by Yu-Hung Hong
Lincoln Institute of Land Policy

SHARING *vs.* *Eminent Domain*

Invoking *eminent domain* to take private property for public use (while paying owners only what the government deems "just compensation") can be controversial, as the firestorm following the U.S. Supreme Court's *Kelo* decision demonstrates. An approach practiced outside the United States offers a possible alternative.

The Kelo discord resulted from a decision by New London, Connecticut, to seize private homes and transfer the properties to other private entities.[1] The goal was to boost economic development by providing land for a Pfizer Inc. project. Although the Court affirmed the legitimacy of New London's taking, the ruling motivated 28 states to pass laws restricting government exercise of eminent domain.[2] As a result, eminent domain is now less tenable in cases where it is not clear that exercising state power to take private property will benefit the public (as opposed to benefiting a company like Pfizer).

The necessity of assembling pieces of land for public purposes has not gone away, however: roads still need to be built; economically depressed areas need revitalization. That is why policymakers may want to consider *land readjustment* (LR), which balances the public interest with private property rights.[3]

Land Readjustment

Countries including France, Germany, Japan, and South Korea use LR instead of eminent domain to assemble privately held land parcels for public projects. Typically, LR features four components: project initiation; community support development; land resubdivision and servicing; and land reallocation.[4]

Project Initiation

First, a municipality or a group of landowners initiates the idea of rearranging land parcels in a neighborhood and forms an agency. Members of the agency may include local residents, government officials, and outside developers. For example, in the Netherlands private developers frequently pool their properties and ask the local government to redevelop the land. The group then presents the local planning authority with a readjustment plan that includes new boundaries and proposed land uses. If the plan seems feasible, the initiators reach out to the public seeking broad political and community support.

Community Support Development

Second, after the local government has approved the initiative, the agency proclaims the targeted area an LR district and organizes public hearings to enlist the participation of affected property owners. The organizing committee presents a detailed plan. All landowners and leaseholders are invited to join the project by contributing their real properties to the agency as investment capital. (Sometimes the property exchanges will require early termination of rental arrangements, in which case, the landlord must compensate the tenant.)

Returns on investment will take the form of a piece of serviced land or another housing unit at the end of project. The agency gathers preliminary data (on how the area will be redeveloped, the cost of construction, the availability of government subsidies) to estimate how the property exchanges will affect participating owners.

With a reasonable approximation of the before-and-after values of land involved, owners can calculate how much land they must contribute to the project to become participating members. Generally, the guiding principle is to keep the net worth of owners' equity unchanged—often by giving owners a smaller plot of serviced land with a higher value than the original piece. An assessment of future land value can never be exact, so one popular allocation method maintains the proportionate value of each owner's landholding relative to the total value of all lots. Public hearings facilitate land-allocation negotiations between the agency and property owners. Hearings also address ways to handle any contingencies, such as compensation for opposing landowners and additional land (or cash) contributions if unexpected financial shortfalls emerge.

In most countries, a supermajority vote from owners is required to approve the plan. For instance, consent from more than two-thirds of all property owners owning more than 66 percent of private landholdings in a district is needed to approve a land readjustment proposal in Japan. In Taiwan, the consent requirement is 50 percent.[5]

Dissenting owners have the right to withdraw by selling their interest in the land to the LR agency. If they refuse to sell,

Illustration: Kirk Lyttle

the agency may ask the government to exercise its authority to take their property, with compensation generally decided not by the courts or outside experts (as with eminent domain) but by the stakeholders at the public hearings. With the consent of the majority of property owners, taking land for community benefit can be justified, but public participation in the decision is essential. Community organizing must be center stage.

Land Resubdivision and Servicing

In the third step, the land readjustment agency draws up a master plan for the district in consultation with the planning department. Again, public hearings are held to solicit comments from participating owners. After the master plan is reviewed and approved by local planning authorities, the agency combines all land parcels for a new subdivision. Because readjusting land for an entire district may take a long time, this procedure can be done with the help of a map or a computer simulation model. Through a virtual process, the agency resubdivides the area and specifies exchanges of land. Owners get to see the locations and sizes of their future land lots.

The LR agency holds the title during the project period. Participants do not need to leave their property until work begins. In large LR schemes, participants in one locale can temporarily relocate to an adjacent area and return to their original sites after readjustment is completed. That way, the operations can be rotated within the district.

Fewer public funds are needed than with eminent domain because parts of the assembled land get devoted to local infrastructure—roads, parks, schools, hospitals, and the like. The infrastructure land gets deducted from the land reallocated to the participating owners on completion of the project. Alternatively, a few reserved parcels may be sold to raise funds for infrastructure. Such land reductions are a way of making owners contribute to the services that benefit them. In a carefully planned LR project, local infrastructure investment could, in theory, be self-financing.

Land Reallocation

The final stage is to give improved property to the original owners. After site boundaries are readjusted and local infrastructure is provided, qualified appraisers assess the market value of all newly subdivided lots. Each owner receives a new land parcel with a market value that is at least the same as the value of the original land, albeit of smaller size. Swapping property has an advantage over eminent domain compensation in that it allows the original owners to partake in the redevelopment and to enjoy the financial gains the project generates.

Numerous versions of LR exist. In Lebanon, for example, property owners receive stock in an LR-like company known as *Solidere* in return for selling the company their land.[6] The amount of stock depends on the value of the land in proportion to the market value of the company's total equity. The company can raise investment capital from both property owners and nonowners. On the completion of project, parts of the available serviced land is returned to shareholders according to prior agreements. Alternatively, shareholders can sell their holdings in the stock market and use the proceeds to buy back land from the company or elsewhere. That gives flexibility to property owners who are interested in participating as investors but do not necessarily want to return to their neighborhood.

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A similar method involves exchanging existing property for the future right to purchase an equivalent housing unit. In Hong Kong, the right to purchase is tradable in the open market.

Implications

In short, LR can engender community-based decision making in land assembly, can allow redevelopment projects to be self-financing, and can encourage public participation in neighborhood revitalization. The downside is that its reliance on persuasion rather than coercion means it often takes a long time to implement.

Nevertheless, LR is a tested alternative to eminent domain. U.S. policymakers would do well to consider using LR and its democratic decision-making approach. Communities will continue to have revitalization needs and other public exigencies, so all tools should be considered.

Yu-Hung Hong *is a fellow at the Lincoln Institute of Land Policy in Cambridge, Massachusetts.*

Endnotes

[1] *Kelo et al. v. City of New London*, 545 U.S. 469 (2005).

[2] See the web site of National Conference of State Legislatures, http://www.ncsl.org/programs/natres/EMINDOMAIN.htm, May 2007.

[3] See William A Doebele, *Land readjustment. A different approach to finance urbanization* (Lexington, Massachusetts: Lexington Books, 1982); Yu-Hung Hong and Barrie Needham, *Analyzing Land Readjsutment: Economic, Law, and Collective Action* (Cambridge, Massachusetts: Lincoln Institute of Land Policy, 2007); and G. Larsson, *Land readjustment. A modern approach to urbanization* (Avebury: Newcastle, 1993).

[4] As the practice of land readjustment is country specific, only a stylized approach is presented and may not reflect the specificity of individual systems.

[5] In the United States, a 2007 Utah law prohibits the use of eminent domain without consent from the majority of owners—80 percent for owner-occupied homes and 75 percent for commercial property.

[6] Solidere is a Lebanese joint-stock company in charge of planning and redeveloping Beirut Central District following the end of the country's civil war in 1990.