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Privatisation of land use planning in urban areas

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1. Introduction: Planning privatisation in Norway

Planning and land development is a joint venture between the public authority and the market. In land use decisions *planning* and *investment* are closely linked, the plan is implemented in the approval of specific building application. There has been a mutual dependency between the public planning activity and the building sector in Norway for centuries. In the last 10 years this dependency has changed as more of the planning activity is taken over by the market actors. The division of labour between the public and the market is changed¹. This reflects a liberalisation of the planning policy, a liberalisation that is rarely outspoken among the politicians and little notified by the research community.

The mutual dependency between the market and the public planning authority has become a question of collaboration and negotiation between private developers and the planning authorities. Collaboration and negotiation is essential and seems to be the main way for the public planning authorities to gain influence the building projects.

There are several problematic issues in this situation: A high development pressure makes the pressure for action very strong. The public planning authorities are unprepared and there is a lack of institutional guidance for collaboration and negotiation. In addition the planning resources have decreased significantly over the last 10 years.

Detailed planning is an activity of specifying building projects; localisation, volume, adaptation to the environment etc. In a situation of privatisation the public planning agency might gain influence on a specific development by collaboration and using their skills and experience to help find the optimal solution. Collaboration is about creating win-win situation and positive synergy effects of different stakeholders meeting (Healy 1997). The collaborative approach is however tightly connected to negotiation and bargaining. It is opportune to focus on the balance between the two parties.

The ambition of this paper is to highlight the changes and the consequences. The paper starts with a brief introduction about the Norwegian Planning and Building Act and the new planning practice. The second and third sections outline the issues of modern urban planning in some Norwegian municipalities and the challenges that the public planning agencies are facing. The fourth section highlights the *strategies* involved in the land use decisions and how they are dealt with in collaboration and negotiation situations. The last section elaborates the consequences of the strategies and the situation for the agencies.

Draft of the formal Norwegian land use decision-process

The Norwegian Planning and Building Act is a *process law* that outlines the model for decision-making about development and area disposition. It states which actors that are entitled to decide in different matters, how they are to be positioned toward each other, what kind of information the decision has to be based on and how the information has to be collected and presented. The law also instructs the local planning authority to outline *the substantial*

¹ This is not 100 % true, as some of the cities in Norway have had this kind of division for a long time. The new is that the division is now the rule, not the exception.

frames for the development within the territory of the municipality². All municipalities have to have a political carried long-term disposition plan for the area of the municipality; a kind of a master plan (kommuneplanens langsiktige arealdel). The plan has to be revalued every 4th year³.

The area disposition plan for the whole municipality is a rather large meshed plan and there is a need for further detailed instructions. Over the years the public planning agency in the municipalities has produced detailed zoning plans, as a guideline for the proceeding of building applications. These plans are called development plans (*reguleringsplan*) and when passed they are juridical binding.

The development plans might be viewed as a contract between the municipality, the residents and the development industries, about what kind of development to be approved within the area. The plan is always a zoning plan as it shows what kind of activity/buildings to be allowed where. Often it also contains specific purview about the building (heights, facades, adaptation to the existing buildings, greenery protection etc.) as well as preconditions for the development; claiming specific technical infrastructure to be installed before building, specific traffic junctions be build, gateways for pedestrians etc. The plan has a great impact for the development industry, as the local authority cannot refuse a project that is within the specifications of the plan. That is why Planning and Building Act is understood as a *law of right*: every landowner has the right to develop his or her land as they choose, *if the activity is within the limits of the plan*. On the other hand, no landowner can be forced to develop his or her land if they do not want to, unless the municipality compulsorily purchases it. Expropriation is however rarely executed.

The Planning and Building Act outlines the detailed decision process for the development plan as it does for other types of plans. It is the council of the municipality that gives the final approval of the plan. The execution of building permissions is delegated to a political building committee, who again has delegated a lot of the decisions to the administration.

Process laws, like the Planning and Building Act is common in situations where the field the law is regulating is changing so rapid that the full law regulation has to be carried out in tight connection to the practical life (Sand 1996). The law is based on a division of labour where the state sets the national frames, mainly in terms of decision process, and the municipality sets the substantial frames⁴. The substantial frames shall act as guidelines for the executive officers as for the land developing industry.

The law indicates a hierarchy between the different kinds of plans and the idea is of course that the more detailed plans shall be adapted to the superior plan.

Traditionally the local planning agency has produced both the area disposition plan for the municipality and the more detailed development plans, showing the individual land owner and the land development industry what to be built in different areas. Norwegian municipalities are now facing a privatisation of the production of development plans. In municipalities that

² Norway is divided in 19 cantons (*fylker*) and 430 municipalities (*kommuner*). The population in the municipalities differ from under 1000 to nearly 500.000 in the Municipality of Oslo. The territory also differ from around 100 square kilometres to the very big municipalities in remote areas.

³ The cantons also have to produce zoning plans for the territory of the canton. The plans from the municipality are supposed to be in line with the plans of the cantons. The state has instructed the cantons to give statements about the plans from the municipality.

⁴ The state does, when it finds it necessary, also develop substantial statements for the nation or for regions. Examples might be the considerations all planning activities in areas close to the Oslo fjord (*rikspolitiske retningslinjer for Oslofjorden*) or considerations for all planning activities connected to the new main airport (*rikspolitiske retningslinjer for Gardemoen-utbyggingen*), or for nationwide considerations like integrated land use- and traffic-planning (*Rikspolitiske retningslinjer for samordnet areal- og transportplanlegging*). This is however not important for the task in this article and will not be elaborated further.

experience development pressure it is estimated that between 70 % and 90 % of the development plans are financed and produced by private developers⁵.

§ 30 in The Norwegian Planning and Building Act does allow private enterprises, institutions and private persons to produce development plans and the local planning agency are entitled to handle them. The practice with private produced development plans does not affect the formal decision procedures, and it is always the council that is the final decision-making authority.

Some characteristics of the situation

The law underlines the need for co-operation between the public planning officials and the developer (Frihagen 1989:137). There has always been tight connection between the plan and the investor as the planning implementation depends on private developers. The cooperation is needed independent of who finances and produces the plans, but the challenges in the cooperation differ. When the public agencies are producing the development plans the challenge used to be how to find investors that are willing to build according to the plan. When the private developers produces the plans, the challenge for the public planning officials is to make sure the development plan is in line with the superior plan, and - even more important - that the development plan maintain considerations for the public interests.

- There are some other differences as well: When the municipality made the development plans they were seldom initiated by a specific project; on the contrary the plans were produced in order to invite investors to develop projects. Private plans are however always motivated by specific project. To summarise; the preconditions for the public planning authorities in the municipalities are new:
 - land developers and the building industry are financing and producing the majority of the development plans
 - the production of development plans are initiated by specific building projects
 - the zoning issues are very often dealt with parallel with the building application
 - negotiation is a customary part of the decision process

In order to understand the challenges it might be of importance to review the forces that promotes the privatisation. In the following I will refer to findings in a pilot study, covering several document surveys and interviewees with planning officers and building officers in four municipalities in the Oslo region (Nordahl 2000).

⁵ *Kommunalteknisk forening* (a forum for planning and building officers) has made a survey that is not yet reported. The preliminary figures shows that in all municipalities in Norway approximately 50 % of the development plans are financed and produced by the private developers/building industry. The figures for the municipalities with development pressure are much higher.

2. Urban development and planning implementation

The cause for the privatisation of development plans is complex. As a start one can sort the explanations by characteristics of practical issues in urban planning implementation on the one hand and the general societal development on the other.

Practical planning issues

The main, direct reason why we face a growth in private development plans is that almost any project of some size needs a *new* development plan. Because of the rapid changes in the urban areas, the time of obsolescence for the development plans is very short. Often the plan is mature for changes in the moment it is passed. This is, among others, due strong market dependence in the projects, new knowledge and higher ambitions in environmental issues and high and changing ambitions within architectonic issues (Nordvik and Presus 1996, Saglie 1998). To produce a detailed development plan without any specific project in sight, to produce it *in advance*, is a Sisyphus work not worth the cost - especially not for the public planning agencies on low budget.

The local public planning authorities have several *old* development plans, that are still legal in juridical terms, but without real legitimacy among the public planning authorities or the developers, as the plans neither reflects the actual nor the ideal development of the area.

If a project (application for a project) is not in line with the existing development plan the public planning authority might turn the application down. If the project is wanted, but not in line with the existing development plan for the area, the public planning agency may accept the application as an *exemption* from the existing development plan. This is not something they want to do too often as it undermines the legitimacy of the plan. Additional option is to claim that the applicants forward a proposal for *minor changes* in the existing plan. But again, if the changes are not minor, but fundamental – and still wanted – the option is to make a new development plan.

Issues in modern urban land development

The development dynamic in urbanised areas has changed focus from *building on vacant land* to *densification and transformation*. The influence of public planning authorities seems to be less in densification and transformation processes than in building on vacant land, probably because the complexity and clash of interest in densification/transformation issues.

The dynamics of transformation

The transformation of land in central areas is a consequence of changes in the industrial production. The industrial thrive for modernisation and bigger units leaves the former production estates free for other purposes. These estates often hold a central location⁶. The process of transformation goes on in small and big scale in very many Norwegian cities, in the capital (Oslo) as

⁶ The former industrial activity often used to be the growth force, and is thereby often located in the very middle of the city, often also at attractive places (like the paper industry that used to be located near rivers or harbours). In Norway several state enterprises within communication and defence are restructuring and leaves land free for other purposes.

well as in towns (like Drammen and Moss). Old areas are rebuilt and filled with new activity, be it estates as large as city districts or smaller ones, just one or two plots within the city. In Norway the trend is that the former industrial areas and estates are sold to professional developers. We see a tendency to alliances between different private actors: developers, inventors, and entrepreneurs. During the 90-ties Norway has got a set of professional land developers that are the main task force in the urban transformation processes.

Turok (1992:139) states that the main issue in order to control urban development is to gain control over the property market. In Norway the municipalities have little control over property and the control has been decreasing over the last years. It is a common policy that the municipalities sell out all properties that is not needed for the use of immediate public services. This leaves the private sector in the driving seat, not only in producing and realising plans but also in creating the preconditions for development to take place. The prime mover for any private investments is profit, in shorter or longer term. Thrive for profit does however take different forms and creates different challenges for the public planning authority. Some developers build in order to rent out the estates (for business or housing) and some want to cash in the investments as soon as possible, and are building for immediate sale. Some are building for their members (as Housing Cooperation Companies) and still some build for own use (like company building new offices for themselves). The picture of the actors is fleeting and affected by series of events. For instance the insurance sector became an important actor in the real estate and land development market, as they in 1994 were allowed to invest their funds free. They now use land development as a strategy for long-term capital management.

One characteristic of the transformation is the need for *quick decisions*, in order to avoid unrealistic expectations for how the plots might be exploited, how high the exploitation ratio might be etc. Unrealistic expectations easily raise the prices, and the planning officer meets high price paid for the ground as implore for high exploitation and less preconditions for the development (Nordahl 2000). For the public planning authority it is of great importance to find ways to ensure that the developments maintain consideration for the public interest, and are within the frames set by the superior plans for the city and municipality in general.

The challenges of densification

Norway has long traditions for a land extensive building pattern, both on the countryside, and in the suburbs and cities. Extensive land use is expensive to run and to serve, for example with public transport. For the last 10 years the official policy has been to promote densification in cities and in suburbs. It is definitely a market for *more dense living*, and during the last years densification is going on in the outskirts of the cities. The Council of the Municipality of Oslo has for example decided on densification as the main policy instrument in their housing strategy.

A very big part of all private development plans is connected to densification projects. One experience from the planning officers in the pilot study was that the existing development plans were not suitable for handling densification projects (Nordahl 2000). If the housing structure changes it is often necessary to revise the plan, both because the by-laws in the existing plan does not allow multifamily houses, and because multifamily building generates the need for new solutions, i.e. for the regulation of traffic and parking.

Densification often generates conflicts, and high level of conflicts is generating plans. In the suburb there are several examples of how land use conflicts between neighbours makes it necessary to forward a development plan. In fact the planning process is used as a tool to sort out the conflicts. The situation is familiar for many public planning agencies and has even got

its own nickname; *lawyer-initiated* planning. This is a very time consuming process, but seen as necessary (op.cit). When a development plan is passed it is a binding contract between the parties, at least in the issues that are regulated by the plan. In many cases neighbour conflicts blossom again, in other issues, when the building application is processing.

Private development plans in densification areas challenges the public planning authorities in several ways. Firstly it is a *technical challenge*, as the plan proposals often cover a small geographic area⁷. This leaves the residential areas as patchwork – and the patches does not always match each other. Secondly the handling of the private plans challenges the division of labour and authority between the planning officers and the building controllers. As noted before the plans often start as a building application and subsequently a claim for planning clarification is put forward. Often the executive officer seeks for ways to pass the application without a new, full development plan; to make an exemption from the existing development plan, or to claim a proposal for minor changes in the existing plan, as this is less time consuming procedures. The situation entails tight cooperation between the building control section and the planning section. That this is not always smooth and easy is exemplified by two expressions from officers in two building sections:

“ We are responsible for implementing the plan and I think we should decide about exemption, not those who made the plan.”

“We lost this case to the planning section.”

Building on vacant land

Even though the biggest part of development projects in city regions is about densification and small-scale transformation, the local planning authorities are still dealing with building on vacant land. The privatisation of development plans is also current in this kind of project. The considerations in these projects are different from those connected to densification and transformation. The planning implications are somehow clearer or easier, as the superior plan often states clearly (1) that a development might take place⁸ (2) that a development plan has to be produced before any building activities may start (3) that a development plan must follow the guidelines for environmental and quality consideration – guidelines that are part of the superior plan. The challenge for the local planning authority is to make sure that the proposals do follow these guidelines. This is indeed a challenge as the technical qualities of development plans made by private agencies are often very low. There might for instance be diversity between text and drawings; the use of symbols may be wrong, inconsistent or different from the practice of the local planning authority. Development plans of low technical quality very often lead to disputes and the need for discretion when the building applications are to be passed. The low technical quality is however stated to be the case for all private plans, no matter the size and the status of the development or the reputation of the private agency.

Another important challenge is to reach agreement on the division of responsibilities between the municipality and the private investor. This is often regulated through the specification of the plan; as the plan state that any development cannot take place before the area is electrified and water and sewage is solved, or that it states that some part of the development cannot be started before gateways is established or a traffic junction is

⁷ The Planning and Building Act have decisions about what the authorities might claim in terms of extending the area of the plan. It is not legal to impose a plan to cover an extended area if this is not strictly necessary for the development to take place. The problems is however not the law, but the fact that the proposal is about few units on a relatively small piece of land, and it does not seem fair to demand such a development to carry the costs of a bigger plan (Nordahl 2000).

⁸ If the long term area disposition plan does not allow for development in that specific area, the planning authorities will have to deny any development of some size.

secured etc. There is in Norway a debate on what kind of obligations a local planning authority can pass on to the developer. For a long time (last 10 years) the practise has been that the private developer has to cover the cost of technical infrastructure. The last years we have some examples of municipalities claiming that the developers must finance *streets, kindergartens, schools* and even *part of the city hall*.

Public poverty

The situation reflects the difficult financial situation of the Norwegian municipalities. Very often they cannot afford to invest in schools, kindergartens⁹ and other infrastructure necessary for serving the new residents, or to finance streets or junctions¹⁰.

The financial situations for the municipalities differ of course. In some regions the municipality make all the investments necessary for the development, sometimes they even subsidises the plots, in order to attract new residents or new business. But all municipalities with development pressure face the same situation; the municipality is under pressure to promote building, but they have no funds to invest in the necessary technical and social infrastructure. Very often this goes along with a passive role; they have no policy that enables them to speculate in land investments and to be an active actor in the land development process. They are left to make the best of the project that private investors promote. Jensen states that the tight co-operation between the municipalities and the private development investors are due to *public poverty*, and the only way for the municipality to maintain considerations of public interest in the development processes (Jensen 2000:25). Because the municipality cannot invest in playgrounds, kindergartens, interconnected green structure with public access etc, etc they make claims for the private developers. The way to make the claims *binding* is to formulate them as preconditions for building activities in the development plan. In tasks that exceed the regulations of a plan, the municipality make private, juridical binding agreements. The planning and building law legalises the right of the municipality to make preconditions, but it restricts the municipalities in what kind of obligations that they might claim from the developers. When it comes to private agreements there are no limits, but the developers might of course drop the project and build somewhere else, where the preconditions are less harsh.

So far the municipalities have no right to claim the developers to join a private agreement with the municipality – it is optional for the developers. This all summarises up to the fact that the municipalities are to create opportunities that is tempting for the developers, they have to give some incitements in order to make the developers come to the negotiation table (Røsnes 2000).

⁹ Schools and kindergartens are the responsibility of the municipality, both to build and to run. But the municipality are not free to invest as much as they want, even not in schools and kindergartens. The Canton supervises the seize of the mortgage of the municipalities, as they are not allowedhem to go bankrupt.

¹⁰ Bigger streets, junctions and gateways are the responsibility of the Canton street office (fylkesveikontoret), but very often they have no funds available, as they have to follow strict long term prioritisation made by the politicians. Often the municipality must make the investments and wait for pay-back when the investment has reached the top of the prioritisation list – something that may take many years.

3. Challenges for the local planning authority

The situation involves several challenges for the public planning authority. Public planning agencies in cities and suburbs are searching for ways to become more proactive and avoid a situation where “everything is negotiable”.

To be more specific the local planning authority are preparing themselves for the collaboration by

- Producing documents that communicate the political policy for development in different areas to the private developers and that set fixed standards for the respond to private proposals, a kind of planning programme.
- Communicating with the private developers, listen to their visions and examine their ideas at a *early stage*, in order to influence the project before too much money (and prestige) is invested.
- Negotiating and making agreements with the development industry insuring the projects are in maintaining public interests.
- Increasing the internal efficiency and handle proposals quick, with as few obstacles as possible.
- Making sure that the discretion involved in the handling of a proposal is adequate and solid.

In addition the local planning authority has an obligation to maintain democratic issues and make sure that involved interest and third parties are consulted and have had a real opportunity to comment on the plan.

This communicative turn of the planning process is fundamental. Both the politicians and the planning officers need to focus on the discursive element in planning implementation and to be familiar with dialogs and negotiation. The discourses and the dialogues have to be recognised as collaboration between parties with *different positions*. It is not obvious who have the best position. Whether the co-operation is characterised by dialog between equal parties or negotiation between strategic positions is an empirical question, set by the specific project and the specific context. One strategic important element in the power of the municipality is to have adequate planning foundation.

Search for new planning documents and fixed standards

The planning agencies are searching for *planning tools* that enables them to “grab the possibilities” implying in specific building projects, but without loosing the track of how the project correspond with preferred development for the local area where the project is supposed to be build. Serendipity is needed, but must be combined with a long-term perspective. The best way to influence the project to be in line with the preferred development of the area is to inform the private developers about the preferences early in the process. For this cause the local planning authorities need plans that are *proactive*. The clue seems to be a plan that both communicates the long-term development and at the same time act as cause paper for the executive proposal handling. Both the traditional superficial long-term area disposition plan for the whole municipality and the regional plan covering geographical parts of the municipality were recognised as to coarse-meshed. The

planning agencies searched for plans that combine geographical and thematic division (Nordahl 2000).

As noted *densification* often bring out private development plan proposals. The local planning agencies wish to produce plans for densification for specific areas, plans that take into consideration the topography, the local traffic challenges, the land ownership structure etc. In order to make the plans be proactive, they tried to define criteria for densification; like stating exploitation rates in different part of the area, sketching preferred densification pattern, high lightening some aspect of the processes for freeing land for new buildings etc.

Transformation of single plots and bigger estates in central areas within the cities also bring out proposals for private development plans. The planning agencies are also searching for planning documents that can speed up the proceeding process of these proposals. They stressed the need of the plan to communicate *visions* for specific areas to the developers (and third parties) showing what kind of activity the municipality want the area to be filled with and what role the area is to play in the city. They assumed that this would contribute to a realistic price level when ground were sold and that it would influence developers and investors to come up with projects that were in line with the expressions.

The local agencies expressed the need for reducing number of the development plan proposals, but not by reducing the development activity. As noted the proposals often started as a building application for one specific project, but because of conflicts and need to clarify the impact of the project on the environment, the municipality claim a development plan. The public planning agencies wanted to develop the plans outlined above so that it could be easier to pass a project only on basis of a building application (Nordahl 2000).

Discretion, co-operation and efficiency

In the pilot study it was striking how much of the handling of the private development plan proposals that were based on discretion. The discretion was about what kind of characteristics of the project that could pass and about what handling procedure to “choose”. The leaders of public planning agencies were very concerned about defining common basis for the discretion and that the discretion was carried out in a similar way for all employees (op.cit). It was important to ensure that the interpretation of superior plans were harmonised between all officers, and to ensure an unbiased professional attitude toward all proposers. They had developed lists of discretion criteria for different issues. They had also organisational structures that should ensure that the decisions are based on the discretion of the *agency* and not discretion of one *individual officer*. One of the agencies practiced a policy where two officers should sign all approvals, one officer from the building section and one from the planning section.

In the municipalities in the pilot study, the building and the planning sections were growing closer. Collaboration and co-operation is a very big part of the handling process. The collaboration is both internal in the section, and between sections. The proposals raise different questions and collaboration between officers with different training is needed in order to have a solid and thoroughly treatment. When a proposal uncover a complex conflict where there is no fixed answers and no standard knowledge to base the handling on, it surely is important to discuss with colleagues; what kind of documentation is needed, which consideration should be focused, which to ignore (if any), whom to consult, should there be stated a precedent etc. Tight co-operation is not always easy as it materialises the domain of different subjects and challenge the borders between them.

The process of planning privatisation in Norway has been accompanied by reductions of the budget for the planning agencies and by a shift in the governance policy in direction of aiming for economical self-sustainability within the planning agency. This means that the fees paid by the applicants is to carry certain percentages of the cost of running the agency. The agencies is divided in sections and the *section for building applications* are very near to cover 100 % of the cost of the section by fees¹¹. The planning section may only charge some of their services and the fees does only cover parts of their expenditures. In all municipalities the agencies face strong efficiency demand.

Both the planning and the building section measure the amount of cases handled and the speed of the handling process. For the public planning officer the concept of *technical* quality is indissoluble tangled to bureaucratic efficiency, to *do the right thing* (Nordahl 2000:38). The concept of being a good planner implies the ability to get things done. The public planning agencies in the pilot study (op.cit) spent too much of their resources on handling private proposals and were not able to work out planning programmes for densification or transformation issues. Some unintended effect of this efficiency claims is that the agencies are caught in a bad circle; they are unable to produce the plans needed to ease the handling of the proposals, because too much of their recourses are tied up in handling the proposals. They did not have time for the *back stage work* that is needed to increase the efficiency.

¹¹ Protocol notes, not published. From the study Nordahl 2000: *Private planer – offentlige utfordringer*.

4. Collaboration, negotiation and making deals

In order to understand the need for more specific superior plans, i.e. planning programmes, it seems useful to focus on the core of the land use decisions, on the different elements in the decisions. To reach a *mutual basis for action* is a very central issue in international literature about collaboration (Forrester 1989, Healy 1997) and in the Norwegian understanding of negotiation in physical planning (Medalen 2000). Also in the public planning agencies in the pilot study the planning was very much about reaching a basis for action. The need for collaboration and negotiation is due to the fact that the stakeholders have different interests and different opinion about a project. The rule is clash of interest rather than harmony. A realistic approach is that the stakeholders enter the collaboration with different interests and strategies.

Strategies for getting a project passed

Prisoners dilemma

There has been some attempt to identify the different kind of strategies and the basis for reaching agreement. The identified strategies are often presented in the terms of game theory. Garnåsjordet (2000:34) and Røsnes (2000:81) present the strategy of prisoners' dilemma as one frequent strategy. In a planning context the dilemma would mean that the stakeholders do not know what goals and what *means* the other stakeholders have, and have very limited possibilities to calculate what they will do. A developer forwarding a development plan proposal, not knowing what kind of considerations the public planning authorities will take, easily enters a strategy where he or she pushes the limits; assuming he or she will have to reduce (ie. exploitation rates, volume etc.) or have to except some additional costs (gateways, playgrounds etc.). On logic of the prisoners dilemma is that the developers aim for solutions that will be optimal for them selves, ignoring any "unnecessary" considerations of public interest. The underlying norm will be something like "*I am in my right*" and "*If I don't take care of my interest, no one else will*"...

This strategy is of course not only available for the private actors. Some developers communicates an experience where the *planning agency* from time to time follow this strategy, making the conditions for any development very strict, assuming that they will have to give in on some points. The same strategy is also observed among neighbours and well organised "affected third parties".

The public planning agency might face strategies of prisoners dilemma by making them *impossible* or making them *uninteresting* (Røsnes 2000:94-95). The way to make them impossible is to make very detailed, strict and precise zoning. Theoretically detailed zoning can avoid conflicts rising from situations like prisoners dilemma, if the zoning is known, legitimate and respected. We have however seen that this is not possible in the practical life. One reason is that rigid zoning presupposes that we may predict the consequences of any project, that the consequences are known in advance. In real life the consequences of similar projects can never be fully known in advance. In addition our perceptions and standards change over the time, as does our ideas of optimal area use. I think is right to state that *absolute*

zoning is a left strategy, at least in areas with development pressure in Norway. The reason is that such zoning is just valid in the very moment it is *produced*. In the moment it is *passed* it might be legally valid, but practical already outdated (at least partly). That leaves the public planning authorities to try to make the strategies of prisoners' dilemma be uninteresting. This implies the opposite extreme; to dissolve the zoning, and instead base the decision on criteria *and* handle the consequences project by project. This way of meeting strategies of prisoners' dilemma implies that an open attitude will reduce the strategy, as any projects is reviewed particularly and on basis of its own specifics and qualities. The success of this strategy is however also based on the criteria to be known, legitimate and respected. The question is whether it is easier to know, respect and follow development *criteria*, than *rigid zoning restrictions*. The practise of private development plans generated by the specific building project shows that the municipalities are rather meeting strategies as prisoners' dilemma by making them uninteresting, rather than making them impossible. For this strategy the public planning agencies need *criteria* – and that is what they are searching when they makes planning programmes.

Accepted unevenness'

Røsnes has focused on the normative basis that underlies decisions in land use matters (Røsnes 2000). He identifies one common norm that might be called *accepted unevenness*. The norm is based on the favouritism of one group of stakeholders before others. The norm is based on the acceptance that one group, because of their position or rights, must be admitted gains that other will not achieve. The norm is valid even if the gain of the one group implies negative consequences for the others. For instance residents will have to accept that a landowner has the right to develop his or her land even if it does not bring any gain for the neighbours. One will even have to accept such development, if it reduces the quality of the neighbours, like reduced view, less sun, increased traffic etc. Røsnes states that the planning officers always have taken advantage of this kind of norms, in order to reach a solution everybody can support (op.cit s. 89). This will be a typical situation in densification issues. This is accepted, even if it does not bring any improvement for the neighbours.

Appealing to the moral codex of the stakeholders by superior plans

Planning programmes that are superior but specific enough to act as cause paper for the executive work of the planning officers, might be a tool to influence the moral codex of the stakeholders, be it the private developers, affected third parties or others. Such plans may be a task force in reaching agreement between parties with different interest. The expectations is that the planning programmes makes the public and the developer more co-ordinated in their understanding of what kind of what accepted development is and give a better understanding of what might pass as *accepted unevenness*.

From zero-sum to win-win

The strategy of prisoners' dilemma reflects a perspective of the cooperation as a zero-game: what one party gains the other must loose. In the literature of planning and negotiation the opposite perspective, the win-win attitude, is strongly promoted (Medalen 2000). The win-win perspective is about identifying solutions where it is possible to improve the situation for all parties if everybody gives in one some point. The strategy is based on all parties accepting the need for collaboration as a good way of finding solutions (Fisher, Ury and Patton 1999). According to this attitude the public

planning agencies has to create events that strengthen the will of co-operation. For the planning agency this is very much a question about finding incitements that promotes cooperation, and to make agreements.

Negotiation, agreements and the time schedule

One specific project might entail series of negotiations, often informal and often involving a lot of parties. The *economical clarifications* will often take place in two phases; first in the very early preliminary phase and later in the process, when the project is planned and the role of different actors is specified. Between these phases, *specific planning questions* have to be clarified, and there will be negotiations about physical shape, form and volume and zoning issues. It is possible to identify three different kinds of situations for specific negotiation:

- Preliminary negotiations about the intentions, frames and principles for the development (big projects).
- Negotiation about zoning details, preconditions for the project and formal/aesthetic aspects (big and small projects).
- Economical negotiations about the division of costs, additional burdens and maintenance agreements (big and small projects).

In practical life the three aspects will influence each other, as the intentional agreements will have impact on the formal aspects of the project, and the formal aspects will have economical consequences for the investor. The Planning and Building Act does not allow the public planning agency to bind them through any private agreement. It is therefore important that the intentional agreement has an open character and does not set any conditions for the later handling of the development plan proposals. It is also important that the detailed economical agreements between the municipality and the private developer are set *after* the development plan is passed. This is due to the democratic basis of the Planning and Building Act and the very clear decisions about the handling of a development plan, including whom to be informed and who entitled to give objections/statements (see page 2). It is important that the influence is real, and that no decisions are made unofficially before the formal negotiation has started.

Negotiation in early phase; intention and frames

The preliminary negotiation is often a task for the administrative and political leaders. In the municipalities in the pilot study, the planning officers actually did *not* take part in this early phase of the collaboration. Also the developers might be a mixed group of landowners, investors, developers and concessionaries. The purpose of the negotiation is to agree about the frames for the development and to define a letter of intent; declaring the principles of the development, transfer of property, overall preconditions etc. The letter of intent often also contains a progression plan for the handling process. To reach a letter of intent, the municipality and the developers must have prepared themselves very well in order to uncover clash of interest and to clarify the different stakes involved. In the pilot study this kind of “meta-negotiations” were of great importance in transformation processes and big projects. Both densification projects and transformation projects have difficult land ownership structure, often with many different small landowners involved. In a situation where the municipality has no policy of buying and selling property, or to use their right to expropriate land, the land issues are often the most complicated factor in reaching a basis for action. In the municipality in the pilot study I was told about situations where landowner refused to free their land for development, even though it would have increased the value of their land, and thereby stopped a development project (Nordahl 2000).

The private developers are reported to have a positive attitude towards collaboration in early stage, and agree on a letter of intent. The collaboration and the negotiation gives them information about the concerns of other stakeholders, realistic frames for division of cost involved in the project, precondition for the development etc. - issues that is of great importance for the predictability of the project.

Collaboration and the development plan

In the collaboration connected to the production of a specific development plan, the *planning officers* play an important role. As mentioned earlier the plans may be about small projects (2-6 units) or bigger projects. The officers in the municipalities in the pilot study all played an active in this process. They cooperate with the proposer, with neighbours and third parties and with the stakeholders that holds the right to object to the plan. The planning officers in some of the municipalities called themselves *catalysts* with the role of promoting good collaborative relations between the developer and the affected interest. In practical life the officers are quite active: they draft alternatives to the suggestions from the developers, they try to find incitement that may release additional input to the development, they try to make the stakeholders give concessions to the municipality and to public interests.

In order to reach an agreement the public planning officers will combine different strategies One example from a suburban municipality may illustrate the use of *acceptance of unevenness, win-win and the use of incitement*: One individual small landowner wanted to build a small multi family house on a plot, in a area dominated by detached and semidetached houses. The neighbours did not want any development; they would loose some threes and greenery and some of their view. The *legitimate* argument from the neighbours were however the traffic situation. The planning officer had a strategy where he wanted to get the acceptance form the neighbour about the landowners right to develop his plot, by offering some improvements in the situation for pedestrians (rebuild the traffic junction). As the development was relatively small, the municipality saw no realism in requiring the developer to finance the junction and offered to build the junction if the landowner ceded the needed area free of charge. The planning officer formed a situation where accepted unevenness was mixed with a touch of win-win for both the landowner and the neighbours, as the municipality offered to build the traffic junction (which were desperately needed also before the development). This example shows how the planning officers are active in reaching a solution. The principle was the same in all municipalities in the pilot study, and in small as well as big project. The limitations in this active attitude are the resources of the municipality. As noted earlier the economical resources of the municipality are limited. They might give some minor incitements, but when it comes to serious investment they are depending on the developer. The public planning authority must rely on the competence of the staff and the preconditions set in the planning programmes. This underlines the importance of having superior criteria for the development as they gives the municipality a "bottom line" for the negotiations.

Development agreement

The third kind of agreement between developers and the public planning agencies is economical negotiations about the division of costs, additional burdens, maintenance arrangements etc. These agreements are very specific, and fill out the decisions in the development plan. The agreements are juridical binding civil agreement ensuring the rights and responsibilities in a specific building project.

The negotiations leading to these agreement is (supposed to be) based on a passed and recognised development plan, as noted earlier the

negotiations should take place after the plan is passed. This is due to the idea of a free planning process.¹² Development agreement is, like the letter of intent, voluntary. No planning authority can force a developer to join such agreements. In practical life it can be put as a precondition for the development, i.e. in the development plan. The agreements regulates issues like time schedule for the building processes, economical conditions, decisions about the hand over process of greenery, roads etc from the developer to the municipality. This kind of agreements is a logical consequence of financial constraints in the municipality and the need for private investment in technical and social infrastructure. When so much is left to the private investors the municipality faces a need to maintain the consideration for the public interest through formal reciprocal agreement. These kinds of agreements are also rarely the task of the planning officer, but a task for the economical leadership in the municipality. The following up is however mostly the task of the building control section.

Theoretically there is certain logic between these three different kinds of agreements: The letters of intent is about creating the basis for action; addressing the right stakeholders and collaborate until some win-win situations are identified. The development plan and the process of producing it is partly about the same, but when "all concerns" are reviewed and pattern of a solution is recognised, the planning process is about making the solutions juridical binding, independent of specific stakeholders - it is valid even if the developer pulls out, goes bankrupt or for any other reason does not go on with the project. The development agreement addresses specific stakeholders implementing specific building projects, and is a way to secure obligations that was not to be regulated in the development plan.

¹² There are reports about this kind of negotiations finding place earlier in the process, but the empirical basis is too weak to conclude on this. At the moment the development agreements are theme of different kind of research concerning the content (what to regulate and how to divide costs burdens and benefits) and concerning juridical issues (for instance the relation between these civil agreements and the Planning and Building Act).

5. Consequences for the public planning authority

Despite the list of different sets of collaboration and negotiation, the detailed land use planning in municipalities with development pressure may be characterised as *chaotic* situation. In situations with no adequate superior plans for the desired long-term development for the area, and several procedural options available, the situation has no fixed goals and no fixed tools. Jensen (2000) states that this situation is becoming frequent, especially in urban land use decisions.

In order to judge whether the privatisation and the collaboration and negotiation that follows is a new way of public-private partnership or ad hoc planning ruled by the big investors, I highlight two consequences: (1) the strategies of the stakeholders and the lack of resources the public planning agencies, and (2) the public poverty, liberalised land use policy and the lack of incitements.

The interplay of the strategies, lack of adequate plans and the efficiency claims

In densification and transformation situations the developer will have two different considerations; how to maximise the profit and how to create a project with high quality and in good harmony with the environment, unfortunately mostly confronting strategies. If the developer is unaware of what kind of development the municipality will accept in the specific area, and there are no legitimate criteria for new developments, the developer is likely to choose a strategy of the *prisoners dilemma* and suggest an exploitation that is economical optimal. If *accepted unevenness* is an frequent strategy for the *municipality*, is the possibility for the developer to have his suggestion passed quite good - especially if the public planning agency are facing strong efficiency claims. The experience from the pilot study is not enough to prove that *accepted unevenness* is more frequent than win-win situations, but it certainly seems to be a wide spread norm.

Accepted unevenness is very much based on the principle of the landowners right to exploit their land. In order to avoid situations where the landowners manage to pass projects based on strategies like *prisoners dilemma*, it is important to supplement the right to exploit ones estates with directions of what is the preferred and the accepted development, and what kind of quality criteria that will be set. This is of very great importance in a situation where the public planning agencies are facing efficiency demands and political pressure for speeding up the handling process. A maximum unfortunate situation is where the developer follows a strategy of *prisoners' dilemma* and the planning agency bases the handling on the norm of *accepted unevenness*, and where time pressure does not allow the officers to make the needed preparatory work before the decisions are made. This is however the most realistic description of the situation, at least in all the big amount of small scale development project that pops up and transform the cities and the suburbs bit by bit.

Public poverty and the lack of incitements

Due to its role as the ultimate passing authority, the municipality is, at least theoretically, in a key situation to identify and create win-win situations. For the public planning agency it is of great importance to find something that may trigger off reductions from one of the stakeholders, allows some grants or in other way releases win-win situations. The planning officer must find incitements that make the plan proposer adjust his or her proposal to the other stakeholders. In the lack of financial incitements, the municipalities must find other incitements. The planning officers in the municipalities in the pilot study clearly stated that also *procedural* issues could act as incitement, for the developers. The planning officer is of course not free to choose any process, but he or she might influence it by defining the category of the development. The influence is wide ranged – from constructive advises to suspect short cuts:

- One kind of procedural incitement is the possibility to choose a quicker process. For instance if the planning officer indicate that there will be objections form regional or national institutions it is likely that the proposer renounce on the parts that may lead to disputes, assuming that keeping them may prolong the handling process.
- Another example is when the planning officer hints that the proposal may pass as “minor changes” or even as exemption if the proposal undergoes some specific changes.
- A more trust breaching way is when the project is split in several small building applications, in order to avoid the production of a development plan at all. This kind of incitements will be a mix of professional advises and taking shortcuts. Nevertheless, the time pressure that rules the development industry and the authority to set procedural claims for the handling process gives the public planning agencies incitements to use in the negotiations.

There certainly is a tension between the procedural decisions in the Planning Act and the need to act quickly. Some politicians are indeed supportive for the developers’ need of quick solutions. The situation with private production of development plans and the praxis of collaboration and negotiation, has brought out worries whether the decision processes are correct and whether agreement are reached before third parties and other affected interest has been consulted. These are certainly relevant worries. Already in 1991 Cars identified the need of an institutional concept that would formalise the process of cooperation within the detailed planning (Cars 1991), the need is still there to day (Garnåsjordet 2000).

The legitimacy of the Norwegian Planning and Building Act is partly rooted in the decision procedures and partly in the substantive frames developed by the municipalities (the plans). If the privatisation leads to reasonable doubts about the procedural issues, or if the developers, the politicians or the residents in general experiences that the substantive frames do not serve as guideline for the development, it is a treat to the authority of the public planning.

Ending word

I started this paper by stating the interdependence between the public authorities and the marked as land use planning and investment are closely linked. This paper has shown that land development in areas with development pressure certainly is linked in Norway, at the beginning of a new century. The terms *join venture* and *private-public partnerships* may

indicate that the activity on each side balance. The terms would make less sense in uneven situation. The conclusions of this paper is that the power of the public planning agencies is big, but because of the circumstances the agencies are not using their power as constructive as they could. The public planning agencies need time and knowledge to prepare themselves for the *negotiation* with the private actors, not only the collaborative part. The paper has indicated a need of more adequate planning programmes, as one first step to be the real term setting part. The paper has also focused on the need for a more active role in land use matters, as this could give the planning authorities a tool to create win-win situations. This implies that the privatisation needs to be accompanied by land policy instruments that make the public an even adversary.

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