TECHNION - ISRAEL INSTITUTE OF TECHNOLOGY
Center for Urban and Regional Studies

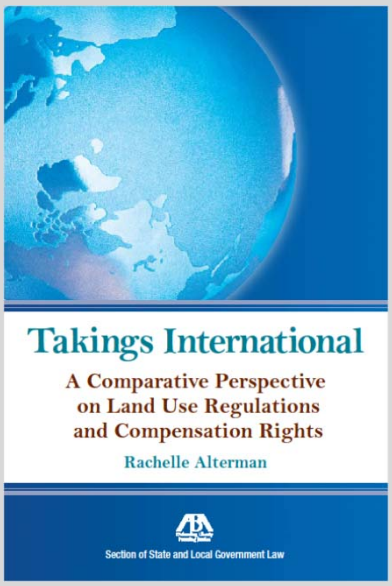
Compensation Rights for Land Use Regulation:

The Findings of Cross-National Research

Rachelle Alterman
Urban planner and lawyer

Founding president of the International Association on Planning, Law and Property Rights – PLPR

FIG Working Week rome May 7 2012



The research questions:

Do landowners (or holders of lesser rights) have legal rights to receive compensation from governments for land use regulation that diminishes property values?

This question excludes actual expropriation, and compensation for taking of a land title (or physical taking) but it includes a range of degrees of decline.

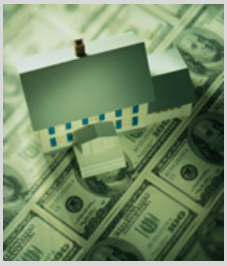
- **In what situations and to what extent do (or should) governments compensate land owners?**

  How extensive are such cases in practice?

?

The Issue

- Almost all countries today have planning laws (though not all implement and enforce them)
- Wherever land-use regulation is applied to the rights to use or develop land, there may a rise or depreciation of land values
- The plus side – "betterment" or the "unearned increment" - is not the focus here; however, it has commanded considerable international academic and organizational interest *(outside the USA)* and resurfaces as a policy agenda from time to time in different countries
- However, the reverse – compensation for decline in property values – has been on a "low burner" of national or international discussion or academic research. The USA is an exception.
- Yet the differences among countries in law and policies in an era of globalization is bound to kindle the internal debates within countries



Why is cross-national learning relevant?

- The current state of systematic comparative knowledge is rudimentary
- Different countries have different constitutional, statutory and practice rules about rights to compensation
- Analytical comparison may help to frame the internal debates within countries and give them a sense of SCALE
- Assessment of outcomes in those cases where there *are* compensation rights may provide some "simulation" for other countries considering a change in laws or policies – but it is difficult (and not part of this research)

The compensation-rights span of policies

No compensation rights except for physical expropriation

Extensive compensation rights

A broad range of interim positions

Examples of situations where a land-use planning decision may reduce private property values

All situations discussed do not involve direct expropriation; title remains and the landowner remains in control of access, transfer etc.

1) **A former land use plan had permitted intensive development, but the landowner did not utilize these; an amendment to the plan (= zoning) reduces the development rights (but does not take them all away)**
2) **A rural area had not before had a statutory land-use plan and landowners had traditionally built farm homes, workplaces, storage areas. A new plan now limits land use to agriculture and there are much more limited development rights**
3) **An owner of farmland near an area of quick urban expansion submits a request for rezoning to permit development but the request is rejected**
4) **A new plan is under preparation. Meantime, a freeze is placed on issuing building permits – for a limited number of years**
5) **A plot of land is designated as agriculture and expectations of development are disappointed**

Examples of situations – cont.

6) **A plot of urban land is designated as open space, but is not necessarily slated for expropriation**

7) **A plot of land is designated for future expropriation but is not expected to be needed for 10 years and government is not yet expropriating**

8) **A major highway is planned. Landowners bordering the new highway are not expropriated but land values decline sharply**

9) **An area next to a quiet neighborhood is rezoned, from public open space (park) to a school. The values of the bordering homes decline**

10) **Landowners in a quiet single-family neighborhood learn that a neighboring plot is designated for a high-rise residential tower – land values decline because the view is blocked, more traffic…**

11) **Same as above, but the single-family neighborhood is not yet built – only as development rights now reduced in value**

My classification of types of ‘‘injuries”

A. Direct *major* injuries – “near expropriation”, “categorical takings

- **Eliminates all (or almost all) economic value compared with previous value – zoning for a *public* type land use (may be expropriated in the future)**
- **Eliminates all (or almost all) economic value compared with previous value – zoning for a non-*public* type land use**
- **Eliminates all.. *future* value due to refusal to “upzone”**

Types of ‘‘injuries” – cont.

B. Direct *partial* injuries –

- **Reduces property value - decision to rezone to a lower-value private-type land use**
- **Reduces the *income* from the property derived under the previous zoning**
- **Reduces the property value (or income?) due to a temporary freeze or interim conditions**

Types of ‘‘injuries” – cont.

C. Indirect injuries (regulatory decision reduces the value of *other* properties (major or partial

- **Stemming from expropriation of part of a plot that results in reduced value to the *remaining* plot (“severance”)**
- **Properties affected by designation of land for a public utility or service that affects neighboring properties (often related to expropriation of *others’* land)**
- **Decision to rezone to a *private* use reduces the value of other land (differences in geographic scope?)**

Legal analysis of

- Constitutional protection of property
- Property law, if relevant
- Planning statutes
- Regulations, orders, decrees
- Court decisions – in common-law countries as well as civil-law countries
- ***Partial coverage only*** of alternative practices –as substitutes to compensation (eg, TDR, land readjustment, clustering)

Selection of 13 countries
all are members of OECD

- **Advanced economies (1 advanced-transition)**
- **Democratic regimes**
- **Four continents**
- **Both federal and unitary regimes**
- **Common-law and civil-law countries**
- **EU and non-EU**
- **A variety of languages and admin-political cultures**
- **A variety of geographic sizes and densities**
- **A few where the issue is a high-profile public issue, most where it is a "non-issue"**

13 Countries (14 jurisdictions)

- Austria
- Australia
- Canada
- Finland
- France
- Germany
- Greece
- Israel
- Netherland
- Poland
- Sweden
- UK
- USA
- *Oregon*

The Findings
(surprising? Counterintuitive?)

No compensation rights (minimal)	Moderate or ambiguous	Broad compensation rights
The UK	**Finland**	**Poland**
Canada	**Austria**	**Germany**
Australia	**The USA**	**Sweden**
France	***[the special case of Oregon – ranged from extensive to moderate)***	**Israel**
Greece		**Netherlands**

Key findings - general

- There are many models to compare with and learn from – both by advocates of compensatoin rights and of denial of such right
- IN the USA the "takings issue" stands out in a paradoxical way: By far the most hotly and politically debated topic, by far the most researched and adjudicated, yet in fact occupies a moderate, middle position on the comparative scale.
- Mutual misconceptions between Americans and Europeans about the takings issue: Americans often assume the existence of a "European approach"; Europeans assume that US law grants very generous compensation rights for regulatory takings.

Key Findings – cont.

- A modest and one-way relationship between the constitutional protection of property and compensation rights
- No clear demarcation line between common-law and civil-law countries
- Major differences even among European countries despite the shared European Convention on Human Rights
- Major differences among neighboring countries with shared cultures
- "Explanatory variables"??? The legal differences and similarities are often counterintuitive and cannot be "predicted" or "explained" based on other attributes of that country's history, geography, planning policies, or even broader land policy

Thank you

alterman@technion.ac.il
http://Alterman.technion.ac.il