

A Coalition of the Willing: Urban Land Readjustment as a Novel Approach for Sustainable Area Development

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Key words: urban land readjustment, national program, pilot projects, coalition of the willing, urban area development, voluntary versus compulsory, paradigm shift, trust, mortgages, incentives.

SUMMARY

The Dutch have a rich tradition in land readjustment but have put this principle only into practice in rural areas. Urban land readjustment is expected to be a potential effective strategy and is now being elaborated in new legislation. In anticipation of this new legislation a national pilot program for urban land readjustment (NPULR) was executed in the Netherlands. Over 2,5 years fourteen pilot projects were stimulated and analysed for the NPULR to draw lessons about the new instruments potential, and to promote its active use. Lessons learned from the program can be used to improve legislation.

Nearing the end of the program in April 2019 none of the pilot projects have reached the multi-party agreement that is the formal pinnacle of the ULR process. This apparent lack of success can be partly explained by the character of urban area development, and the time that is needed to get used to changing relations between public and private parties. Though it is too soon to draw final conclusions on the draft legislation for ULR observations can be made on its effectiveness. That seems to be suboptimal due to a lack of concrete organization track and clear incentives for private parties.

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1. INTRODUCTION

The Netherlands, a small but urbanized nation in Europe, is globally known as a ‘planner’s paradise’. Part of the toolkit of the Dutch planning system is a land policy instrument called *land readjustment*. For more than a century, land readjustment allowed for the transformation of a staggering amount of rural areas through the exchange of ownership. Government decided on the goals that had to be achieved in a designated area, and the Cadastre guaranteed the legal certainty for involved parties. Land readjustment can formally be practiced in a compulsory or a voluntary mode, and up till now, was applied exclusively in rural areas. However, due to urbanization, societal challenges tend to manifest increasingly in the urban built environment. Different European and Asian countries therefore already have rules and regulations for the exchange of ownership in built up areas.

Table 3
Dutch (proposed) ULR legislation in international context.

ULR International: main characteristics	Dutch (proposed) ULR legislation: main characteristics
<ul style="list-style-type: none"> ● Initiative for ULR scheme comes from one or more owners ('bottoms-up') ● Public authorities may promote and support ULR initiatives ('top-down') ● Property rights temporarily transferred to a third party. ● Implementation of ULR scheme requires participation of all owners (voluntary track); if necessary, owners can be enforced based on majority vote (compulsory track). ● ULR-based plan must comply with land use plan or local authority must adjust the land use. ● Value increase of land as a result of ULR will be used to cover the costs of the process and to make land available for necessary public facilities. The remaining will go to the owners ● Sometimes public facilities are paid out of value increase. ● ULR assumed to be self-financing strategy 	<ul style="list-style-type: none"> ● Similar ● Legislation leaves this open; participating owners are free in how they 'organize' this process. ● No compulsory track; instead, municipality can be asked to use expropriation powers to expropriate owner that is unwilling to participate. ● Similar. ● Similar, including payment of public facilities (voluntary track); ● Additionally, existing cost recovery legislation can be used by local authority to enforce contributions by private owners to public facilities (compulsory track). ● Similar

Figure 1: Dutch proposed URL legislation in an international context (van der Krabben & Lenferink 2018)

Dutch national government is currently sorting out rules for urban land readjustment as part of the integrated Planning & Environment Act ('*Omgevingswet*'). Such new legislation is based on the concept that by empowering society to take control of the living environment, the opposition and public costs associated with area(re)development should be reduced. The public must be willing and able to positively impact the living environment, without extensive and expensive governmental influence. Such reasoning only allows for a voluntary mode of urban land readjustment (URL). As of July 2016, a unique collaborative national Pilot Program for URL ('*Stimuleringsprogramma Stedelijke Kavelruil*') or NPURL between the responsible

Ministry and the Cadastre has supported fourteen projects that experiment with voluntary land readjustment in advance of new legislation.

Expectations run high on the results of these urban experiments, relying on the Dutch tradition of cooperation that has been traced back to the nation's successful fight against flooding. In April 2019, the pilots will be evaluated for the performance of land adjustment as an approach for sustainable land use in the urban built environment. A key question is if a compulsory tool for the urban context is in fact required, as has been demonstrated for the rural land readjustment tool. If this is the case, the program gives cause to rethink the upcoming Planning & Environment Act before it has been implemented. This paper aims to reflect on the pilot projects' results.

2. THE 'DRAFT' LEGISLATION FOR URBAN LAND READJUSTMENT

During the euro crisis or Great Recession between 2009 and 2014 the Dutch government was pressed to take action because of stagnating prices in real estate, bankruptcies in the building industry and great scale vacancy of shops, offices and industrial areas. Vacant areas and real estate were often scattered through inner-city areas and lacked a critical scale to fit new enterprises or housing projects. These areas should be redeveloped for a sustainable future but due to fragmented landownership revitalizing is challenging and expensive.

In response the ministry of Infrastructure and Environment declared new legislation would be made to help solve problems of structural vacancy and declining real estate markets. Another motivation for updating legislation is the political priority of building in brownfields instead of green ones thus preserving precious open spaces. The dominant and traditional 'active landpolicy', where municipal land companies bought land, prepared the site and ultimately sold it to private developers is deemed to be less suitable for these kind of locations. This is attributed to the high initial investments in built up areas resulting in high risks off losses (van der Heijden, 2016). A transition towards 'facilitating land policy' should be made to make area development easier and cheaper and share risks with the owners and developers.

One of the new instruments that the Minister of infrastructure and environment mentioned as a solution for these challenges was urban land readjustment (ULR). ULR is expected to help to solve the transformation issue by exchanging land, building and spaces. ULR is defined in the draft legislation of 2016 as following;

Urban land readjustment is an agreement between three or more owners. The agreement is put into writing and is submitted into the public registers (of the Cadastre). The owners commit themselves to combine the properties belonging to them in the built up area, and subsequently parcel and distribute among each other the thus created 'mass'. The agreement is finally executed by notarial deed. (art. 12.41 lid 1)

The legislation for urban areas is meant to be tantamount to the already existing legislation in rural areas. But the tax exemptions and arrangements for transferring mortgages have yet to be secured for the urban land readjustment!

In contrast to the rural land readjustment no formal tracks are defined for the process of urban land readjustment, there are no public institution designated to take responsibility and there is no support arranged to accommodate the process or safeguard legal certainty.

The new legislation was presented for open consultation and many professionals, including Cadastre, contributed reactions for the optimization of this 'draft'. Most people celebrated new legislation and the idea of emancipation area development, but many were also disappointed by the rather unspecific new rules and apparent lacking in incentives and structure. Till this day government never reacted upon the contributions made on the draft legislation but did proceed with its internal process towards formal declaration by parliament nonetheless.

3. A NATIONAL PILOT PROGRAM FOR VOLUNTARY LANDREADJUSTEMENT

The Minister in office stated that new legislation was on its way to present options for revitalizing urban areas in a better and cheaper way. But this new legislation would be part of the integrated Planning & Environment Act that was planned to be operative in 2019. Parties advocated fast action because the times were dire.

To counteract discontentment, and to meet the urgent needs of the market the national Pilot Program for Urban Land Readjustment (NPURL) was called into existence. To encourage projects that were already willing to experiment with the new legislation.

The NPURL had to work on the definition of land readjustment as it was presented in draft legislation of the summer of 2016. Its goals were to promote knowledge, to stimulate pilots and to learn more about the potencies of the new instrument. The results could be used to optimize the legislation. The ministry had a limited amount of civil servants at her disposal qualified for policymaking, but they were relative strangers to area development and land readjustment. Therefore the Cadastre was approached for helping out with the program by providing knowledge and expertise.

4. FOURTEEN PILOTS AND ZERO MULTI-PARTY AGREEMENTS

To test the potential of the new instrument fourteen pilot projects were selected. Careful attention was given to compose a mix of experiments that represented various pressing theme's (declining inner-cities, outdated industrial areas, housing projects and impoverished recreational zones), had a balanced geographical range and contained areas where either population growth or shrinkage was to be expected. The developmental stage of the projects was taken in account too. Some of them were still in the exploratory phase where others seemed to be close to the final phase of affirming the desired development by signing the multi-party agreement. In the pilot projects of the first year local government played significant roles because stimulating enterprises or private parties with state funds is illicit. Hopes were that somewhere during the program the first urban land readjustment could be celebrated (although still formally impossible to submit this agreement into the public registers as one deed).

After two and a half years of experimenting none of the fourteen projects resulted in an multi-party agreement as described in the (draft) regulation for URL. *NB: as the projects are still*

being followed and evaluated changes are the outcome might be different during the FIG Hanoi.

Disappointing as this may seem this does not mean there are successes to be celebrated and no lessons learned to share. Transactions were made, agreements reached and area developments started. Projects were encountered outside the program that had executed area developments that resemble ULR closely.

Why then, did even the most promising experiments not result in a formal multi-party agreement?

5.1. No magic formula: all projects are in some way unique

The success of any urban area development depends on many factors and circumstances and is therefore vulnerable. They also take a long time. The actual dynamics of real life projects executed by municipalities and private parties are often far more complicated and volatile than can be estimated by policymakers at forehand.

All have their own specific characteristics decided by time, place and people. The observation can be made that ULR processes are path dependent (Druif, 2018). Therefore they tend to defy straight comparison or even thorough analysis. Does the apparent lack of agreement result from local culture, the goals for transformation in relation to location and time or to the draft legislation for ULR? It can be assumed that there is no magic formula for ULR in all cases and it takes more time and effort to customize a fitting ULR construction for each case.

5.2. Inner-city area redevelopment is complex and time-consuming

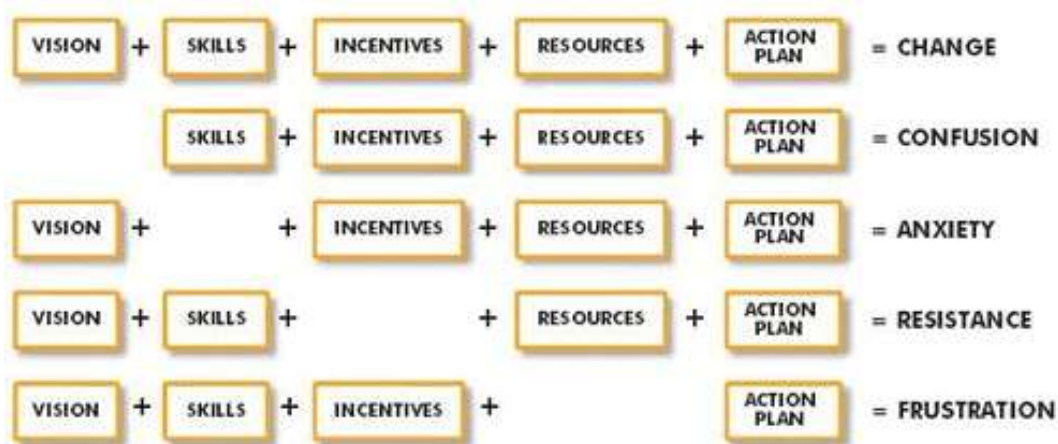


Figure 2: the complex change model (Mary Lippitt)

Inner-city redevelopment can be perceived as a complex change according to the Complex Change Model of dr. Mary Lippitt. It takes the combination of five elements for change to manifest itself; vision, skills, incentives, resources and an action plan. In the case ULR perseverance of all participating stakeholders could be added. The average inner-city redevelopment in the Netherlands takes about 15 years. This is due to high costs of real estate, fragmented landownership, changing economic and political conditions (BPD, 2017). Costs and risks are high. This makes the changes of success slim for any inner-city redevelopment

regardless of the used instrument, and also slims the changes for striking a deal during a relatively short-term national program.

This was enhanced by the fact that all pilot projects were already known to be complex and could not be realized to traditional means. Municipalities were not just willing to experiment, they had to!

5.3. One or more landowners just ceased co-operation

Since ULR as foreseen in the new legislation is voluntary the consent of all the owners needed for the area redevelopment; a coalition of the willing. The cooperation of the last owner is essential to complement the puzzle.

This demands for all the owners to master not only the five elements for managing complex change, but also to have the same sense of urgency and to trust one another. This combination is vulnerable and easily affected by outside influences. In two cases one or more owners did not see benefits in cooperating, lacked incentives to do so or simply changed their mind. Some seemed to wait for the municipality to expropriate them for this is expected to be the most beneficial financial arrangement.

These observations do raise the question; would these area developments have prospered when the municipality, or even the majority of ‘neighbours’, could have coerced these last landowners? Would these landowners when haven been given only two limited ‘choices’, have opted for a the financial compensation from expropriation of for an new and better location in the designated area?

In one case the municipality is anticipating expropriation because of the public interest invested in the project. This could eventually lead to ULR between the other owners and newcomers, but also demands the municipality to own the property in the meantime. This can be perceived as an unwanted return to the more traditional Dutch active land policy while facilitating land policy is being pursued by government.

5.4. A friend without benefits?

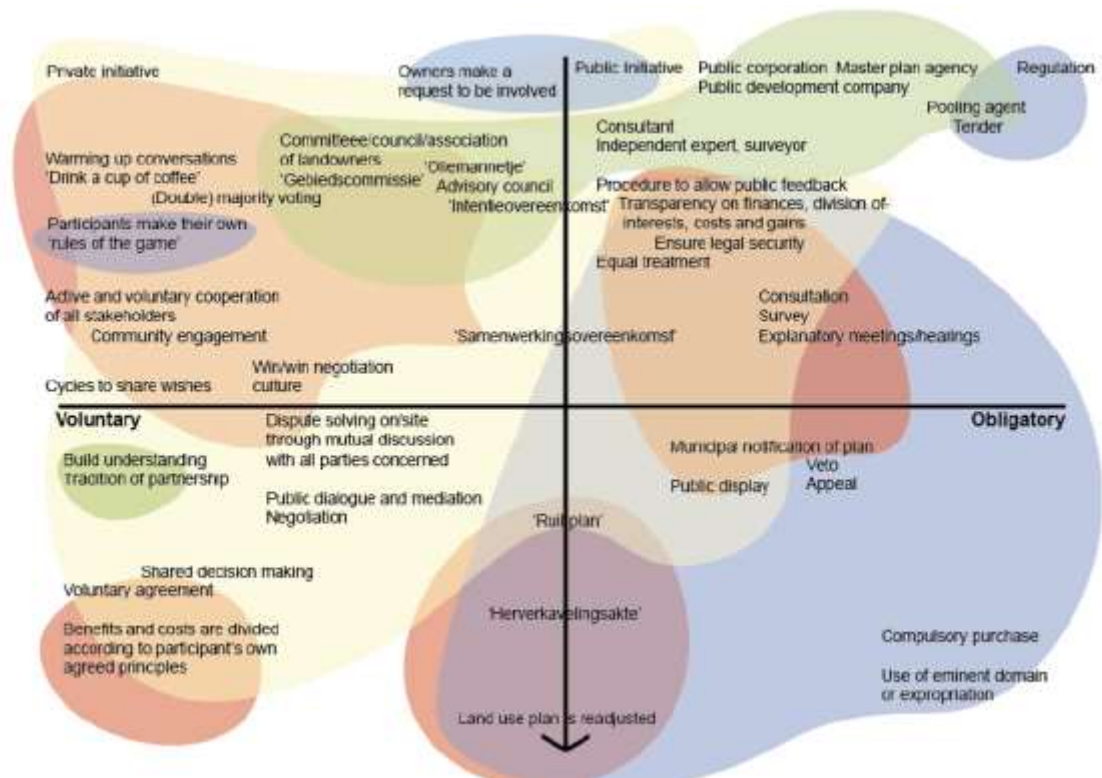
Sometimes stakeholders simply did not seem to understand what urban land readjustment was, what was expected of all partaking stakeholders and felt uncomfortable in the new constellation. They were professionals but not in area- or real-estate development and had other, often more pressing concerns on their mind. Assumedly they looked for quick-wins in time or money (Heurkens, 2018) and did not find them in the new legislation. Costs would have to be made without certainty of goals being reached within a reasonable time.

Risk aversion is said to be characteristic to the Dutch planning culture (Li et al. 2018) and in this perspective it is not hard to comprehend why private landowners do not react enthusiastically immediately. Especially when taking in account that their mortgage providers have to agree as well.

ULR may potentially lower the cost of area development but it is not meant to full up negative business cases. The revenues of the development need to cover the costs. In areas with population shrinkage it would be almost impossible to add value to the development to be distributed between stakeholders and to finance the process of readjustment. Making the

changes of area transformation slim in areas with limited population growth (van der Krabben & Lenferink 2017).

5.5. Trust is the decisive factor and there is no uniform trick for assuring it



Spectrum of manifestation and organization of trust in an land readjustment process (Druif, 2018)

In planning culture, policymaking and the spatial research field technical, legal and financial perspectives tend to be dominant. To stimulate the practice of ULR the national program developed generic tools, free to use for everyone. But during the program realization dawned that due to the voluntary character of the legislation results depended strongly on a successful deal making process. And in any deal making process the critical factor is trust.

Research concluded that interpersonal-, institutional- and procedural trust all play a role in uniting stakeholders and fostering cooperation, and these different forms of trust all play a role in the interaction between stakeholders. But interpersonal trust relationships can be observed as dominant (Druif, 2018).

When working in the principle of voluntariness explicit attention should be paid to the social aspects of communication and deal making next to the more technical and administrative aspects. Simply said: we have the techniques but its people's minds that are the final frontier.

5.6. Mortgages are a showstopper!

In one pilot project and a project that was encountered outside the experiments private plots were planned to be exchanged with plots owned by a housing corporation and plots owned by local administration. Many of these private plots were dependent on mortgages and needed formal permission of the providers to be able to sign the multi-party agreement. The banks providing the mortgages, in one case as many as 17 different providers could or would not cooperate.

In legislation for rural land readjustment arrangements have been made for this specific problem.

5.7 The paradigm shift of the active society and facilitating government takes time and patience.

The relation between owners and municipality were in some pilots troubled. Sometimes specific events or projects were the obvious reason for strife and discontentment. But more often it was a more general sense of unease between administration and private parties, grown over a long period of traditional planning in which government took action and had instruments to coerce or even force owners and enterprises to do their bidding (de Wolf, 2018).

The new legislation is based on a more balanced relation between all parties and where the municipality is not only the guardian of the public interest, but can also be just one of the owners with a more common interest partaking in the deal making. Municipalities have to understand these differing roles and to clearly and consequently propagate the distinction.

This also leads to issues of leadership and responsibility. Who is in charge? And who will fill the gap in the business case if it arises? Especially this last item made municipalities reticent because private parties quickly assumed that when the municipality starts the process they will be willing to boost the business case or take all the risks and losses.

The pilots who had intermediates to facilitate the deal making process like Cadastre or local influencers fared remarkably better. Plans reached a more concrete stage sooner and with less confusion.

6. DISCUSSION: FAILURE OR SLOW SUCCESSION?

Two and a half years of experimenting is relatively short for urban area developments.

The fourteen pilot projects of the NPULR are not necessarily representative for Dutch urban area development processes in general, nor can they provide proof of the effectiveness of the future ULR legislation because the regulations are yet to be installed. So it's even harder to make final conclusions on the benefits of an compulsory track.

Having mentioned these mitigating circumstances other observations on the new legislation can be discussed.

Urban land readjustment as an approach seems to have especially social benefits.

Stakeholders get involved in an early stage and get their say. They share their ambitions, fears and grudges. They are free to take part, refrain or even obstruct. Surprising initiatives can take shape from this sharing of neighbours' interests. Or initiatives can come to a grinding halt due

to one or more owners ceasing cooperation. This principle is in one hand as old as the world and in the other shockingly new to the Dutch being accustomed to institutional planning systems.

What seems obvious is that urban land readjustment in its contemporary voluntary track is not a magic formula for urban redevelopments. It does not always lead to a spark or acceleration in urban redevelopment nor does it guarantee the desired outcome. And was this not one of the objectives for even adding ULR to new legislation?

The erratic outcomes of ULR processes do have a relation with the needed consent of all the owners. Expropriation is a method available to municipalities to deal with 'obstructing' owners but this might not always be optional due to high costs legal requirements. Offering an obstructive owner a new location instead of mere financial compensation would add a new interesting option to the possible arrangements but is yet excluded in the new legislation due to political motivations. From a professional point of view it is disappointing that a compulsory track is not being prepared due to political motivations. This dogmatically stand might be explained by the inclination to avoid conflict by refraining from taking possibly unpopular measures.

Since there is no way of putting a compulsory track of ULR to test nothing decisive is yet to be said of its benefits.

Last but not least: the practical issue of mortgages as a showstopper can effectively be addressed in the legislation process. As the lack of tax exemptions paramount to the rural land readjustment. When ULR does not gain publicity and attractiveness it's not hard to depict this useful instrument end up in the innovation chasm between early adopters and early majority. (Rogers 1957) .

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Geospatial information for a smarter life and environmental resilience

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BIOGRAPHICAL NOTES

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