Land Questions in Relation to Town and Regional Planning in Holland.

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Town planning duties, in accordance with the law and practice in Holland, devolve mainly upon the common-councils. The provincial councils and the government control the fulfilment of the task and if necessary have to complete same.

Town Planning Compulsory.

The Housing Law of 1901 for the first time compelled municipalities to prepare a town-plan.

This obligation was imposed on all municipalities with more than 10,000 inhabitants, and on smaller municipalities whose population increases more than 20% during a period of five years.

Periodical Revision.

In order that town-plans are kept in relation to the development of the town they have to be revised at least once every ten years.

Both the town plans and the revisions are subjected to the approval of the provincial council.

If a municipality does not prepare a town plan, the provincial council may do so.

Inspection of Plan.

A town plan must be exhibited for at least four weeks, so that parties concerned have sufficient opportunity to oppose if they think that their interests will be damaged. Moreover, parties concerned may appeal to the Crown after approval has been given by the Provincial Council, and practice shows that these appeals are sometimes successful.

It was some time before the councils took up the task imposed upon them by the Housing Law of 1901 but the necessity and the importance of a good town plan has been understood more and more and most of the larger towns and a number of the next category now have town plans designed by the most capable architects in Holland.

Extent of the Town Plans.

A great difference exists with regard to the extent of the town plans. Some municipalities have prepared a town plan embracing nearly their whole territory, the full execution of which could probably be expected in the course of a hundred years or still longer ; others rather follow the course of preparing plans for smaller areas, as required for town extension.

The weak point of a town plan dealing with a very far off future is that it is impossible to determine exactly so far beforehand what the use of the land will be and therefore the town plan is sure to have to be repeatedly and radically altered.

In most cases the municipalities limit themselves to future needs that can be foreseen with a tolerable certainty. In addition they secure that existing parks and estates that will be wanted in the more distant future are reserved.

Tendency of Town Plans.

The tendency of a town plan is to determine the main features of development in the near future and the use of the land included in the plan.

The practical upshot of this is that the road plan is fixed, as a rule with plantations, parks, and playing and sport grounds, while sometimes the sites for schools and public buildings are also indicated. The kind of building is not fixed in most cases. A frequent exception is the indication of sites, mostly near railway or water, for industrial purposes, and of lands favourably situated for open building (country houses, garden suburbs).

With regard to fixing the use of land, the Hindrance Law of 1875 is of significance. In accordance with this Law, establishments that might cause danger, damage or obstruction, cannot be erected without approval of the common-council, who must give the proprietors and users of the adjacent sites opportunity to make their complaints before approval.

The law provides the common-councils with authority to prohibit some industries in certain parts of the town and to point out certain parts of the town for certain industries. Several municipalities make such stipulations with the intention gradually to expel those industries from existing residential districts and to keep them from the very beginning out of proposed residential districts. A part of the town where a little more freedom of movement can be allowed to them than would be possible in a residential district is then reserved for those industries.

Town Planning and Land Values.

The town plan includes both the land belonging to the municipality and that belonging to private proprietors.

The influence of a town plan on the value of the land may be great. It will in one case lead to a fall in prices, in the other to a rise. To a fall of prices with regard to land destined for a road, way, or park, in short, land that may not be used for building purposes. It will lead to a rise of prices for land destined to be built upon and situated very favourably in the town plan, for example, along broad roads or near projected parks.

A municipality very seldom experiences any loss on account of a rise in prices, because when expropriating only the current value and not the future higher value has to be paid. Moreover, a town plan is rarely fixed in all subdivisions until the municipality has acquired the land it needs, e. g., for schools, etc.

Legal Consequences of a Town Plan.

The legal consequences of a fixed town plan is that a municipality is in a position to prevent all building in contradiction with that plan. The building and housing by-laws generally stipulate that no building can be commenced without permission of the common-council. If a proprietor carries out building in contradiction to the plan and without special permission the municipal council has the power to remove such buildings at the cost of the owner.

Authority of the Council regarding the Town Plan.

As the town plans in Holland are meant rather to indicate in rough outline the future extension of the town than to prescribe future building in all particulars it is obvious that the town plan alone does not sufficiently arm the common-councils against undesirable town extension. The comon-councils are further supported by their powers

1. To fix building and housing by-laws.

2. To issue a building prohibition by which an existing building or group of buildings may not be rebuilt or altered.

3. To prohibit cutting down trees in woods and parks in private ownership where the council has the intention to expropriate these areas and preserve them as natural monuments.

The building and housing by-laws have for a long time included stipulations that buildings must satisfy certain technical and hygienic conditions. Of late years many municipalities have extended the stipulations with regard to hygienic conditions so as to obviate methods of building (that in themselves could not be prohibited) becoming an impediment to buildings to be erected later on adjacent sites. This extension usually includes stipulations with regard to the part of the yard that has to remain open, and with regard to the building lines (also for the back of the building), outside which lines building is not allowed.

In an increasing number of municipalities there are stipulations that buildings must also satisfy conditions of quality fixed by the common-council.

Though the councils are in a position to protect themselves sufficiently against certain violations of the town plan, and though they have authority to ensure in many respects a reasonable extension of the town, they cannot compel a private proprietor to lay out his land in accordance with the town plan. If such an owner refuses to develop, the only remedy is for the council to proceed to expropriation.

Expropriation Act of 1851 repeatedly supplemented.

The Expropriation Act of 1851 is based on two principles. If the public interest demands it, property may be expropriated, but this cannot take place without indemnification.

Not only the full property of the land may be expropriated, but also the lease and all other rights that may be fixed on the land in accordance with the Dutch law.

It should be noted that generally the land is possessed in full property and that municipalities sometimes distribute on lease but that private proprietors very seldom do so.

In general expropriation has to be preceded by an act declaring the work to be of public utility and limiting the area of expropriation.

The Expropriation Act has been repeatedly supplemented in a number of special cases in which it was accepted that the purpose itself is of public utility. In these cases no special law has to precede expropriation. These cases are, in so far as this paper is concerned :—Expropriation of land for housing (1901), Expropriation for the provision of land with houses for working farmers (1918), Expropriation of land for houses (1921), Expropriation for the improvement of drainage and irrigation (1922), Expropriation for the maintenance of natural monuments such as woods and other tree plantations (1922).

These special rules were meant also to remove every doubt as to whether an expropriation for one of the special cases, mentioned above should be considered for the public benefit, to hasten the expropriation proceedings. A stipulation added to the Law of Expropriation in 1920, assigning the right of temporary possession of the land by the expropriating party, has the same tendency. In consequence of this stipulation the expropriating party may, before the expropriation proceedings have come to an end, take possession, and may even start the work for which the expropriation will be carried out. The conditions are that the expropriating party has to guarantee the indemnification to be fixed by the court of justice and that this party is obliged, in the event of the expropriation not being allowed, to indemnify the damage caused by him to the real estate.

In practice this last stipulation often effects an acceleration of the expropriation by a year or more.

Municipalities may expropriate to execute their town plans. When they want land for making roads, laying out promenades, parks, or recreation grounds, building schools, libraries, baths, gasworks and electricity works, or for building houses, they may demand expropriation.

The proprietor of the land may, however, object or show that the municipality does not need his land, because it already possesses land fit for the purpose. Unnecessary expropriation may be prevented in this way.

When the municipality has expropriated it must execute the work failing which the expropriated person may claim back his land in its existing condition, paying for it in proportion to value returned. This stipulation also prevents the right of expropriation being abused and the municipality making quite another use of the land, than that for which it was expropriated, for instance, by distributing land as building sites although it had been expropriated for a park.

Determining the Indemnification.

Rules for determining the indemnification have not been stipulated by the law ; the real value of the property expropriated has to be paid. This stipulation leaves room for very different opinions, especially with regard to expropriation of land on the periphery of growing towns, for which private owners usually try to get an indemnification based on the value of building sites, whereas the expropriating municipality generally is of opinion that a price a little above the agricultural value will suffice.

The purpose for which land is expropriated seldom influences the amount paid. When a municipality, for instance, expropriates two similar plots, one for public baths and the other to distribute as building sites, the difference in destined use will cause no difference in the indemnification. But if there is an indication on a fixed town plan that a certain piece of land shall become a street or a road the court of justice certainly will keep this in mind and will put the indemnification lower than if the land had not been so destined but might gradually be laid out as building sites.

Expropriation is only resorted to by a municipality when the land cannot be bought at a reasonable price by private treaty, for as the price cannot be estimated with certainty before expropriation the municipalities prefer to avoid risks.

Increasing the Area of Municipally Owned Land.

To avoid difficulties about acquiring land every time it is needed, and the necessity to expropriate, which would probably increase prices, the larger municipalities have gradually acquired land by purchasing when up for sale at a fair price and likely to be of use. In this way they have acquired important areas of land mainly bought when still agricultural and mostly situated around the built up areas.

Disposal of Municipal Land.

This municipal land ownership has a double purpose. In the first place a municipality with a growing population has an increasing need of land for schools and other public buildings and for the laying out of playgrounds and sports grounds. Therefore no insignificant part of the land is meant for the use of the municipality. The land not meant for that is developed by the municipality (by laying out streets and sewerage) into building-sites and is distributed. In this way the municipalities are in a position to see that the prices of building sites belonging to private proprietors are not unreasonably raised and that land fit for building sites is to be obtained at reasonable prices.

Sale or Lease of Municipal Land.

The land not needed by a municipality for its own use is either sold or leased. Of the three largest municipalities Amsterdam (more than 700,000 inhabitants) and the Hague (more than 400,000 inhabitants) almost exclusively lease their land. Apart from some exceptions land is sold only for churches and schools. Rotterdam (more than 500,000 inhabitants) generally sells land, except the land along the river and harbours, which is leased.

The duration of the lease differs. For instance the Hague usually leases land for 75 years at a fixed annual rent. Amsterdam generally distributes land on a continual lease, while after a certain number of years the annual rent may be altered.

Advantages of Leasing.

The main reasons why councils prefer leasing to selling are in short the following :—

1. Should a municipality need the land at some time or other it would be easier to get it back than if sold outright. This avoids expropriation.
2. A municipality can enforce more radical stipulations with regard to the use of land on lease than with a sale.
3. With a lease for a fixed period a municipality will benefit by an eventual rise in the land values, because after the expiration of the lease the land returns to the ownership of the municipality. With a continual lease by gradually raising the rent a municipality will also get this profit. A municipality will not benefit by this rise in value with a sale.

Municipal Mortgage Bank.

Some time ago the municipality of The Hague, in order to support the issue of leases, established a municipal mortgage-bank that provides money as a first mortgage on buildings on land leased from the municipality. Now that the private mortgage banks have gradually started also to lend money on buildings erected on leased land the activity of the municipal mortgage bank has decreased more and more.

Since with a lease, in contrast to a sale, the capital invested in land does not return to the municipality but only the annual rent a large and

ever growing municipal capital remains invested in this land exploitation. This makes great prudence urgently necessary.

Municipal Land Exploitation has not the Character of a Monopoly.

In Holland municipal land exploitation has not the character of a monopoly. In all municipalities side by side with municipal land exploitation private land exploitation exists, or at least is allowed. Private land exploitation is based, apart from rare exceptions, on the sale of land.

Municipalities cannot compel private proprietors through any other method than through expropriation to cede land to them. A separate regulation for compulsory sale of land destined for garden cities does not exist in Holland.

No Compulsory Exchange of Land Except in the Interests of Agriculture.

The power of compulsory exchange exists only for agricultural interests (law of 1924) and not especially for the sake of municipalities and other public bodies. On the application of a certain minimum number of landowners holding part of a certain number of landed estates an exchange in plots may be asked for.

The tendency of this is to provide each of the owners with an estate forming an unbroken piece of land, as far as possible along public roads or along waterways.

A municipality is only able to determine the use of a piece of land in a negative sense, viz., by preventing the proprietor from putting it to some other use. This is done either through scheduling the use in the town plan or through turning special parts into monuments of nature through a by-law.

Up to now, so far as I know, no municipalities in the Netherlands have tried to ensure that certain plots now used for agriculture or horticulture are to be kept to this use, otherwise than by expropriating the land. Where a municipality owns the land it is, of course, able to ensure this use but a by-law to make private owners, either without or against an indemnification, to do so probably would not get the necessary consent of the Province or the Crown. This is quite apart from whether if such regulations did exist they would be workable.

Regional Plans not yet Regulated by Law.

In Holland the necessity and the significance of a good town plan is being understood more and more and of late the number of those advocating that town plans are not sufficient and regional plans are also necessary is growing.

This idea is based mainly on the following arguments :—

The necessary connection between the town plan of the larger centres of population and the neighbouring municipalities ; the comon interests in some parts of the Netherlands ; the altered requirements of modern traffic ; the desire to preserve the beauty of nature outside the larger centres of population.

A separate legal regulation of regional planning does not exist in Holland but the following paragraph is not without importance in this connection.

Increasing Interest in Regional Plans.

Since 1921 the authority of the " deputy " of the provincial council has been included in the housing law, by which authority the obligation can be imposed on small municipalities to prepare a town plan (although

the housing law does not compel them), and that either separately or together with other small municipalities or in connection with an existing town plan of a neighbouring municipality.

In 1925 a committee was formed by the Union of Dutch Towns and by the Dutch Housing and Town Planning Institute to prepare a legal regulation of regional plans. This project was greatly criticised, mainly because it created a new public authority and the authority of the provincial council's " deputy " was not included in it.

In the same year the provincial council's " deputy " in North Holland started an investigation concerning the desirability of regional plans in their province and in 1926 the Minister of Home Affairs and Agriculture appointed a committee to investigate the desirability of a regulation of regional plans.

In the same year Government introduced a Bill in the House of Commons to prepare a government road plan. For this important extension and improvement of the main-road system in Holland, the execution of which will probably take from 25 to 30 years, the sum of fl. 300,000,000 is asked for in the Bill.

Conclusions.

It may be concluded that the councils, particularly through the right of expropriation, are in a position greatly to influence the execution of their town plans and if this execution does not work smoothly, the cause of this generally is the financial position of the municipality or a lack of energy and of forethought. To avoid such conditions it is necessary that a general law on town building should compel the councils to act more energetically and to work out their schemes mor fully than they sometimes do.

A legal basis for regional planning is urgently needed.

Summary.

The task of fixing and maintaining a town plan principally rests with the common-council.

Communities with more than 10,000 inhabitants are obliged to prepare a town plan and to revise it periodically.

A town plan has force with regard to all the land within its area, therefore also with regard to land in private ownership.

A town plan may, owing to the use to which it destines the land, cause either a rise or a fall of the price.

A municipality is in a position to prevent private landowners from putting their land to a use contradictory to the town plan but cannot compel them to exploit their land in accordance with the town plan.

In the case of a private owner remaining in default the only way the municipality can put itself in a position to have the land laid out in accordance with the plan is by expropriation.

The law of expropriation provides the common-councils with radical authority with regard to the town plan. Not only the full property in the land (which is a rule) but also the right of lease (which is an exception) and all other rights on real estate may be expropriated.

Expropriation takes place against indemnification fixed by the court of justice. This indemnification is fixed in accordance with the real value of the land at the moment of expropriation, a future possible rise of price being disregarded. The use for which the land is destined only rarely influences the indemnification.

Owing to the uncertainty of the indemnification expropriation is risky and is only applied when purchase by private treaty on fair conditions is impossible.

The power of compulsory exchange is available only for agricultural interests. Municipalities have no authority to ensure that land belonging to private proprietors shall always be used for agriculture.

There is increasing municipal land ownership for municipal use and for distribution as building sites, the latter either by sale or on lease. Municipal land-exploitation has not attained the character of a monopoly.

Regional plans have not yet been provided for by legislation. There is increasing interest in this question.

Conclusion: Town councils are already able greatly to influence town plans, but a general law for the building of towns and a legal basis for regional plans are urgently wanted.

Sommaire.

La charge de l'établissement et de la mise à jour d'un plan de ville incombe au conseil municipal.

Les communes de plus de 10,000 habitants sont obligées de préparer un plan de ville et de le reviser périodiquement.

Un plan de ville exerce son action sur tout le terrain qu'il englobe donc aussi pour ce qui concerne le terrain possédé par des particuliers.

Un plan de ville peut, en raison de l'usage auquel il destine le terrain, causer soit une hausse, soit une baisse des prix.

Une municipalité est bien placée pour empêcher les propriétaires privés d'attribuer à leur terrain un usage contraire au plan de ville, mais ne peut les forcer à exploiter leur terrain selon les prescriptions du plan de ville.

Dans le cas d'un propriétaire privé restant en contravention le seul moyen pour la municipalité d'obtenir que le terrain soit aménagé conformément au plan est de recourir à l'expropriation.

La loi d'expropriation donne aux conseils municipaux pleine autorité en ce qui concerne le plan de ville. Ce n'est pas seulement la propriété complète du sol (ce qui est une règle) mais aussi le droit de cession à bail (ce qui est une exception) et tous les autres droits sur un domaine foncier qui peuvent être expropriés.

L'expropriation a lieu moyennant une indemnité fixée par le tribunal. Cette indemnité est fixée en rapport avec la valeur réelle du terrain au moment de l'appropriation, sans tenir compte de la hausse des prix possible dans l'avenir. L'usage auquel le terrain est destiné n'influence que rarement l'indemnité.

En raison de l'incertitude de l'indemnité l'expropriation est hasardeuse et n'est employée que lorsqu'une entente amiable à de bonnes conditions est impossible.

Le droit d'échange obligatoire n'existe que pour les intérêts ruraux. Les municipalités n'ont aucune autorité pour stipuler que du terrain appartenant à des propriétaires privés doit toujours être employé pour l'agriculture.

La propriété municipale du sol pour l'utilisation municipale et pour la distribution en lots à bâtir, par vente ou par cession à bail, dans ce dernier cas, s'accroit. L'exploitation du terrain municipal n'a pas pris le caractère d'un monopole.

La législation n'a pas encore pourvu à l'établissement de plans régionaux. L'intérêt pour cette question va croissant.

Conclusion : Les conseils municipaux sont déjà bien à même d'influencer les plans de ville, mais on désire vivement une loi générale pour la construction de villes et une base légale pour les plans régionaux.

Auszug.

Die Aufgabe, einen Stadtplan festzustellen und durchzuführen, ist in der Hauptsache Aufgabe des Gemeinderates.

Gemeinden mit mehr als 10.000 Einwohnern sind verpflichtet, einen Bebauungsplan auszuarbeiten und ihn von Zeit zu Zeit einer Nachprüfung zu unterziehen. Ein Bebauungsplan bestimmt die Verwendung aller innerhalb der Gemeindegrenzen liegenden Grundstücke, also auch der in Privatbesitz befindlichen Flächen.

Ein Bebauungsplan kann je nach der Verwendung, die er für ein Grundstück vorsieht, dessen Preis erhöhen oder erniedrigen. Die Gemeinde ist in der Lage, die Privatgrundbesitzer daran zu hindern, daß sie ihre Grundstücke anders verwenden, als das im Bebauungsplan vorgesehen ist, aber sie kann sie nicht zwingen, ihre Grundstücke in Übereinstimmung mit dem Bebauungsplan zu verwerten. Wenn ein Privateigentümer die Verwertung seines Grundstückes unterläßt, kann die Gemeinde die Verwertung des Grundstückes in Übereinstimmung mit dem Bebauungsplan nur auf dem Wege der Enteignung erreichen.

Das Enteignungsgesetz gibt dem Gemeinderat sehr weitgehende Machtvollkommenheiten in Hinblick auf den Bebauungsplan. Es kann nicht nur allein das volle Eigentum an dem Grundstück (welches die Regel ist), sondern auch das Baurecht (welches eine Ausnahme ist) und alle anderen Rechte, die an dem Grundstück haften, enteignet werden. Die Enteignung geschieht gegen eine Entschädigung, deren Höhe vom Gericht festgesetzt wird. Diese Entschädigung wird in Übereinstimmung mit dem wirklichen Wert festgesetzt, den das Grundstück im Zeitpunkt der Enteignung hat. Künftige Wertsteigerungen werden nicht berücksichtigt.

Der Zweck, für welchen das Land bestimmt ist, hat nur selten einen Einfluß auf die Höhe der Entschädigungssumme. Mit Rücksicht darauf, daß die Höhe der Entschädigung nicht von vornherein feststeht, ist die Enteignung mit Risiko verknüpft und wird nur angewendet, wenn der Ankauf zu dem angemessenen Preis durch Privatvertrag unmöglich. ist.

Die zwangsweise Grundstückumlegung ist nur für landwirtschaftliche Zwecke zulässig. Gemeinden sind nicht berechtigt zu bestimmen, daß Grundstücke, die Privatleuten gehören, dauernd für landwirtschaftliche Zwecke Verwendung finden sollen.

Der Landbesitz der Gemeinde nimmt ständig zu und dient für Gemeindezwecke und zur Verwendung für Bauzwecke teils auf dem Wege des Verkaufes oder des Baurechtes. Die Bodenverwertung der Gemeinden hat nicht den Charakter eines Monopols erhalten.

Regionale Nutzungspläne sind noch nicht von der Gesetzgebung berücksichtigt. Es besteht ein wachsendes Interesse für diese Frage.

Schlußfolgerung: Die Gemeinderäte sind bereits in der Lage, die Bebauungspläne weitgehend zu beeinflussen. Es besteht jedoch ein dringender Bedarf für ein allgemeines Stadtbaugesetz und eine gesetzliche Unterlage zur Beschaffung von regionalen Nutzungsplänen.