

Distribution of Costs and Profits in Danish Urban Development

Michael Tophøj SØRENSEN and Finn Kjær CHRISTENSEN, Denmark

Keywords:

SUMMARY

Most countries have a system – procedures and tools – for foreseeable, clear and fair distribution of costs and profits in urban development.

However, the distribution of profits and costs between the municipality and the developers /landowners is in Denmark rather fragmented and not very transparent as the distribution is regulated throughout the whole planning and environmental regulation system. Furthermore, development agreements – an “old” tool in many countries and an efficient tool to distribute profits and costs between the public and private sector – have only recently become possible in Denmark, and only under some special circumstances.

This paper aims to clarify how costs and profits are distributed between the municipality and the developers/landowners in Denmark.

The paper analyses how the Danish planning and environmental regulation system handles this issue. Based on the analysis an overview will be constructed. Finally, the paper discusses the Danish “distribution model”, and who holds the best ”set of cards” in the distribution of profits and costs in the urban development process.

Distribution of Costs and Profits in Danish Urban Development

Michael Tophøj SØRENSEN and Finn Kjær CHRISTENSEN, Denmark

1. INTRODUCTION

When a developer/landowner engages in an urban development project, he presumably does so with an aim of profit. The size of the profit – being the difference between the sale value and costs of producing the development project – will usually be influenced by both the present market situation and the size of production costs. It is therefore essential to the developer/landowner to know how the total development costs are split between the municipality and the developer/landowner.

Like many other countries Denmark is considered a constitutional state. Among other things this means that the “principle of legality” as well as the “requirement of statutory authority” are fundamental principles in Denmark. Specifically local authorities are not allowed to collect taxes – or similarly, require financial contributions – without statutory authority. In connection to urban development and the distribution of profits and costs a municipality can only claim some of the profits and impose costs on the developer if it is an option given in Danish regulation.

In several other countries there are quite well-functioning systems to handle “fair and transparent” distribution of profits and costs. The distribution of profits and costs between the municipality and the developers/landowners in Denmark can, however, more meaningful be described as regulated in a quite “fragmented way”: Firstly, the distribution is regulated in many different acts throughout the whole “planning and environmental regulation system”. Secondly, in some cases distribution across public and private is not regulated at all, generally speaking. Together, this makes the distribution in Denmark rather fragmented and not very transparent.

This paper offers a compiled overview of the distribution of profits and costs in Denmark. This is done through an analysis on how the Danish planning and environmental regulation system regulates the distribution in urban development.

To analyse the distribution of profits and costs in the urban development process, the process is divided into five parts: A) Project and planning process, B) Supply of land, C) Site preparation and supply of physical infrastructure, D) Supply of social infrastructure and E) Construction of buildings. This division is not especially related to events or time, but related to how the Danish regulation handles the issue of distribution.

2. PROJECT AND PLANNING PROCESS

It is broadly recognised theoretically as well as empirically¹ that the value of agricultural land and the value of land designated for urban purposes are different, just as the value of a worn down industrial area usually is lower than the value of the area designated for high rise office buildings. It implies that there is a value increase from the point in time where the development idea arises to the point where the municipality adopts the planning (binding local plan²) that gives the landowners the right to develop the area in accordance with the plan.

In connection with compulsory purchase the term “expectation value” is often discussed - in Denmark as in many other countries. The term concerns the increase in value that takes place before the local plan is adopted and is caused by the expectation of future development of the area³. (Kalbro, T, 2007) describes the expectation value as an upward sloping curve, meaning that as the development gets more and more certain the value increases. The municipality’s adoption of the local plan brings the value a step further up the ladder. It can be argued that this increase in value is “created by the society”, since the municipality does the planning and gives the possibility for development. (It is here taken as an assumption that the value increases, first caused by expectations and next created by the adoption of planning).

The municipality is not given any right or possibilities to claim some of the increased value from the landowner in Danish regulation. However, the landowner pays tax of the value of land cf. Danish taxation law⁴, and the municipality receives this tax. The landowner also pays tax of the total property value, but this tax goes to the state. Thus, the municipality gains some of the profit from the society-created value-increase, but it is insignificant on the whole. All things considered, the landowners get the profit.

3. SUPPLY OF LAND

Knowing that the landowner gains the profit – by and large – makes it interesting to look at; who is the landowner, and how does the ownership change? In other words – who owns the land when the value increases? This is important because it is the landowner at the time when the value increases that gets the profit caused by the society-created value-increase.

¹ E.g. (Bramley, J., Bartlett, W., Lambert, C., 1995), (Kalbro, T, 2007), (Voss, W. & Dransfeld, E., 1993) and (Nielsen, Christensen and Pedersen 2005).

² The term ‘local plan’ is used in accordance with the Danish Planning Act. It resembles the common term ‘binding development plan’. In Denmark the local plan contains detailed regulations on how to utilize one or several properties. Before any major development project is carried out a local plan shall be produced. The Danish Planning Act is based on the principle of framework control, in which a local plan must not contradict planning decisions at higher levels e.g. municipal plan.

³ That expectations of future usage possibilities have an influence on property value is also clearly stated in the new High Court verdict U.2008.2823H. In this verdict the land had no expectation value because the landowner – as a result of unbinding municipal planning – could not have any expectation to the future use of the land since it was to be used as public owned kindergarten.

⁴ The Danish Property Tax Act (LBK nr. 724 af 26/06/2006) and The Danish Property Profit Margin Tax Act (LBK nr. 891 af 17/08/2006).

When the purchase of land is between private people (or companies) they can in principle chose the price that they want to – higher or lower than market price – to even out costs and profits, or to share profits. The setup is different when the municipality is either the buyer or seller. The municipality is not allowed, as private developers and landowners, to speculate in land, partly because it is not considered a municipal task, and partly because it would be considered a distortion of the competition on the private property market. Therefore, municipalities are bound by a set of rules that – to put it briefly – commit municipalities to buy and sell property at market value, unless the municipality through buying land to prices higher than market price, or through selling land below market price, can prove intentions of managing their interest in planning, environmental and infrastructural issues. This means that to ensure that the municipality spends its resources in the best interest of the municipality's population the main purpose of the property purchase/sale must be different from earning money (Sørensen, M.T., 2007, p 272-275). Due to this municipalities have – also in this connection – very limited possibilities to obtain some of the profits that go to the developers/landowners.

No matter what, municipalities can – at least indirectly and as a side benefit – obtain profit on land development in connection with supplying the local community with building sites. A municipality can get ownership of land for urban development in three ways – all of which the land is acquired at market value: When the municipality buys land on market terms, compulsory purchase based on municipal plan⁵ and compulsory purchase based on local plan. (Sørensen, M.T., 2007, p 276-279)

3.1 When the municipality buys land on market terms

If the municipality and the landowner can agree on the market value of the land, the municipality can buy the land – like anyone else – to supply the local community with building sites. This is possible anytime in the development process, and also before planning and development starts. The only limitation is that the municipality must buy land with some reference to their interest in planning, environmental and infrastructural issues and at market price. This way of acquiring land allows the municipality to become landowner before the value of land increases significantly.

When an area has been planned either through municipal plan or local plan the sale conditions can change a bit as the planning (also) constitutes a necessary and legal prerequisite for using compulsory purchase (see further below). This means a great deal to the landowner since he is exempted from paying tax of his earnings of the sale of the property⁶⁻⁷. In other words, if the landowner waits to sell until the land is planned he gets a “double benefit” since the land has a

⁵ The term ‘municipal plan’ is used in accordance with the Danish Planning Act. It resembles the common terms ‘master plan’ and ‘structure plan’. In Denmark the municipal plan covers the entire municipal territory – city areas as well as rural areas – containing guidelines on future development and a framework for the binding local planning.

⁶ The Danish Property Profit Margin Tax Act (LBK nr. 891 af 17/08/2006) § 11.

⁷ If the sold piece of land is for instance a cornfield, it is only the value of land that is tax free, the crops are not (Ensig J 2007, s 109-125).

greater value and his earnings are exempted from tax. It could be argued – and a few municipalities have tried – to split the bonus from tax exemption between the landowner and the municipality. The court decisions on this issue have gone both ways, but recently the High Court made clear with its latest verdict – U.2008.1738V⁸ – that the tax exemption rules should only benefit the landowner and not the municipality.

3.2 Compulsory purchase based on municipal plan

The Danish Planning Act⁹ has two options concerning compulsory purchase for urban development. The first is based on the municipal plan – discussed here – and the second is based on the local plan, which is discussed below.

When a piece of land is designated for urban purposes in a municipal plan the municipality can acquire land through compulsory purchase¹⁰. The municipality's possibility to use compulsory purchase based on the municipal plan is restricted to agricultural land designated for urban purposes. If the municipality wants to use compulsory purchase in the existing city the municipality has to wait until there has been adopted a local plan for the area.

Seen from an economical perspective, the land that the municipality wishes to acquire has most likely increased in value as a result of the expectations of future urban development. The value will probably increase further later on as the probability of development gets higher, and the binding local plan is adopted. Therefore, by expropriating based on a municipal plan the municipality can expect to get a substantial share of the increase in value that is caused by planning.

3.3 Compulsory purchase based on local plan

The municipality's possibility to do compulsory purchase based on local plan is the second compulsory purchase option in the Danish Planning Act¹¹. As mentioned above compulsory purchase based on local planning is the only option in the fully developed city area – other than free sale of course. It can also be used to acquire agricultural land as the possibility mentioned above.

If the municipality waits until the local plan has been adopted, and thereby waits until the land is given new usage opportunities, the increase in value caused by the planning goes to the selling landowner. The municipality cannot get any part of it, due to the current valuation principles that gives the landowner full compensation, i.e. compensation of the property value including the value of building opportunities according to the binding local plan.

⁸ The verdict is about a municipality that through compulsory purchase acquires a piece of land to a future residential area from a farmer.

⁹ The Danish Planning Act (LBK nr. 1027 af 20/10/2008).

¹⁰ The Danish Planning Act (LBK nr. 1027 af 20/10/2008) § 47.

¹¹ The Danish Planning Act (LBK nr. 1027 af 20/10/2008) § 47.

3.4. When the municipality sells land on market terms

When the municipality sells land – e.g. after expropriation – the land has to be sold at market price as a principal rule. This scenario is common in Denmark; the municipality buys agricultural land, prepares the land, and sells the land as building plots for one-family houses. To secure a transparent sale process and sale at market price the municipality must (with a few exceptions) follow the rules of public procurement in advance¹². There are detailed regulations on this issue in the legislation¹³. The few exceptions – explicit mention in detailed rules – on when public procurement can be avoided covers for instance sale between municipality and region or state.

The municipality can in some exceptional cases sell its property for less than market value; it is however only possible if it is helping the municipality in serving its public interest in planning, environmental and infrastructural issues (Sørensen, M.T., 2007, p 275).

4. SITE PREPARATION AND SUPPLY OF PHYSICAL INFRASTRUCTURE

When analysing the distribution of profits and costs during the preparation of land it is necessary to distinguish between: Preparation of the development area with regard to earlier land use, and preparation of the development area with regard to future land use. The reason for this distinction is that city areas often have to be cleaned-up due to polluted soil etc. before the traditional land preparation (water supply, sewage systems etc.) can be carried out.

4.1. Preparation of the development area with regard to earlier land use

The conditions caused by the prior use of land are a bit different depending whether the areas are existing urban areas like redevelopment areas or, on the other hand, agricultural land. Demolition of old buildings does mostly occur within the existing city. It is the developers/landowners that have the cost of this, and the same applies if there are trees, farming buildings etc. on agricultural land. There is however a couple of other important issues around the earlier land use; polluted soil and cultural heritage.

Polluted soil can be a quite costly thing to get rid of. The Danish legislation on polluted soil¹⁴ distinguishes between three different levels of soil; 1) Soil which is considered clean, 2) lightly polluted soil and 3) polluted soil (including soil mapped as polluted).

Land with clean soil is “ready” to use, and if soil is to be moved away from the property the landowner only has to make sure that the soil is actually clean¹⁵ - and if it is not clean it is treated as polluted soil as discussed below.

¹² The Danish Act Governing the Municipality (LBK nr. 696 af 27/06/2008) § 68.

¹³ Statutory order on public procurement when a municipality sells property (BEK nr. 472. af 20/06/1991) and Guidance on public procurement when a municipality sells property (VEJ nr. 60. af 28/06/2004).

¹⁴ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007).

¹⁵ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007) § 50.

In 2006 the term “lightly polluted soil” was introduced. It is an area classification of all urban zones (cities). The assumption is that city areas suffer from at least some pollution. Lightly polluted soil becomes a problem for the developer/landowner when he wants to move soil away from the property. If the soil is kept on the property he can continue as he has planned. When moving lightly polluted soil away from the property the developer/landowner must first of all report four weeks in advance that he wants to move the soil, and secondly he arrange a test of the soil at his own expense¹⁶. The costs of moving and handling polluted soil can be very costly, and developers/landowners cannot chose the method themselves (Moe, M; Lynæs, C. B and Krat, L. P., 2004, pp 144-145). If the soil has to be moved from the property it is handled as garbage. This means that the municipality assigns where to put it and what happens with the soil. (Basse, E. M., 2001, pp 257-258)

Soil that is polluted or mapped as polluted¹⁷ is handled in the same way as lightly polluted soil when it leaves the property. There is, however, additional rules concerning polluted soil and soil mapped as polluted. In relation to urban development of polluted areas the important rule is that it requires a permit to change the use to “sensitive uses” like dwellings, summer houses, kindergartens and playgrounds for children.¹⁸ In such cases the municipality can – and usually does – make permits conditional on cleaning the polluted soil¹⁹.

To secure that prehistoric settlements, graves and the like are not destroyed when areas are developed the Danish Museum Act²⁰ regulates the handling of Danish cultural heritage and archaeological findings in urban development. Findings in the ground stop the development immediately.²¹ The main principle is then that developer/landowner has to pay the costs of both the delay in the project and the archaeological investigation conducted by the local museum. If the findings are so important to Danish history that it is necessary to keep it and keep it on the spot, the land will be acquired by the Heritage Agency of Denmark.

The developer/landowner can minimize his risk by asking (and paying) the local museum to screen the development area prior to development.²² To sum up, the screening prior to development is the developers/landowners’ cost – unless it is a small screening less than 5000 m² (Buch, A.V. & Møller, J. (eds.) 2005, ss. 454-455). Any costs caused by delays are the developers/landowners²³. Who shall pay for the archaeological investigation – if such becomes necessary – depends on whether a screening has been done or not. If the developers/landowners have requested a screening it is the local museum/Heritage Agency that pays. If they have not requested a screening it is the developers/landowners’ cost.

¹⁶ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007) § 50 and Statutory order on notification and documentation when moving soil (BEK nr. 1479 af 12/12/2007).

¹⁷ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007) §§ 3-5.

¹⁸ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007) § 6 and § 8.

¹⁹ The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007) § 8 subsection 4.

²⁰ The Danish Museum Act (LBK nr. 1505 af 14/12/2006).

²¹ The Danish Museum Act (LBK nr. 1505 af 14/12/2006) § 27 subsection 2.

²² The Danish Museum Act (LBK nr. 1505 af 14/12/2006) §§ 25-26.

²³ The Danish Museum Act (LBK nr. 1505 af 14/12/2006) § 27 subsection 5.

4.2. Preparation of the development area with regard to future land use

Almost all buildings are connected to common supply networks (heat, power and water supply etc.) in Denmark. Only in the countryside some of these common services are not offered. In urban development areas such common services are always offered, and through regulation in binding local plans municipalities can even demand new buildings to be connected to common services.

The supply of electricity, water and district heating is usually offered by private “utility companies” – which are sometimes owned by municipalities. These companies pay – at first – the costs of cables and pipelines when the preparation of land takes place. Whenever a building is connected to the supply network the developer/landowner pays a connection fee – and thus, when all properties/households are connected the cables and pipelines are financed. The utility companies set a yearly price for both the consumptions fees and the connection fees.

The district heating is a bit different. There is still a connection fee for the landowner, but in addition the developers/landowners can be imposed the cost of the main pipeline in the development area. On top of this there is a consumption fee, which beside the actual consumption also reserves some for renovation work.

Also the supply of sewage systems is a bit different, since the size of connection fee is regulated directly in the legislation (app. 42.000 DKK)²⁴. The sewage systems are supplied by the municipality, and are – due to the fixed low²⁵ fee – partly paid for by the developer/landowner through consumptions fees and the connection fees and partly financed by the local municipality (Christensen, 2008).

As it appears the regulation of common supply is rather fragmented, but developer/landowner can usually calculate the costs in advance.

Development of roads and public spaces are, however, even more differentiated when it comes to the distribution of costs. There are two possible types of roads within a development area: Private roads and public roads. Private roads are typically internal roads – they are owned by the landowner who also pays for them. The public roads are typically the bigger roads leading into the area – they are owned by the municipality who also pays for them, at least the first time round. The municipality does, however, have two options to impose some public road-costs on the developer/landowner through: 1) Development agreements and 2) road levies.

The developer/landowner can make a development agreement with the municipality if the developer requests it voluntarily²⁶. It is not possible to force it upon the

²⁴ The Danish Act on Payment for Wastewater Treatment (LBK nr. 281 af 22/03/2007) § 2.

²⁵ The fee is low compared to the real costs, and is decided in national politics.

²⁶ The Danish Planning Act (LBK nr. 1027 af 20/10/2008) § 21b.

developer/landowner.²⁷ However, a light pressure can be put on the developer as the municipality can refuse to provide the necessary planning and planning permission, if the municipality will not be able to prioritise the necessary road development in the municipal budget.

The other possibility, “road levies”, is given by the road legislation²⁸. This gives the municipality the option to impose landowners with “direct access” to the public road some of the costs of making and maintaining the road²⁹. “Direct access” also includes public roads leading into a housing area that – despite also used by “outsiders” – are primarily used by the landowners in the area³⁰.

5. SUPPLY OF SOCIAL INFRASTRUCTURE

Inevitably, development of a new urban areas – especially housing areas – will have an impact on the community and the services provided by the municipality in the community such as kindergarten, schools etc. If schools or kindergartens are to be enlarged as a result of housing development it is considered a traditional municipal task to develop – and pay for – such social infrastructure.

When the municipality makes its planning it is natural to take the whole economy into consideration – meaning also to consider how the development will affect the supply of services (kindergartens, schools etc.). As the municipality has limited funds the municipal council needs to do so. (Bogason, P. et al. 2008, p. 58)

Social infrastructure costs cannot be imposed upon developers/landowners due to the tradition that such infrastructure is in Denmark always defrayed and budgeted by the local government. The Danish regulations also reflects this since there is no law – or the like – that gives the municipality the option of imposing the costs of public institutions on the developers/landowners when the municipality develops an area. Quite the reverse, as landowners by the Basic Law are protected against “hidden” tax charging, i.e. municipalities are prohibited to charge landowners for infrastructure costs which are normally defrayed and budgeted by the local government.

However, and quite opposite, a municipality can in a local plan regulate that *“the production of or connection with common facilities located within or without the area governed by the*

²⁷ The fact that the development agreements are voluntary protects the land owners against “hidden” (i.e. unlawful) tax charging. In other words, municipalities are prohibited to charge landowners for infrastructure costs which are normally defrayed and budgeted by the local government. Only when the urban development results in extraordinary expenses, these expenses can be charged the landowners – i.e. when a higher quality or standard of the planned infrastructure in an area is to be achieved (cf. § 21b, subsection 2 no. 1); or when accelerating the local planning (cf. § 21b, subsection 2 no. 2); or when the development opportunities are changed or extended (cf. § 21b, subsection 2 no. 3), cf. (Sørensen M. T. and Aunsborg C., 2008).

²⁸ The Danish Road Levy Act (LBK nr. 392 af 22/05/2008).

²⁹ The Danish Road Levy Act (LBK nr. 392 af 22/05/2008) § 6.

³⁰ The Danish Road Levy Act (LBK nr. 392 af 22/05/2008) § 6 subsection 2.

plan as a condition for starting to use new buildings”³¹. Common facilities normally refer to technical infrastructure described above, cable-TV arrangements, common houses with laundry etc. and parking spaces within the area and so on – and this is also the way it is administered in practice. However, it is explicitly mentioned in the explanatory notes of the planning legislation³² that kindergartens etc. are included. This extension of the interpretation is considered to be very hard to use – if ever used (Sørensen, M.T. 2007, p. 283).

6. CONSTRUCTION OF BUILDINGS

The construction of (private) buildings is (of course) the developer/landowner’s cost and they also gain the possible profit. The municipality only serves as the permit-giving authority³³. According to the Danish building law the developer/landowner needs a building permit before construction and a permit (i.e. a commissioning certificate) to utilize the building when it has been built.³⁴ It costs a small fee to apply for the building permit – but in comparison to the building cost etc. it is insignificant.

7. OVERVIEW

Looking at the distribution of profits and costs from the point of view that the municipality cannot demand a share of the profits or impose costs on the developer/landowner without being based in legislation in accordance with the Danish Basic Law, the distribution adds up to the following:

The developer/landowner gets the profit, and the municipality’s only option if they want to obtain some of the profit, is to become landowner themselves by acquiring land early and strategically - either through free sale or through compulsory purchase.

Who gets the profit of a particular development project?		
	Developer/Landowner	Municipality
Project initiation and planning process (The value of the project idea and the value of building rights – including the expectation of such)	X	(X) (If the municipality acquires the development area strategically – i.e. before the local plan is provided)
Preparation of land	X	(Only if the municipality is landowner when the preparation of land takes place)
Construction of buildings	X	

³¹ The Danish Planning Act (LBK nr. 1027 af 20/10/2008) § 15 subsection 2 bullet 11.

³² The legislative history of act no. 168/1974 (§13, stk. 6).

³³ But – as mentioned above - a light pressure can be put on the developer to enter into a development agreement as the municipality can refuse to provide the necessary planning and planning permission.

³⁴ The Danish Building Act (LBK nr. 452 af 24/06/1998) § 16.

The municipality can choose another strategy – to impose as many costs as possible on the developer/landowner. The municipality does however only have the costs of the planning process and of the construction of public roads to impose on the developer/landowner – the rest is already the developer/landowner’s cost. Both in the case with the costs of the planning process and of the construction of public roads the voluntary developer agreements are an option. The municipality does have a second option concerning the costs of roads; road levies. It would however be a special case if the municipality is totally free of costs. The big picture is that the developer carries the costs.

Who carries the costs?		
	Developer/Landowner	Municipality
Purchase of land	X	
Planning	(X) (Maybe through development agreement)	X
Preparation of land		
- Archaeological investigation	X	
- Polluted soil	X	
- District heating	(X) (Connection fee /development fee)	(*)
- Electricity	X (Connection fee)	*
- Water supply	X (Connection fee)	*
- Sewage systems	X (Connection fee)	(X*)
- Roads	X (Connection fee) X (Private roads – always; public roads - developer agreement/road levies)	(X*) (See chapter 4.2) X (Public road)
Social infrastructure (Note that this is not technically a part of the development project, but a service provided by the municipality as a traditional ‘municipality task’)		(X) (Not technical a part of the development project)
Construction of buildings	X	
* The costs of the cables and pipelines in the supply network are financed through connection fees, but are at first paid and build by the utility companies.		

8. EVALUATION OF THE DANISH PROFIT AND COST DISTRIBUTION SYSTEM

To evaluate the Danish profit and cost distribution system it has to be held up against certain criteria based on “good administrative practice”. In Denmark as in many other countries, a good distribution system must at least be predictable and specific in its regulations and have a transparent process. This concerns the “system-technical side” and not necessarily what is fair. Both issues are discussed further below, however, with clear emphasis on the former rather than the latter.

Fundamentally, it is important to stress that the “principle of legality” as well as the “requirement of statutory authority” applies in Denmark. This, among other things, means that it is not possible for the municipality to negotiate a “bigger piece of the cake” by imposing extra costs. Furthermore, the municipality can for instance not “sell” the planning permissions “at the highest” price³⁵, and the developer/landowner cannot “bribe” the municipality to adopt a certain planning. Both would conflict with a transparent distribution and could undermine the public’s trust and confidence in the planning system (Harvey, J & Jowsey, E, 2004, pp. 412-413).

Is the Danish system predictable and specific in its regulations, and does it have a transparent process? As shown the distribution system is regulated throughout a whole range of different laws and the main part of the costs are imposed on the developer/landowner – and at different times – in the development process. To outsiders this may not appear very transparent. On the other hand, it is clearly regulated and when the local authorities are given competences it is explicitly based legally. The different costs are calculable since the models for calculating fees are public available and the parameters for calculating fees are to a wide extent known beforehand – often through the municipalities websites. This is quite transparent, at least for those who know the system. One exception is the costs on public roads, where the developer cannot beforehand predict his share of the total costs.

Another question is if the distribution system is fair? The present system is illustrated in the figure below, which is also the starting point for the following discussion. As the system is now, the developer/landowner “gets it all” (more or less) – profit, risk and costs. But the municipality contributes to some of the profit, at least the part that is caused by planning and building rights, as it can be seen in the upper part of the figure. Thus, the municipality is providing a value increase on private land, and the actual owner gets the profit. On the other hand, he “loses” if the municipality makes a planning decision which decreases land value³⁶. The figure also shows that the developer pays for some of the services provided by the municipality – sewage, part of the roads and so on. It could be argued that this is additional

³⁵ However - as mentioned above - when the development opportunities are changed or extended the municipality can (at least indirectly by putting at light pressure on the developer/landowner) charge extraordinary expenses to upgrade the technical infrastructure (cf. Danish Planning Act § 21b, subsection 2 no. 3).

³⁶ However, there is a “safety net” for the landowner if the land will be designated for public use (road, recreational area, etc.), cf. Danish Planning Act § 48: *“When a local plan or a town planning by-law reserves a property for public use, the owner may demand that the municipality assume ownership of the property and pay compensation”*.

expenditure to the municipality, and therefore, it would be fair to impose these costs on the developer/landowner. The same arguments could apply for the social infrastructure. On the other hand, the municipality is (by tradition or law) obligated to supply the community with the majority of these services. Such infrastructure is in Denmark always defrayed and budgeted by the local government.

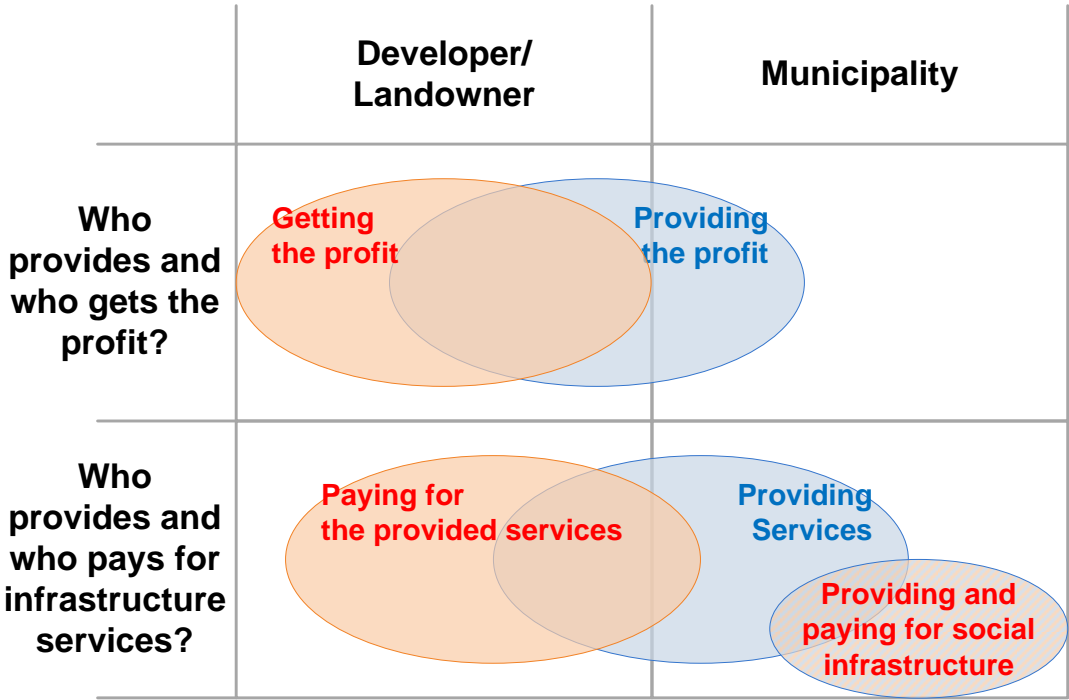


Figure showing the distribution of profits and costs in urban development projects. The circles are placed schematically for illustrative purposes and do not have foundation in empirically data.

An example on this discussion could be a typical one-family housing development at the edge of the city: The municipality plans the area and the developer/landowner develops the area – covering most of the costs, having the risk and getting the profit of it. The municipality is then left with some costs to roads, planning and the development area’s impact on the existing social infrastructure. Several Danish municipalities are struggling with their economy, and therefore also with the illustrated costs. The area does of course also produce extra tax money (property tax and income tax from the new inhabitants), but that does of course not solve the funding problems around the time of the development. The example points towards letting the municipality impose more costs on the developer/landowner. But if the development project appears unattractive because of absence of the necessary municipal infrastructure investments, and thus not profitable, the landowner/developer would properly not develop at all – a situation most municipalities would like to avoid. Therefore, most municipalities in Denmark actually develop the infrastructure without complaints, because they later on gain (property and income taxes) what they have “lost” in the first time round.

8.1 Is there a need for improvement in the Danish system?

Keeping in mind that the distribution of profits and costs should be “predictable, specific and transparent”, and taking the existing system into consideration, it may be the best solution to keep the focus on the costs as it is today. In the present system it is only the costs related direct to the actual development that can be imposed on the developer/landowner – which excludes costs for social infrastructure. Keeping it to the costs that is directly related to the actual development is a secure way to “keep it simple” and to keep it fairly measurable and predictable.

There is, however, one troublesome issue – public roads and the municipality’s possibilities to pass on the costs to the developer/landowner – which is not as predictable as the others. The developer/landowner can engage in a development agreement and through this they can pay the costs of roads that exceed the normal standard of roads – the extra costs. This is clearly stated in the Danish Planning Act. The municipality can, however, go beyond this through road levies. Both parties would be better off if the option of development agreements were extended, and if the option for road levies were minimised. Not necessarily to change the distribution of costs between the public and private parties, but to make it more transparent and predictable.

9. CONCLUSION

The Danish system for distributing the profits and costs in urban development has a fragmented foundation in the entire planning and environmental regulation system. To fully understand the system it is necessary for the developers/landowners, and for that matter the municipalities, to have a wide insight in the system’s considerable amount of legislation. When knowing the system for distribution of profits and costs it is in general transparent and predictable. There are, however, some uncertainty concerning public roads and the distribution of their costs.

The analysis shows that more or less all profits and costs go to the developer although parts of both profits and costs might be the municipalities’ rightful gain/loss. The Danish system for distribution of profits and costs are in that sense “double wrong” – at least under a narrow project development perception. On the other hand and in a broader view, usually municipalities will later on gain what they have lost in the first time round: Municipalities will gain from mainly new income and property taxes. Whether this distribution – which actually is functioning despite not easy to handle (neither for municipalities nor developers/landowners) – should be changed is in the end a political question. A question beyond this paper to answer!

REFERENCES

(Kalbro, T, 2007)

Kalbro, T. 2007, Markexploatering - Juridik, Ekonomi, Teknik och Organisation, 3rd eds., Norstedts Juridik, Stockholm.

(Sørensen, M.T. 2007)

Sørensen, M.T. (2007), Fast ejendomsret, p269-290, 1st eds., Jurist- og Økonomforbundets forlag, Copenhagen, Denmark

(Ensig, J. 2007)

Ensig, J. (2007), Fast ejendomsret, p109-125, 1st eds., Jurist- og Økonomforbundets forlag, Copenhagen, Denmark

(Buch, A.V. & Møller, J. (eds) 2005)

Buch, A.V. & Møller, J. (eds) 2005, Projektudvikling af fast ejendom - en håndbog for praktikere, 1st edn, Thomson A/S, København.

(Moe, M; Lynæs, C. B and Krat, L. P., 2004)

Moe, M; Lynæs, C. B and Krat, L. P., 2004, Miljøret, Thomson, 5th eds.

(Basse, E. M., 2001)

Basse, E. M., 2001, Miljøretten 3 – Affald, jord, råstoffer og undergrund, Jurist- og Økonomiforbundets Forlag, 1th eds.

(Bogason, P., et.al. 2008)

Bogason, P. & et. al. 2008, En forhandlet løsning - En casebaseret analyse af byggegrunde, byudvikling og prisdannelse i Danmark, Mandag Morgen a/s.

(Ministry of the Environment, 2007)

Ministry of the Environment, 2007, The Planning Act in Denmark - Consolidated Act No. 813 of 21 June 2007, ISBN no. 978-87-7279-796-0

(Harvey, J & Jowsey, E, 2004)

Harvey, J & Jowsey, E, 2004, Urban land economics, 6th eds., Palgrave Macmillan

(Bramley, J., Bartlett, W., Lambert, C., 1995)

Bramley, G., Bartlett, W. & Lambert, C. 1995, Planning, the market and private housebuilding, 1st eds., UCL Press Limited, London.

(Kalbro, T, 2007)

Kalbro, T. 2007, Markexploatering - Juridik, Ekonomi, Teknik och Organisation, 3rd eds, Norstedts Juridik, Stockholm.

(Voss, W. & Dransfeld, E., 1993)

Voss, W. & Dransfeld, E., 1993, "Funktionsweise städtischer Bodenmärkte in Mitgledstaaten der Europäischen Gemeinschaft - ein Systemvergleich,, Bundesministerium für Raunordnung, Bauwesen und Städtebau

(Nielsen, Christensen and Pedersen, 2005)

Anne Møller Nielsen, Finn Kjær Christensen and Mette Bach Pedersen, 2005, "Kommuneplanens påvirkning af ejendomsmarkedet – påvirkes grundens markedsværdi?",

(The municipal plan's influence on the property market – is the land's market value effected?), Master thesis at Aalborg University

(Christensen, 2008)

Finn Kjær Christensen, 2008, Working paper: The urban development process and land preparation in a economical perspective, (Working paper: Byudviklingsprocessen og byggemodning i et økonomisk perspektiv), Aalborg University, Publication series 2008-17
ISSN 1397-3169-pdf

(Sørensen M. T. and Aunsborg C., 2008)

Michael Tophøj Sørensen and Christian Aunsborg, The Call for Statutory Tools in Urban Regeneration, Paper given at Planning Law and Property Rights Symposium, Warsaw, Poland, February 13-15, 2008

Laws etc.

The Danish Planning Act (LBK nr. 1027 af 20/10/2008)

Bekendtgørelse af lov om planlægning - LBK nr. 1027 af 20/10/2008

The Danish Property Tax Act (LBK nr. 724 af 26/06/2006)

Bekendtgørelse af lov om kommunal ejendomsskat - LBK nr. 724 af 26/06/2006

The Danish Property Profit Margin Tax Act (LBK nr. 891 af 17/08/2006)

Bekendtgørelse af lov om beskatning af fortjeneste ved afståelse af fast ejendom - LBK nr. 891 af 17/08/2006

The Danish Act Governing the Municipality (LBK nr. 696 af 27/06/2008)

Bekendtgørelse af lov om kommunernes styrelse - LBK nr. 696 af 27/06/2008

The Danish Museum Act (LBK nr. 1505 af 14/12/2006)

Bekendtgørelse af museumsloven - LBK nr. 1505 af 14/12/2006

The Danish Act on Polluted Soil (LBK nr. 282 af 22/03/2007)

Bekendtgørelse af lov om forurenet jord LBK nr. 282 af 22/03/2007

The Danish Road Levy Act (LBK nr. 392 af 22/05/2008)

Bekendtgørelse af lov om grundejerbidrag til offentlige veje (Vejbidragslov) - LBK nr. 392 af 22/05/2008

The Danish Building Act (LBK nr. 452 af 24/06/1998)

Bekendtgørelse af byggelev - LBK nr. 452 af 24/06/1998

The Danish Act on Payment for Wastewater Treatment (LBK nr. 281 af 22/03/2007) § 2

Bekendtgørelse af lov om betalingsregler for spildevandsanlæg m.v. LBK nr. 281 af 22/03/2007

Statutory order on public procurement when a municipality sells property (BEK nr. 472. af 20/06/1991)

Bekendtgørelse om offentligt udbud ved salg af kommunens faste ejendomme - BEK nr. 472. af 20/06/1991

Statutory order on notification and documentation when moving soil (BEK nr. 1479 af 12/12/2007)

Bekendtgørelse om anmeldelse og dokumentation i forbindelse med flytning af jord - BEK nr. 1479 af 12/12/2007

Guidance on public procurement when a municipality sells property (VEJ nr. 60. af 28/06/2004)

Vejledning om offentligt udbud ved salg af kommunens faste ejendomme - VEJ nr. 60. af 28/06/2004

The legislative history of Act no. 168/1974

Lovforslag nr. 168, Folketinget 1973-1974, fremsat den. 9 maj 1974 (§13, stk. 6)

Verdicts

U.2008.1738V

U.2008.2823H

CONTACTS

Michael Tophøj Sørensen
Associate Professor, PhD
Aalborg University
Department of Development and Planning
Fibigerstræde 11
9220 Aalborg East, Denmark
Tel. +45 9940 8415
Email: tophoej@land.aau.dk

Finn Kjær Christensen
Ph.D. Student
Aalborg University
Department of Development and Planning
Fibigerstræde 11
9220 Aalborg East, Denmark
Tel. +45 9940 8383
Email: kjaer@land.aau.dk