

Land Development in The Netherlands

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Summary

The article gives an overview of almost 100 years of land development in the Netherlands. It shows the evolution of land development from purely agricultural importance to a multi-functional approach. Within this evolution, the re-allotment process (voluntary as well as compulsory) forms an important instrument for pursuing the objectives in rural areas. The current situation of land development confirms the necessity for land exchange instruments, but with the need to optimising and speeding up this process. After almost one age of evolution, it's concluding, that land development in the Netherlands is still a fruitful instrument for different objectives in the rural area.

Zusammenfassung

Der Artikel beschreibt die etwa hundertjährige Geschichte der Landentwicklung in den Niederlanden. Sie verlief von einem rein landwirtschaftlich ausgerichteten Vorgehen hin zu einem multifunktionalen Ansatz. In dieser Entwicklung bildete die (freiwillige wie die hoheitliche) Bodenordnung ein zentrales Element, um die Ziele der ländlichen Neuordnung zu verfolgen. Das gilt auch heute noch, allerdings mit der Notwendigkeit, die Entwicklungsprozesse zu optimieren und zu beschleunigen.

gen. Auch nach einem Lebensalter ist die Landentwicklung in den Niederlanden immer noch ein wirksames Instrument für die Entwicklung der ländlichen Bereiche.

Keywords: historical overview, spatial planning, land development objectives, voluntary land exchange, institutional set up

1 Introduction

Since 1924 more than 500 land development projects have been taken place in The Netherlands. Almost 1.4 million hectares were involved in these projects. Besides, on a voluntary base, yearly thousands of hectares were exchanged in privately organised land exchange projects. In the Netherlands an experienced organisational structure and knowledge network was built up during almost a century of land development projects.

In the early years land development and land consolidation were quite similar. Later on, land development was the overall approach for a project area with objectives to improve agriculture, nature, landscape, infrastructure, water management and outdoor recreation. Land consoli-

dation or re-allotment (land exchange) became measures that were often crucial to achieve the overall objectives of the land development project.

This article will first look back into the history of land development. With a short historical overview, the current situation will be understood better. In the following section, land development will be described as it was under the Land Development Act 1985, with special attention to the re-allotment process. The overall approach under this law is still the current one. The changes in the current law of 2007 will be shortly evaluated in view of the objectives of the differences compared to the Law of 1985. Subsequently, a new approach for voluntary and compulsory land exchange (land consolidation) will be discussed. Last but not least some issues will be mentioned for a sound future of land development in the Netherlands.

2 Historical perspective of land development

The awareness that land consolidation (in the meaning of land exchange or re-allotment) can give a fruitful contribution to the development and economic meaning of agriculture started at the end of the 19th century. However there was a high degree of restraint from the government side because land consolidation was seen as an intolerant interference interfering with private property rights.

After two experimental projects, done by a private company between 1913 and 1919, the need for a legal base for land consolidation was growing. The first land consolidation act entered into force in 1924. The only objective of the law was to improve the agricultural structure. In practice, this meant merging of land by combining plots preferably near the farm house.

The first land consolidation act (1924) did not lead to an increase of the number of land consolidation projects. Between 1924 and 1935 only 20 projects were implemented. The limited enthusiasm had three causes. Land consolidation had to be initiated by at least 25 % of the land owners in the project area; subsequently the land consolidation plan needed the approval of a majority of land owners with a majority of the land area as well. The third reason was that the project had to be financed by the involved land owners. The government subsidised the project in a very limited way. The professional support was still done by a private company.

Since 1935 land consolidation became an instrument of governmental policy by introducing a Governmental Service for Land Consolidation (the current Government Service for Land and Water Management – DLG). The Land Consolidation Act was modified in 1938 and the governmental subsidy for land consolidation projects was increasing.

The interest for land consolidation was growing and the number of projects was growing, too. All this resulted in a new law in 1954, with some essential modifications. For instance, the tenant (with a regular land lease contract)

got a separate legal position, comparable to the land owner. A system of “deduction” was introduced by the law.

Deduction means that the private property of every land owner can be reduced till a maximum of 3 % (later 5 %) in the re-allotment process. In this way room was created to improve infrastructure needed for general purposes, in particular for new or improved roads and new or improved water courses. Infrastructure and water



Source: DLG, M. Dekker

Fig. 1: The land development plan comprehends all the measures and facilities to be realized in the project area; the photo shows the presence of water, everywhere within the Netherlands.

resources were improvements for the region as a whole and therefore also for the land owners (and the agricultural structure). For this reason the land owners did not get financial compensation for the deduction. In later legislation, deduction was also used for nature, landscape, outdoor recreation and other objectives of general interests. A financial compensation for deduction was introduced.

The basic system of land consolidation of the Land Consolidation Act of 1954 did not change essentially until 2007. The same basic approach was followed in the Land Development Act of 1985. Since that period onwards it is better to use the term “land development”.

In headlines the process is carried out as follows: Land development starts with drafting a land development plan containing all the measures and facilities to be realised in the project area. Mostly land consolidation is one of the most important measures. The plan is approved by the provincial government after a procedure of participation and appeal procedures. Appeal to the court is restricted to the land owners who are involved in the measures to be realised with deduction.

An important evolution of land development is that it has been changed from purely agricultural importance to multifunctional objectives (infrastructure, water management, nature, landscape, outdoor recreation). This means an integrated planning and implementation approach towards the land development project area. Implementation of a land development plan contains not only the re-allotment, but also the construction of nature, landscaping, new and better roads, water courses etc. Though introduced

gradually in the 1970s, the integrated approach received a legal basis and further elaboration in the Land Development Act of 1985.

An important consequence of this multifunctional approach was that, in addition to agricultural actors, public authorities and organisations defending general interests became stakeholders in the process. Sometimes, general or public interests outweighed agricultural interests in the process of re-allotment. Besides regular national legislation, also specific laws for specific areas and/or specific objectives were used.

- In 1947 the Re-allotment Act Walcheren entered into force with the intention of reconstructing the agricultural situation of a region in the Province of Zeeland after the Second World War. This law was also used for the reconstruction of other agricultural areas in this province after the flood disaster in 1953.
- Another important law was the Redevelopment Act for Northeast of the Netherlands, dated 1977. This specific law had the intention to improve the economic and social development of this part of the Netherlands. Being a backward part of the Netherlands at the time, the living and working conditions of this area had to be improved substantially.
- Another special law was the so called Reconstruction Act Concentration Areas of 2002. Following the outbreak of food and mouth disease, there was a need for restructuring the areas containing concentrations of pig farms by creating for instance pig free zones.

The instruments of land development were considered as very useful to realise specific objectives in special areas.

3 Land Development Act 1985

The Land Development Act 1985 introduced four forms of land development that expressed the integrated manner of land development.

3.1 Different forms of land development

The most traditional one was “land consolidation”. In a land consolidation project the improvement of the agricultural structure was the main aim and sometimes even the only aim. In that situation land consolidation took place in the entire planning area. After endorsing the land development plan by the provincial government, a voting process took place by all the participants (land owners and tenants) of the planning area. The land development plan was adopted in case of a majority of the participants or in case of a majority of the project area which they represented.

The second form was derived from land consolidation but a new legal form at the time, named “land redevelopment”. Redevelopment means land development wherein

multiple targets were served in the project area. Agricultural restructuring is not the most important aim, but rather the improvement of nature, landscape or outdoor recreation. It also meant that land consolidation (re-allotment) is not a compulsory part of the plan. Redevelopment plans are possible with full land consolidation, without land consolidation or with land consolidation only in a restricted area. In practice this meant that land consolidation



Source: DLG, H. Leenen

Fig. 2: In the densely populated Netherlands get opportunities for outdoor creation high relevance.

only took place in an area where agricultural objectives are possible. The implementation of redevelopment starts after approval of the plan by the provincial government. There is, almost self-evidently, no voting for this plan, because the interests of the private owners in the area are subordinate to the public interest. The possibility of expropriation in the interest of land development was introduced by the law for a redevelopment plan. Between 1990 and 2000 frequently use was made of expropriation as part of land development, in particular in the western part of the Netherlands. Besides this particular period and area, expropriation has never become a popular instrument for reaching the intended aims of integrated projects.

The third completely new form of land development was named “land adaptation”. In this situation land development was related to a big infrastructural project (project of national or regional importance, like a motorway, railway or airport). However, the infrastructural project itself was not part of the planning area. The infrastructural project was the responsibility of the concerned governmental service. The purpose of land adaptation was to remove constraints caused by the construction of the infrastructural project. The task of the re-allotment process was to compensate or neutralise the adverse effects of the infrastructural project, like the intersection of plots and deteriorated accessibility.

The approval of a land adaptation plan was also done by the provincial government but it needed the approval of the governmental service charged with the implementation of the infrastructural project.

During the first period of the new law some land adaptation projects were implemented, but it never became a

popular form of land development. Increasingly, the absence of the infrastructural project itself as part of the land adaptation project was seen as a handicap since it introduced two parallel procedures which needed a lot of tuning between the responsible bodies.

The fourth form was a long existing instrument called "land consolidation by agreement". This is voluntary land exchange, based on a private initiative. The legal definition of land consolidation by agreement defines this form of voluntary land exchange as a process of at least three land owners involved.

During the nineties it became a very popular form of land development because of the financial advantages (the costs of the exchange of ownership were fully subsidised and besides the transactions were free of property transfer tax). In this period yearly more than 10,000 hectares of land were changing ownership by voluntary land exchange.

Land consolidation by agreement became even more popular than compulsory land consolidation (re-allotment process). It was seen as a good alternative for this compulsory process. In particular this was the case in redevelopment plans.

Halfway the nineties, the voting of land consolidation plans by land owners and tenants resulted in rejections of plans, due to a lack of efficiency and benefits for the farmers. Subsequently, these plans were converted to redevelopment plans with voluntary land exchange.

As part of land development plans the planned voluntary land exchange became a useful instrument for the realisation of different objectives in rural areas. In practise this meant that approximately 75 % of the intended objectives of the plan were realised.

3.2 The re-allotment process

Throughout history the most important part of land development was the re-allotment process. It is not only an important instrument for improvement of the farm structure, but also very useful for the realisation of other functions like for example nature, landscaping and infrastructure. The re-allotment process is an important part of the task of the Land Development Committee, which is responsible for the implementation of the plan.

Since the Land Consolidation Act of 1938 a land consolidation or Land Development Committee was responsible for the implementation of the plan. The committee derives its power from the law. The committee consists of representatives of the various interest-groups in the concerned rural area, like farmers, nature-management organisations, water management authorities and municipalities. This was a precondition for the participatory approach of land development. They were appointed by the provincial government and they got a fee for their contribution.

For the implementation of the plan, the committee used the professional advice and support of the Cadastre and



Source: DLG, H. Leenen

Fig. 3: The cooperation between the farmers, the government and other public bodies (e.g. water management authorities) led to efficiency and good results.

the Government Service for Land and Water Management (DLG). The Land Development Committee also had a coordinating and advising role in the preparation of the land development plan. The re-allotment process differentiates three procedural steps:

3.2.1 List of rightful claimants and land valuation

First step in the process is to determine who has a right for allocation of land (entitled land owners). For this purpose the committee draws up a list of rightful claimants/landowners with land property in the project area in accordance with the land register of the Cadastral Registry office. At the same time an up to date list of tenants with legal leases is made.

Each participant in the re-allotment process has the right to receive land of same type, quality and agricultural value as he or she brought in. For that reason land valuation of the agricultural exchange value takes place. This land valuation is done with the help of a system of land classification (with approximately six to ten classes).

The results of the land valuation and the list of rightful claimants are available for a public consultation. The law provides a process of lodging objections which will be described shortly below.

3.2.2 Re-allotment plan

The second step of the process is the most important one, because it concerns the exchange of private properties. It is important to realise that land, released with the instrument of deduction for infrastructure (roads, water resources), nature and landscaping is not be part of this process. This land is assigned directly to the public bodies involved, like water management authorities and municipalities.

The re-allotment process can also be used for the realisation of new nature, landscape and water storage. For that purpose the Bureau for Agricultural Land Management (BBL) buys land and brings in this land in the re-allotment process.

The Bureau for Agricultural Land Management derives its legal status by law. Its tasks and proceedings are described in the law. The bureau is participant in the re-allotment process by purchasing land on a voluntary basis in the project-area and by this building up a stock of land for exchange and assignment to other bodies. The Bureau buys land at market prices in the project area as far as needed for the objectives like nature, landscape, outdoor



Source: DLG, M. Dekker

Fig. 4: After one age of land development throughout rural areas, the Dutch agriculture is well "consolidated".

recreation and others within the project area. Another instrument of the Bureau is to buy allocation rights of private landowners in a land development project. In the re-allotment process the acquired land will be allocated at the intended location.

The re-allotment process starts with the inventory of wishes of all participants in the project area (land owners and tenants). Based on these wishes, the intended objectives in the project area and the land valuation, the Committee will design a re-allotment plan with professional support of the Cadastre and the Government Service for land and water management.

With the re-allotment plan the committee aims to realise the planned improvements of nature, landscaping, water storage and other functions. It aims as well to form well shaped plots, preferably near the farm buildings, concentration of land use and accessibility of land plots, road safety and other improvements of the agricultural structure.

To give the newly formed plots the same uses, plot device works will be done like levelling, making and filling of drainage canals and ditches, subsurface drainage, connecting dams etc. This work will be commissioned by the land development committee.

These works have the objective of making the whole re-allotment procedure physically acceptable for all participants.

The draft re-allotment plan is subject of a public consultation and a process of lodging objections as described below.

After the process of lodging objections the re-allotment plan is finalised followed by drawing up a deed by the

notary for the property transfer notary deed. The process is closed by registering the new properties in the public registers of the Cadastral office.

3.2.3 List of financial arrangements

The last step in the re-allotment process is the financial arrangement with the participants. The costs, which are not financed or subsidised by government, province, municipality or other public bodies, have to be paid by the land-owners involved in the re-allotment process (as far as it concerns land consolidation costs). In practise, it concerns a maximum of 35 % of the total costs of the re-allotment process (excluding the costs of professional support). The contribution of the participants is determined on the basis of the benefits of the re-allotment process. A land owner who's property is located close to the farm buildings after the re-allotment, has a maximum benefit and has to pay for it. If there is no benefit, no costs have to be paid.

The list of financial arrangements contains not only re-allotment benefits, but also settlements between the old and new land owner, like facilities left and received, subsurface drainage systems, and for example non-agricultural value of the land (if planning for housing in the future is foreseen).

The list of financial arrangements is also subject for public consultation and a process of lodging objections. After finalisation of this procedure, each owner is obliged to pay a certain amount (land consolidation interest), which must be paid in 26 annual installments. The land development repayment obligation which is attached to the land will be entered in the public registers of the Cadastral office. In case of selling the land, the repayment obligation is transferred to the new land owner.

3.2.4 Process of lodging objections

The re-allotment process touches property rights which are well protected fundamental rights. This requires a good and thorough legal protection. Therefore every step in the re-allotment process is surrounded by safeguards and legal protection.

Each step (list of rightful claimants/land valuation, re-allotment plan, list of financial arrangements) starts with a public inspection in a public office during a month. The participants in the project area have the opportunity to lodge written objections to the Land Development Committee.

The process starts with a treatment of the objections by the committee. The committee tries to solve the objections by making arrangements with objector and relevant stakeholders, for instance by making an alternative for the re-allotment for the involved landowners.

If the committee fails to make an arrangement, the committee submits the objection to an investigating judge. The jurisdiction of this judge does not go further than trying to arrange an agreement with the involved stake-

holders (including the objector). If this fails, the Court will take a decision after a judicial treatment. An appeal to the Supreme Court is restricted to cases concerning the list of rightful claimants and the list of financial arrangements.

4 The current set up of land development

In 2007 a new land development act (Law on Development of the Rural Area) entered into force. The new Land Development Act was introduced for two important reasons. The most important one was the shift of the responsibility for Land Development from the Central Government to the Provincial governments. This concerned the responsibility for the implementation of the projects but also the responsibility for the financing of the projects.

The other reason was the decreasing popularity of land development. This concerned in particular the re-allotment process due to the fact that this is a time consuming process. The new law revised the re-allotment process, with maintaining adequate legal protection and safeguards for the participants. This revision has the intention to speed up the re-allotment process. The aim was to make re-allotment less time consuming and therefore more applicable to today's time. The new law was an attempt to make re-allotment more popular as instrument for improvement of the agricultural structure of the area and in particular, for the realisation of other non-agricultural objectives.

However, it was a misconception to attribute the slow pace of land development process solely to the time consuming process of re-allotment. Other causes were interim changes of the plans and plan objectives, the availability of the finances and, in particular, the size of the planning areas. Project areas of more than 5,000 hectares (sometimes more than 10,000 hectares) mean a long lasting process of re-allotment. In particular the treatment of objections had slow progress in such big areas. Therefore it was concluded to restrict the project area to a maximum of 1,500 to 2,000 hectares or to split up the project area in more separated re-allotment blocks.

The decentralisation of the finances resulted in less interest of the Provincial Governments in re-allotment. The Provincial Governments preferred mostly other instruments for the realisation of the different objectives in rural areas. This concerned acquisition (combined with the implementation of design work), subsidising and the possibilities of voluntary land exchange (land consolidation by agreement).

The step to make Provincial Governments responsible for land development meant the formal end of the Land Development Committees, which for decades were responsible for the implementation of land development plans and re-allotment processes. The implementation of a land development plan is done now by the provincial government itself. They have the opportunity (not the duty), given by the Act of Provinces, to appoint a provin-

cial committee and give such committee similar authority as the classical Land Development Committee. At the moment, the different provinces use different forms for this.

In the new law the different forms of land development of the former law were deleted. Besides land consolidation by agreement there is only one integrated and multifunctional form of land development with all the ingredients of the three forms of the former law. To speed up the re-allotment process the legislator sought simplification in the procedure of re-allotment, for instance by deleting the valuation of the land and combining the list of rightful claimants and the re-allotment plan into one step of the re-allotment process. The soil quality is still very important for the process of land exchange, but for this part of the process use is made of (sometimes existing) soil suitability maps. Separate valuation of the soil is no longer part of the process.

The process for the determination of the re-allotment plan is split into two steps:

The first step is to submit objections against the draft re-allotment plan to the province. After treating the objection the Provincial Government takes a decision and determines the final re-allotment plan. This step prevents prolonged negotiations concerning a particular objection like frequently happened in projects under the former Land Development Act of 1985.

As the second step, appeal can be signed to the Court against the final plan. The intention of this process is to make it less time consuming. Otherwise, the introduction of appeal to the Supreme Court concerning the re-allotment plan can cause a considerable delay and a lot of uncertainty regarding ownership rights.

The list of financial arrangements has the same procedure. After termination of this procedure, the land development repayment has to be done directly and not in annual instalments by the landowner at the moment of deposit of the draft re-allotment plan. There is no formal link anymore with the land. This means that selling land after the approval of the draft re-allotment plan and before payment time will not dismiss the former land owner from his payment obligation.

Except above mentioned changes in the process of land development the system and approach towards land development of the former law (Land Development Act of 1985, as discussed in paragraph 3) are the same.

At the moment, an evaluation of the new Law will start. It will probably lead to the conclusion that the aimed acceleration of the process has not been reached sufficiently by the changes introduced by the Law of 2007.

5 A new approach for land consolidation

Since the new legal process of re-allotment did not have the expected acceleration, a different approach towards the process of (voluntary) land exchange was developed. DLG (Government Service for Land and Water Management),



Source: DLG, H. Leenen

Fig. 5: Awareness building by and cooperation with the farmers create individual, but sustainable land use solutions.

Cadastre and Agricultural and Horticultural Organisation LTO (organisation of farmers) have jointly developed a new innovative re-allotment approach. This bottom up approach is called “Re-allotment for growth”. This name indicates that the re-allotment intends to create an economically viable agricultural structure and at the same time to realise governmental objectives in the rural area (like Nature Network, Water Framework Directive, Flood Protection Programmes, infrastructural challenges and restructuring outdoor recreation). The intention is to achieve these aims faster and cheaper in this new bottom up approach.

Starting point of this approach is that farmers have to be convinced that a good and efficient re-allotment will contribute to a viable and future oriented agriculture, prepared for all future challenges (e.g. reduction EU subsidies and payments) for agriculture. A good and efficient re-allotment will contribute to lower production costs and will give savings between 200 to 300 Euro per hectare yearly.

The interest and awareness stimulate farmers to design jointly, in good cooperation and on a voluntary basis a new re-allotment plan for their region. The first projects with these approaches started in the North of the Netherlands where a new motorway had to be built. The bottom up approach led to the prevention of expropriation for the motorway and simultaneously to the improvement of the agricultural structure.

The cooperation between the farmers, the government and other public bodies (e.g. water management authorities) led to efficiency and good results. Projects of this kind have a term of maximum one year from the start till property transfer. The project starts with the creating of support and enthusiasm from the landowners. During the duration of the project permits from municipalities and water management authorities will be arranged for some necessary plot device works and some other proceedings in the project area.

The designing of the re-allotment plan is a democratic participatory process of all involved landowners and is based on a full agreement of all participants. At present there is an increasing interest in this approach for the

realisation of all kinds of objectives in rural areas. Even in the compulsory legal re-allotment projects this approach is becoming popular, because this approach will restrict the number of objections and court trials and thereby shorten the re-allotment process.

6 Issues for future land development

At the moment the legislator is preparing a new law, the so called Environmental Law. In this law the legislator will collect all acts concerning the spatial environment and realise harmonisation of all legal aspects, procedures and definitions concerning the spatial environment. It is the intention of the legislator to incorporate land development in this law, although the main part of the law consists of civil property rights. As far as this incorporation leads to a more effective coordination between land development and spatial planning it is acclaimed. The experience of all former land development laws is that the non-committed co-ordination between (spatial) planning and land development caused considerable delays in the implementation of land development. In case land development is not in line with spatial planning a procedure for modification of the spatial planning has to be followed before the implementation of land development can take place or permits for the execution of work can be issued. It is desirable to give a land development plan the same legal force as a municipal zoning plan.

It is important to look for new possibilities to speed up the legal procedures for land development and re-allotment to be incorporated in the new law. On the other hand, it is important that it is not (or not only) the law which determines the duration of the process. As mentioned above the new approach (the so called re-allotment for growth) gives good opportunities to speed up the process of re-allotment, both in projects with and without a legal form of land development. The success of this bottom up approach using “sketch and match” sessions will give a new future to voluntary and compulsory re-allotment processes.

At the same time, issues like prevention or restriction of interim modifications of land development plans, prevention of changes in available budgets and working in manageable sizes of project areas, are important issues to take into account. These elements are very decisive for the duration of the land development process.

Taking into account these issues, a fruitful future for land development with a wide and multifunctional range of objectives in rural areas will be guaranteed.

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