

## The Dutch plan benefit levy

### Added value of land in order to improve the public business case

*The role of the land market for a well-functioning housing market is increasingly in the spotlight. If you have land, you can build. And maybe also: land is gold. Land increases in value when the function changes to housing. The fact that the increase in value ends up with the owner of the land has led to questions, even in the House of Representatives. Why does the increase in the value of land go to the owner when area development is hardly financially feasible and government money needs to be added? And that while the change of function from land to housing is a decision taken in the public interest, by the government. In the Letter to the House of Representatives on the Modernisation of Land Policy, the more fundamental issues have been included under the title "Making value more public". The recently examined plan benefit levy is the most concrete measure of this. In what way does such a levy actually contribute to more increase in value for public purposes and does it really affect the housing market and land market?*

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#### Time for fundamental questions

The economy and functioning of the land market leads to the growth of inequality. There is a considerable imbalance, because on the one hand there is a huge financial advantage for 'accidental' landowners who receive the redevelopment value of locations as a result of a zoning change without having to do anything for it! On the other hand we are insufficiently able to develop locations for affordable housing in a financially feasible way<sup>ii</sup>. Over the past 10 years, this has led to such a social debate that more and more fundamental issues have become part of the



public debate. In addition to an area development that is too slow and too expensive, the questions: *Who owns the land?* and *To whom does the value belong?* are recurring themes. In the letter Modernisation of Land Policy, an important part is devoted to an analysis of the functioning of the land market, including the role of (1) land ownership, (2) increase in value and valuation as well as (3) the anchoring of ownership in our legislation. Ownership is very important in Dutch law (as in many other European countries), also of land. That is why there are careful rules for the government in the Netherlands when it wants to acquire land from private individuals when it wants to build. Dutch expropriation law provides for a careful procedure and the valuation focuses primarily on the current value of land and real estate and additional damage as a result of relocation, etc. However, if, after the sale of land, a redevelopment yields a higher value than the current value, then the owner (who is expropriated) is also entitled to this increase in value. Value as a result of a zoning change also ends up with the original owner. Laws and regulations on expropriation thus strongly frame the functioning of the land market.

### **Ownership and appreciation**

The above means that, in theory, you can not make money out of selling land by successive owners. After all, assuming a correct calculation of the redevelopment value, all the increase in value ends up with the first owner. Of course, this is not the case in practice, but it is clear that an increase in value that is a result of a public decision in the public interest does not lead to an increase in value that also ends up with the public. By skimming off redevelopment value to the original owner, the right application and the most effective cost recovery possible are crucial. In our legal cost recovery, it is clearly stated that all relevant costs that make the redevelopment possible must be recovered from the landowner and initiator. This enshrines in our legislation that cost recovery must take place in full and that the increase in value after cost recovery is the actual increase in value. Perfectly arranged in theory. Here, too, practice often goes wrong, because it takes a long time before the public costs (such as new roads, water and greenery) of the government are clear. This is not a reproach to the government, but a consequence of the fact that land is often sold long before planning takes place. Acquisition prices of land are difficult to reverse, and the comparative valuation in appraisals includes high acquisition prices. It is also questionable to what extent appraisals take into account programmes (like the percentage of affordable housing), costs and the period between the purchase of land and actual development. The ongoing research into a new valuation guideline for land is therefore relevant and can contribute to better coordination of processes and agreements on valuation. The same applies to the fact that the Ministry of the Interior and Kingdom Relations is currently doing research on the foreseeability of cost recovery as well as the contribution value of land in (facility) cost recovery<sup>iii</sup>.

### **Cost recovery and self-realization**

The reason why cost recovery is a central theme in the Netherlands is partly based on property law. If landowners are able and willing to realize a new destination, they are allowed to do so and cannot be expropriated since they can invoke the so-called right of self-realization. They then develop the new real estate and agreements have to be made about the costs of building public facilities. The development of land policy over the past twenty years has been based on these principles. In the recovery of costs, only the costs may be recovered; More than that means benefit skimming (baatafroming<sup>iv</sup>). In fact, basin skimming means that the government skims off part of the value from the land and/or real estate exploitation of the market party. This is forbidden in the Netherlands, as is paying for an environmental permit (this is called payment planning).

### **How to make value appreciation more public?**

Recently, it was investigated whether there are instruments or whether legislation needs to be amended to allow an increase in value to contribute more to the feasibility of area development. Research has also been carried out abroad which shows that Finland in particular acquires land in its own unique way. There, land is acquired at current value, which means that the redevelopment value belongs to the government. Expropriation is not very common there because owners know that the basis for amicable acquisition is the same as for expropriation. The international investigation still raises the question of whether Finland's policy is in line with European Human Rights



(ERVM). For the Dutch situation, there are two options for making part of the increase in value of land more public in the event of a zoning change, or for it to pass to the government: (1) changing the basis for appreciation in the law and/or (2) taxing appreciation with a tax or levy. Taxing increases in value is effective and still leaves room for discussion and research into the question of whether legislative changes are possible and desirable.

Land value tax and plan benefit levy are the two best known forms. These were examined in the study *Possibilities for the introduction of a planning benefit levy and a land tax to promote housing construction*.

A land tax is an annual financial remittance that is calculated on the value of land at a given point in time. This can take place on land with a current use, its increase in value or the value that arises after a destination is changed. The introduction of a land tax means a lot and when this tax applies to all land (existing value), several taxes will have to be adjusted to obtain a system with the same tax burden. For a more detailed explanation of the complexity, please refer to the study. However, the researchers do conclude that an alternative might be to tax the increase in value of land (after a change of use). In that case, you would achieve over a large number of years (because this would also be an annual tax) what you would achieve in one go with a plan benefit levy. A planning benefit levy is a one-off financial contribution (from the landowner to the government) on the increase in the value of land as a result of the change in zoning. There is only an increase in the value of land if all the necessary costs that have to be incurred for the zoning change have been settled. This means that the plan benefit levy takes into account the cost recovery. The plan benefit levy therefore comes after the recovery of costs and not as is the case in other countries (e.g. Switzerland), for example. In the study of how a plan benefit levy can work, the researchers have opted for a contribution that is in line with the current method of cost recovery.



In the calculation example, it is shown that the cost recovery (€ 100) must first be settled on the increase in value after a change of zoning (redevelopment value -/- current value € 470 -/- € 250 = € 220) in order to then be able to determine what the plan benefit is € 120. In the case of a 50% levy, an amount of € 60 accrues to the government and € 60 to the owner. The owner thus obtains € 250 + € 60 = € 310.

### Connecting to existing working methods; practical but also better fit in the system

The financial contribution (the levy) can be definitively determined when there is actually a change in the zoning, when the zoning plan is adopted. The research report proposes that the levy should not be imposed in the event of a change, but only when area development actually takes place, namely in the case of the Zoning Permit. This seems



logical because this is the moment that the plan, the program to be realized is known and the initiator will actually realize the value creation. A levy on the adoption of an Zooning Plan, regardless of actual development, means a financial cost for all owners in the area, even if they do not proceed with development. In the elaboration of (building) plans, the program and the land value become clear and therefore also the levy contribution. It is obvious not to skim off the entire plan benefit. This is also undesirable, because the basic principle is still that the increase in the value of land is for the owner and that the owner pays a form of tax with the levy on it, but the increase is for the owner. Secondly, if the full amount were taxed, there would no longer be any incentive to sell. Suppose the levy is 50% on the increase in the value of land. In that case, a landowner would in principle be able to sell the land to anyone, but the parties will have to take into account that a payment must be made in the event of actual realization. So (1) a buying party pays less and takes the risk of the levy or (2) parties make provisional agreements that, with subsequent payment or set-off, become final upon actual development and realisation of plans.



#### **In line with practice**

A good example of provisional agreements can be seen in area developments in municipalities with leaseholds, especially in Amsterdam. Here, developers often make provisional agreements about the amount of the purchase of land, which only becomes final when the developer is aware of the new leasehold conditions of the municipality. In other words, at that moment the payment to the municipality (on the basis of the supplementary scheme) is final, the final purchase price is determined. An additional advantage is that the cost recovery is then also 100% clear, which is included in the determination of the redevelopment value. The introduction of a plan benefit levy may therefore result in a change in behaviour. This can limit a lot of discussion about the amount of purchases, feasibility and planning. This could certainly accelerate area development. A second and more important advantage is that if there is indeed an increase in value that makes a levy possible, extra money is freed up for area development.

Opponents of a tax on the increase in the value of land often argue that governments should buy land themselves and make a profit on land by running the land exploitation themselves. In this

way, they can compensate for unprofitable area developments with profitable ones. But even in that case, municipalities must purchase land in line with the market, based on the same valuation (discussed earlier). Even then, the initial increase in value resulting from changes in function will be transferred to the first landowner.

#### **What will it bring?**

It is abundantly clear that many inner-city area developments are not financially feasible. The redevelopment value of the area development is lower than the current value. If the area development is to go ahead in the public interest, then money must be added. In these cases, there will be no plan benefit levy because there is no increase in the value of land. If money has to be added in the public interest, then there is something to be said for the fact that if there is an increase in value (resulting from a change in zoning), this will partly end up with the government, so that they can pay for unprofitable area development at the scale level of the municipality. Incidentally, it is very short-sighted to immediately assume that a planning benefit levy will only work in areas where mainly undeveloped land is repurposed for housing. The revenue and cost level is very different here due to the density in which construction takes place. It is mainly the ratio of current value to future value that also has a significant real estate



value in our busy inner-city areas. This was different in the period 2012-2015, but "cheap locations" no longer exist, also because the shortage of business locations is increasing, which has an effect on the current value. The introduction of a planning benefit levy will not be noticeable in the financial feasibility of area developments tomorrow. New acquisitions will have to deal with these regulations, so the effect will take some time. But recent research by the Land Registry (Kadaster) has shown that municipalities and developers own about two-thirds of the land for the housing assignments of 1 million homes. This means that the effects of a plan benefit levy can potentially be felt for 1/3 of the task<sup>vi</sup>. If the political majority in the House of Representatives also remains unanimous about the way in which a plan benefit levy can be introduced and how it can work, then speed of introduction will also have a sooner effect. It is not a quick fix<sup>vii</sup> and even if we only notice the effects in years' time, there is still the opportunity to make a structural change in the way we do area development, distribute value and make area development feasible. Municipalities that test the financial feasibility of each project already implicitly determine the plan benefit every time.

### **More money for area development through the plan benefit levy**

This article describes that our system of expropriation encourages a maximum yield of land value when sold by a landowner. After all, landowners can tell developers they get the top prize if the municipality "ever comes along". Optimism about future redevelopment opportunities is perhaps more a trait of sellers than of buyers. Limiting the increase in value by skimming it off with a levy may make the acquisition market a little less heated. This benefits all parties in the chain of area development, except for the first landowner. Although you may wonder to what extent it is part of this chain, or just the beginning of an often long process, which has been under financial pressure from day one. With a plan benefit levy, the increase in value can be taxed and thus partly skimmed off. In this way, the value is implicitly made more public, in anticipation of a fundamental discussion about who is due to the increase in value. Quite a Dutch solution. Seeking to connect with the system of cost recovery is also part of this.

Municipalities would do well to be clear (when it comes to implementation) about the levy and its amount. The foreseeability of the levy is crucial to its effect. It is recommended to apply the same levy (also amount) throughout the Netherlands, from the same time. Paying the levy must be part of the overall system of area development. Not wanting to pay the levy must be a basis for expropriation, because the developer is then able, but unwilling, to realize the area development. Such a potential sanction prevents landowners from trying to pass the levy on to developers. Having a clear policy on this will help developers avoid this. With the planning benefit levy, land value can be made more public in a pragmatic way. This is necessary from a financial point of view, but it also provides an answer to a changed view of value distribution within our society. Such an answer must not only be policy-based and/or political, but also responsibly embedded in the system of the land and housing market. The study's question of *how a plan benefit levy could work* has already answered many of these kinds of system questions.

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<sup>i</sup> Stauttener T.J. Actualiseren Grondbeleid Bittere noodzaak, art. Grondzaken & Gebiedsontwikkeling, aug 2022

<sup>ii</sup> Zie ook: Stauttener T.J. Gebiedsontwikkeling moet door Grondzaken & Gebiedsontwikkeling, aug 2022

<sup>iii</sup> Min. BZK, Op grond kun je bouwen 2024 Zie de schets van de samenhang van instrumenten w.o. de planbatenheffing op p. 45. You can build on land 2024 See the outline of the coherence of instruments including the plan benefit levy on p. 45.

<sup>iv</sup> Benefit skimming is seen as taking away a part of the landowner's development profit. The right-wing political party (VVD) in particular is opposed to this.

<sup>v</sup> *Mogelijkheden voor invoering van een planbatenheffing en een grondbelasting ter bevordering van de woningbouw* Allers en Schep (ESBL en COELO) mei 2024

<sup>vi</sup> De Planbatenheffing is opgenomen in het Hoofdpijnenakkoord. The Plan Benefit Levy is included in the Outline Agreement of the new government in 2024.

<sup>vii</sup> Zie ook Min. BZK, Op grond kun je bouwen p. 47, 2024

<sup>viii</sup> This article was published in the Dutch version in *Praktijkblad Grondzaken & Gebiedsontwikkeling* (okt 2024-46)