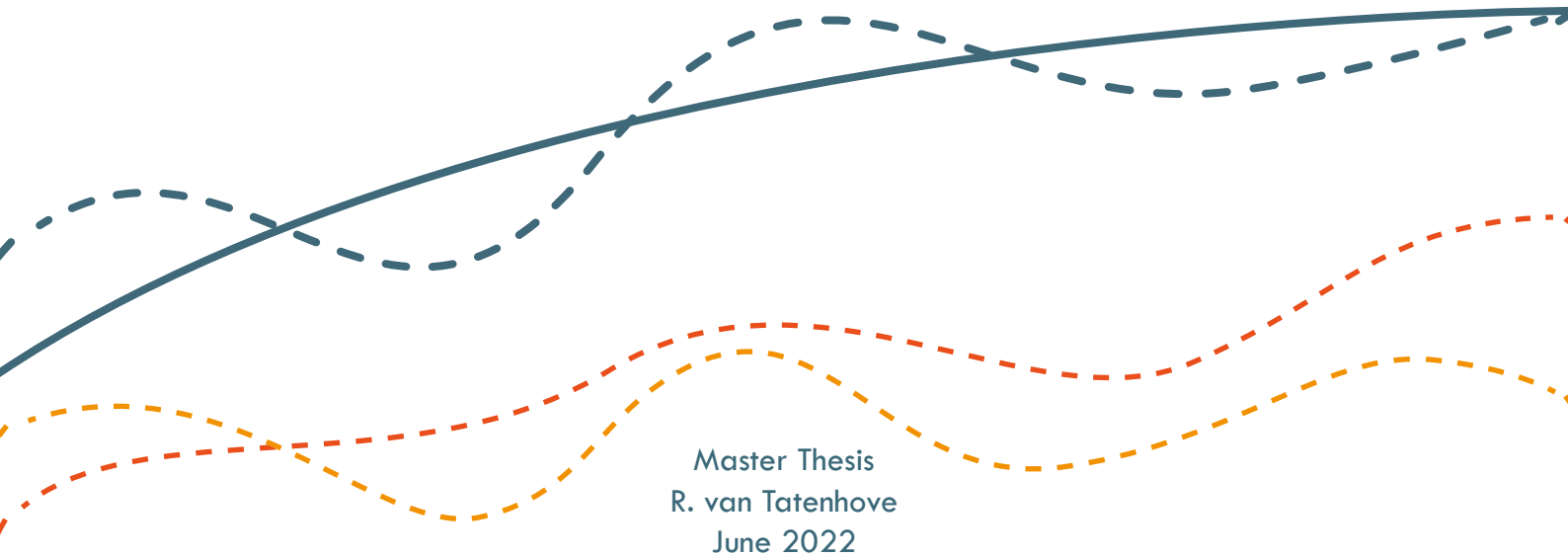
STRATEGIZING TOWARDS AGREEMENTS THAT CREATE AND CAPTURE ADDED VALUE

A MIXED METHOD EXPLORATORY CASE STUDY TO GUIDE FUTURE AREA DEVELOPMENT PROJECTS IN A NEO-LIBERAL URBAN LANDSCAPE.



Master Thesis
R. van Tatenhove
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PREFACE

To sonder: [1]

"The profound feeling of realizing that everyone, including strangers passing in the street, has a life as complex as one's own, which they are constantly living despite one's personal lack of awareness of it"

This feeling dawned on me for the first time about a decade ago, whilst I was in a train which rolled into a crowded station, and keeps my mind occupied from time to time. During the process of conducting the study that lies in front of you, even more so. As you read this thesis, and become (more) acquainted with the world of value creation and value capturing, perhaps you'll join me in awe of the following. Value in the Built Environment can arguably be seen as the sum product of pluriform and dynamic interests and ambitions, yet in a formal and more absolute sense can be created with the stroke of a pen as the change in a land use plan is formalised. Such a moment is naturally preluded by an array of studies, participatory events, sublimation meetings, engineering sessions, and so on, but has a focal point in such an apparently simple action. With the stroke of a pen, value is created, and numerous lives are influenced. With the stroke of a pen, the entire value chain will slowly mobilize, from consultant to contractor, from the architect that draws up high-rise plans to the carpenter that assembles the kitchen in a single dwelling. Through the stroke of a pen, the baseline for spatial quality is created, and possibly brings into being new residences, housing people, with a live as complex as our own. A quote I've used in this thesis is from Adams and Tiesdell: "*The built environment is a place of everyday joy or everyday misery*", and I feel this to be a consequence to the quality of urban planning. In other words, I believe that the creation and capture of value goes beyond financial engineering, and has, in my eyes, an intrinsic position in regard to the impact that it has on our lives, and of those around us. We, as students of the built environment, have a responsibility to mean well and do good. I believe the thesis before you makes a small contribution to this end.

'Strategizing towards agreements that create and capture value' is the final product of my study here at the Technical University Delft, presents my graduation work, and concludes for me the master programme 'Management in the Built Environment', at the faculty of Architecture. I started the faculty's bridging programme in the spring of 2020, and with covid emerging five weeks in, it has been a heck of ride. I am however grateful for the lessons I've learned, and the new lenses I've gathered through which to start understanding the world around me.

I am grateful too, for the many people that have contributed to the research before you. All interviewees, who enthusiastically shared with me their work and their views on the cases that I studied, and to those who reviewed the case study accounts with diligence. All colleagues at my internship company, who were always open to constructive debate on any topic. But especially I would like to express my gratitude to my academic supervisors, Fred Hobma and Herman de Wolff, and to my internship supervisor Robert Siersma, for guiding the research process and providing critical feedback along the way, challenging me to take the extra step. Also, to my fiancé, Maria, for providing critical notes and moral support. A great word of thanks to them all, my thesis could not have been completed at the level it lies before you today, without their contributions.

I hope you enjoy reading my thesis.

Sincerely,

R. van Tatenhove
June 2022

1. Wikipedia's definition, which calls it a neologism. First citations date back to 2012.

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Abstract

The urban challenges of today are plentiful. A million houses need to be built in the next decade, urban development needs to allow for climate adaptation and contribute to the energy transition. It needs to ensure sustainable economic growth potential in a circular and social economic fashion. The active forms of land policy that where standard to the Dutch government prior to the economic crisis of 2008 however are no longer applied in the same level of frequency. Neo-liberal influences have over time shifted the top-down government-led planning approach, to one where private parties need to be incited if there are particular planning questions to be solved. Yet, even when confronted with fragmented land ownership, or the necessity of integrating non-economic-efficient development functions, through facilitative forms of land policy, the government still has a task to shape the environment. Achieving the urban ambitions above is very costly, especially when integrative development is necessary; and without active forms of land policy or heavy forms of public private partnerships, the government can no longer mobilize the incomes gained from land management. According to former studies, it is possible to achieve integrative added value in urban development where private law agreements embody the value capturing arrangements. Little to no study has yet been conducted into how such agreements can do so in the Dutch institutional context, for which reason this thesis has addressed this apparent literature gap through the following research question: How can public parties increase the potential of their value capturing strategies within facilitative land policy using private law agreements in projects of area redevelopment? Through an explorative case study approach, initial lessons -rooted in empirical data- are drawn and abductively translated to formulate more tangible insights. The end product therein is the proposition of an initial theoretical understanding, and to present what Glaser and Strauss would call a 'running discussion'.

Value capturing within facilitative land policy in a technical sense takes places through agreed-to contributions in the anterior agreement, be they monetary or in-kind. From both literature as well as the case studies conducted it becomes apparent that it is the process preluding the actual agreement that makes possible more integrative forms of value capturing, through for example negotiation or a market-oriented redesign of the anterior process. These more integrative forms however are not necessarily to be understood in a solely financial sense. This thesis proposes to couple the concept of value capturing with the policy mode in the new actionable definition 'facilitative value capturing'[1], and to therethrough see value capturing within a facilitative context as an active exercise of attaining public spatial policy objectives. In conclusion this study proposes to use the definition of facilitative value capturing as a starting point, from the contention that even when public parties cannot or will not take a more risk-bearing role to the development, they still ought to take a proactive role towards achieving their spatial objectives, as they have an inherent responsibility to shape the environment, and facilitative therein needn't equal laissez faire.

Key words:

value capturing, area development, land policy, Dutch municipalities, anterior agreements, developers contributions

1. Maximising the way in which the area development contributes to public spatial policy objectives through (synergetic) negotiations, transfer of operational risks or anterior process design.

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Samenvatting (Summary)

Introductie

De stedelijke uitdagingen van vandaag zijn legio. Er moeten de komende tien jaar een miljoen huizen worden gebouwd, stedelijke ontwikkeling moet klimaatadaptatie mogelijk maken en bijdragen aan de energietransitie. Het moet zorgen voor duurzaam economisch groeipotentieel op een circulaire en sociaaleconomische wijze. De actieve vormen van grondbeleid die voor de economische crisis van 2008 nagenoeg standaard waren voor de Nederlandse overheid worden echter niet meer in dezelfde mate toegepast. Neoliberale invloeden hebben in de loop der tijd de top-down door de overheid gestuurde planningsaanpak doen verschuiven naar een aanpak waarbij private partijen moeten worden aangespoord als er bepaalde planningsvraagstukken moeten worden opgelost. Toch heeft de overheid, zelfs wanneer zij geconfronteerd wordt met versnipperd grondbezit, of met de noodzaak om niet-economisch efficiënte ontwikkelingsfuncties te integreren, door middel van faciliterende vormen van grondbeleid, nog steeds de taak om de omgeving vorm te geven. Het verwezenlijken van bovengenoemde stedelijke ambities is kostbaar, vooral wanneer integratieve ontwikkeling noodzakelijk is; en zonder actieve vormen van grondbeleid of zware vormen van publiek-private samenwerking kan de overheid de inkomsten uit grondbeheer niet langer mobiliseren. De breedste uitleg van 'value capturing' in gebiedsontwikkleing doelt op alle manieren waarmee de winsten van gebiedsontwikkeling worden gebruikt om de publieke kosten te dekken (al dan niet direct gelateerd aan de betreffende ontwikkelingen). Hierbij is het volgens eerdere studies mogelijk een integratieve meerwaarde bij stadsontwikkeling te bereiken wanneer privaatrechtelijke overeenkomsten de regelingen voor value capturing belichamen. Er is echter nog weinig tot geen onderzoek gedaan naar hoe dergelijke overeenkomsten dat kunnen doen in de Nederlandse institutionele context, om welke reden dit onderzoek hieraan tracht bij te dragen middels een exploratief casestudy onderzoek.

Hoofd- en deelvragen

Aan dit onderzoek ligt de volgende hoofdvraag ten grondslag: "Hoe kunnen publieke partijen het potentieel van hun value capturing's strategieën binnen faciliterend grondbeleid vergroten door gebruik te maken van privaatrechtelijke overeenkomsten bij gebiedsontwikkelingsprojecten?"

De vraag wordt beantwoord middels vier deelvragen:

1. Waarom is value capturing middels privaatrechtelijke overeenkomsten relevant, volgens literatuur en praktijk?
2. Hoe kan value capturing middels een privaatrechtelijke overeenkomst behaald worden en daarbij ook bijdragen aan de ontwikkeling zelf?
3. Hoe heeft value capturing in zulke overeenkomsten plaatsgevonden in het verleden? Op welke wijze werd daarbij de waarde afgevangen, zijn doelstellingen behaald en privaatrechtelijke valkuilen voorkomen?
4. Hoe kunnen de lessen, getrokken van zulke casestudies bijdragen aan value capturings-strategieën in Nederlandse gebiedsontwikkelingsprojecten, gegeven het theoretisch en praktisch kader waarbinnen de Nederlandse praktijk van value capturing zich bevindt?

Onderzoeksopzet

De hoofdvraag van dit onderzoek is vrij breed in zijn scope, en daar er een gemis lijkt te zijn aan literatuur over het specifieke vraagstuk vraagt het om een inductief, exploratief casestudy onderzoek. Glaser en Strauss schreven in 1967 dat nieuwe theorie als het ware naar boven kan drijven door het vergaren van nieuwe inzichten middels comparatief onderzoek van empirische data. Hierbij staat het ontsluiten van de data niet los van de wetenschappelijke literatuur, maar wordt het veldwerk er niet direct door geleid. Deze logica sluit aan bij het doel van

dit onderzoek: Leren van praktijkervaringen omtrent value capturing middels anterieure overeenkomsten, en komen tot nieuwe inzichten voor toekomstige gebiedsontwikkelingsprojecten. De opbouw van de deelvragen volgt dan ook eenzelfde redenering. De eerste twee deelvragen schetsen een theoretisch en praktisch kader, waartegen de ontsloten data van de casestudies (deelvraag 3) gespiegeld en bediscussieerd kan worden (deelvraag 4). Wegens het exploratieve karakter kan dit onderzoek niet leiden tot formele, of causaal gestaafde theorieën. Maar, omdat de uitkomsten geworteld zijn in literatuur en praktijk leidt het wel tot inzichten en biedt het (zoals Glaser en Straus dat noemen) een 'running discussion' – ofwel, een opmaat naar verder debat.

Relevantie van VC middels privaatrechtelijke overeenkomsten

De eerste deelvraag luidt: "*Waarom is value capturing middels privaatrechtelijke overeenkomsten relevant, volgens literatuur en praktijk?*" en is onderzocht door middel van een narratief literatuuronderzoek en verkennende interviews met senior consultants uit de praktijk. Het antwoord wordt gevonden op het snijpunt van twee deelantwoorden: De inzet van privaatrechtelijke overeenkomsten bij stedelijke gebiedsontwikkeling is relevant vanwege de geleidelijke politieke verschuiving naar een liberaler landschap. Een stroming die streeft naar vrijemarkteconomieën, omdat dit - volgens het liberalisme - zal leiden tot de meest efficiënte verdeling van welvaart. Stedelijke ontwikkeling als praktijk moet meebewegen als de vorm van bestuur verschuift van een top-down coördinerend model naar een model van open bestuur, dat meer openstaat voor de belangen van meerdere partijen. Zonder actief grondbeleid worden publiek en privaat gezien als symbiotisch van elkaar afhankelijk, en moeten ze samenwerken om te komen tot een vruchtbare ontwikkeling. Het tweede gedeeltelijke antwoord heeft betrekking op de relevantie van value capturing, wat het is, omdat het onrealistisch zou zijn om alleen te vertrouwen op de vrije markt om integrale plaatsen te realiseren, en het consequent te integreren van niet-economisch efficiënte, maar noodzakelijke elementen in gebiedsontwikkeling. Grondbeleid is het middel waarmee ruimtelijke ambities worden gestuurd in de notie dat grond schaars is, maar vatbaar voor externe, mogelijk maatschappelijk ongewenste effecten die de markt niet integraal zelf zou oplossen. Daarin ligt ook het raakvlak: Value capturing is een inherent onderdeel van actieve vormen van grondbeleid, en dergelijke vormen van grondbeleid worden minder gemakkelijk en minder vaak ingezet als vroeger. Het is dus belangrijk om de toepasbaarheid en doeltreffendheid te onderzoeken van value capturing via meer marktgerichte oplossingen; zoals door middel van privaatrechtelijke overeenkomsten.

Het hóe van privaatrechtelijke value capturing in de Nederlandse context

De tweede deelvraag van deze studie leest: "*Hoe kan value capturing middels een privaatrechtelijke overeenkomst behaald worden en daarbij ook bijdragen aan de ontwikkeling zelf?*", en is beantwoord in samenhang met de eerste deelvraag. Het praktische antwoord ligt besloten in paragraaf 6.4 van de WRO (Wet ruimtelijke Ordening). Als er publieke kosten of investeringen nodig zijn om een bepaalde private ontwikkeling mogelijk te maken, is de overheid verplicht om de gemaakte kosten te verhalen op de private ontwikkelaars die van de investering profiteren. De publiekrechtelijke weg biedt daartoe de mogelijkheid via een exploitatieplan, maar van gemeenten wordt verwacht dat zij eerst de privaatrechtelijke weg onderzoeken en een anterieure overeenkomst pogen te sluiten. Deze anterieure overeenkomst moet anderszins het verhaal van kosten verzekeren, maar kan meer bevatten dan enkel de elementen van kostenverhaal die anders in het bestemmingsplan zouden zijn uitgewerkt, zoals soorten ontwikkeling, (publieke bereidheid tot een) wijziging van het bestemmingsplan, fasering, en proces gerelateerde onvoorziene gebeurtenissen – waarbij het proces tot die anterieure overeenkomst de facto het gesprek mogelijk maakt over alles wat op dat moment voor de partijen relevant kan zijn.

Met dergelijke overeenkomsten wordt het mogelijk om verder te gaan dan een louter privaatrechtelijke invulling van de publiekrechtelijke verplichting tot kostenverhaal. De wederzijdse afhankelijkheid tussen publieke en private partijen maakt het mogelijk om extra waarde te creëren in gebiedsontwikkeling door begrip voor elkaars belangen en een coöperatieve, open houding ten opzichte van onderhandelingen. Dergelijke afspraken kennen wel enkele 'privaatrechtelijke valkuilen'; het is publieke partijen verboden om via betalingsplanologie overmatige invloed uit te oefenen, waarbij de grens tussen onderhandelingsdruk en dergelijke invloed als vrij dun kan worden ervaren. Tegelijkertijd worden dergelijke

onderhandelingen vaak in wederzijds vertrouwen gevoerd, terwijl een wijziging van het bestemmingsplan meerdere mogelijkheden biedt voor een breder geïnteresseerd publiek om een mening kenbaar te maken. Indien tussen het publiek en een enkele private partij afspraken worden gemaakt over een wijziging van het bestemmingsplan, wordt het voor het bredere publiek mogelijk ondoorzichtig welke alternatieven er zijn onderzocht. Bovendien is het in het geval van bijdragen in natura noodzakelijk dat de private partij zich houdt aan publieke waarden en dat de bijdrage in natura niet onder de economische waarde valt van de anders noodzakelijke compensatie.

Case studies

Casusopzet

Dit onderzoek heeft gekeken naar vier casussen, waarbij partijen zijn gekomen tot een anterieure overeenkomst, maar waarbij deze overeenkomst – in product of voorafgaand proces – tot meer heeft geleid dan enkel een geldelijke bijdrage van de private partij. Hierbij is gekeken óf value capturing tot uiting komt, zo ja, hóe, en bovenal, of er in de casussen sprake is geweest van slimmigheden waardoor value capturing wellicht beter is gelukt. Hiervoor is gekeken naar drie globale thema's: De karakteristieken van de casus en diens context, in welke mate de betrokken partijen hun doelstellingen als behaald zien, en natuurlijk op welke wijze er waarde ontstaat, wie doelstellingen realiseert, en hoe en onder welke legitimering eventuele waarde verhaald wordt. Dit alles in een kwalitatieve zin, om vooral scherp te krijgen welke mechanieken er zijn gebruikt of bedacht in relatie tot value capturing, en daar dan van te leren. Iedere casus is gereconstrueerd aan de hand van project- en beleidsdocumentatie, en semigestructureerde interviews met betrokken actoren in de casus.

Casus 1: Deelgebied 2 in Greenpark Aalsmeer

In het gebied rondom Schiphol bevinden zich een hoop internationaal georiënteerde bedrijven. Zo ook een hoop van het Nederlandse tuinbouwareaal. Rond het jaar 2000 is er intergemeentelijk besloten om de N201 te verleggen, om de verkeersdruk In Aalsmeer af te doen nemen, en in 2001 is er een bestuursovereenkomst en in 2005 een Masterplan gemaakt, waarbij is vastgelegd hoe de gebieden rondom de nieuwe N201 gebruikt kunnen worden om een bredere herstructurering in te zetten voor het gebied. Om zo de verloedering van stukken oud glastuinbouw tegen te gaan, en een verduurzamingslag in te zetten.

In de basis een stukje actieve grondpolitiek, uitgevoerd door intergemeentelijke uitvoeringsorganisatie GPAG, wie het mandaat mee hebben gekregen om voor het hele Greenpark gebied de herstructurering te overzien. Zo ook in deelgebied 2, waar op dat moment oude kassen gebruikt werden voor 'illegaal' Schiphol parkeren. Een poging tot minnelijke verwerving in 2006 mislukte, en de grootste grondeigenaar heeft getracht middels zelfrealisatie een wellness center te ontwikkelen. Nadat de economische crisis omstreeks 2010 roet in het eten heeft gegooid, zijn de onderhandelingen in 2015 weer gaan lopen, waarbij woningbouw het programma van keuze was geworden met oog op woningbehoefte en bijbehorende winstgevendheid. Hier is ook het interessante stukje van de casus ontstaan, omdat de, inmiddels drie samenwerkende grondeigenaren hier gezamenlijk een woningbouwprogramma hadden opgesteld, in aansluiting op de publieke beleidsdocumenten van dat moment. In samenwerking met GPAG is er besloten om via een meervoudig onderhandse marktselectieprocedure met twee fasen een ontwikkelaar te selecteren. Hierbij is de eerste fase ingezet om drie partijen te selecteren op basis van prijs. In aanloop naar de tweede fase konden de partijen hun plan – en verkavelingsplan optimaliseren, en zou de partij geselecteerd worden op basis van zowel prijs als kwaliteit. Waarbij het bod van de marktpartij dan voor zowel de grond als voor de exploitatiebijdrage en de realisatie van het publieke gebied zou moeten betalen. Zekerheid voor GPAG, en potentieel voor winstmaximalisatie voor de grondeigenaren. Tegelijkertijd ook relatieve zekerheid voor de marktpartijen, omdat een goed deel van de onderhandelingen naar het programma al uitbesproken waren. Een plan, wel te verstaan, waarbij drie eigenaren anterieur gezamenlijk naar een integrale herontwikkeling toewerkte – iets wat posterieur niet gelukt zou zijn.

Casus 2, Herontwikkeling GGz Centraal Landgoederen Ermelo

In Ermelo heeft GGz Centraal sinds vanouds een gigantisch stuk grond, plus vastgoed in bezit en beheer. Hier wordt namelijk al sinds 1884 geestelijke gezondheidszorg aangeboden, al niet altijd onder dezelfde instellingsnaam. In het laatste decennium

heeft er echter een fundamentele verschuiving plaatsgevonden in de wijze waarop de geestelijke gezondheidszorg aangeboden wordt. Meer ambulant of poliklinisch, en veel minder langdurige of levenslange behandeling onder opname. Vanuit het perspectief van strategisch vastgoedbeheer gekeken betekent dit dat de vele duizenden vierkante meters niet langer effectief benut werden, en het beheer van de onderhouds-behoevende villa's niet langer opwogen tegen hun benutting.

In 2015 zijn gesprekken tussen GGz Centraal en de gemeente Ermelo op gang gekomen, waarbij het idee centraal stond om delen van het landgoed te verkopen ten behoeve van woningbouwontwikkeling, waarbij GGZ de opbrengsten kon gebruiken om te investeren in het her-ontwikkelen op een klein deel van het landgoed om zo hun zorg geconcentreerder aan te bieden.

Deze herontwikkeling gaat gefaseerd. De gesprekken lopen integraal sinds 2015, maar waar de Hooge Riet in 2019 al verkocht is, is voor de overige clusters eerst één anterieure overeenkomst gesloten met GGZ, welke als voorwaarde gehecht wordt bij de verkoop van de clusters. In beide gevallen is, of wordt de ontwikkelaar gezocht middels een marktselectie, waarbij de aanbestedingsverplichting voor het realiseren van de openbare ruimte aan de ontwikkelaar doorgelegd wordt, maar bij de Hooge Riet moest de ontwikkelaar de anterieure overeenkomst nog sluiten met de gemeente. Hoewel er een ontbindende voorwaarde afgesproken was van een onherroepelijk bestemmingsplan, hebben publiek en privaat toch nog twee jaar met elkaar onderhandeld, voordat ze kwamen tot een overeenstemming. Voor de clusters van Veldwijk zijn de publieke doelstellingen als een soort Bidbook gehecht aan de AOK. De verwachting is dat deze vorm van duidelijkheid naar de markt interessante biedingen ophaalt en tegelijkertijd GGZ en de gemeente zekerheid van zaken geeft.

Casus 3, Tuindersuitbreiding in de bommelerwaard

De derde casus vindt plaats in Zaltbommel, en betreft de uitbreidingsontwikkeling van een enkele tuinder, de heer Kreling, wie in de bredere herstructurering van de Bommelerwaard met het intergemeentelijke herstructureringsbedrijf PHTB moest onderhandelen om planologische medewerking te krijgen voor de uitbreiding van zijn tuinbouwbedrijf. Het eerste contact vond plaats in 2013, en de onderhandelingen liepen door tot 2016, waarbij het PHTB en de heer Kreling maandelijks contact hadden. Het opstellen van het provinciaals inpassingsplan liep parallel aan de onderhandelingen, en is in 2015 vastgesteld. Bijzondere aan deze casus is dat de exploitatiebijdrage die de heer Kreling zou moeten betalen weliswaar is vastgesteld aan de hand van de overkoepelende GREX van het PHTB, maar dat de heer Kreling deels in natura heeft betaald door het realiseren van enkele publieke voorzieningen. Zo bijvoorbeeld de ontsluitingsweg naar het noordelijk gelegen bedrijf, waardoor het zware verkeer daarnaartoe niet langer rond de schoolse sluitingstijd door de binnenstad hoeft te denderen. Deze weg is echter wel gerealiseerd op grond van Dhr. Kreling, wie er zelfs een stukje van zijn andere kas voor heeft gesloopt. Een afspraak van duidelijk meerwaarde, in ieder geval voor de gemeente, welke zonder het anterieure traject eigenlijk alleen met heel actief grondbeleid was mogelijk geweest.

Casus 4, Campus Zuid, ontwikkelplannen Technische universiteit Delft

De vierde casus bevindt zich op een steenworp afstand van de Technische Universiteit Delft. De TU en de gemeente Delft werken nauw samen. In feite zijn ze met elkaar verweven door hun wederzijdse geschiedenis en wederzijdse doelen. Eind 2021 ondertekenden zij een anterieure overeenkomst, waarin beide partijen instemden met een wijziging van het bestemmingsplan van het zuidelijk terrein van de universiteit, 'Campus Zuid'. Interessant is dat deze wijziging van het bestemmingsplan geen nieuwe of méér functies mogelijk maakt, maar eerder een flexibiliteit in tijd en zonering behelst, die door de universiteit wordt gewenst om organisch te groeien en haar primaire processen in de toekomst ook passend te faciliteren. Waardecreatie moet hier dan ook door een andere bril worden begrepen, aangezien deze wijziging in het bestemmingsplan dus niet per se meer financiële waarde creëert, maar eerder een waarde die specifiek is voor de universiteit. Natuurlijk bevat de anterieure overeenkomst afspraken over de ontwikkelingsbijdragen, maar de meeste publieke voorzieningen worden door de universiteit gerealiseerd, op haar eigen grond. Value capturing in deze casus is complexer te duiden, omdat de gecreëerde waarde moeilijk in geld is uit te drukken. Waardecreatie en value capturing zijn hier ontstaan door een wederzijds begrip tussen de universiteit en de gemeente over

elkaars doelstellingen. Via onderhandeling zijn inhoudelijke afspraken gemaakt over de hoogte van de bijdragen, maar ook over een organisch verloop van ontwikkeling, waarbij publieke investeringen meegroeien op basis ontwikkelingsmetrages, in plaats van specifieke momenten in de tijd. Bovendien hebben partijen in de tekst van de overeenkomst afgesproken open te staan voor toekomstige onderhandelingen over nut en noodzaak van publieke voorzieningen, en eventuele private bijdragen daaraan, in en buiten het plangebied. Geen carte blanche, maar een wederzijdse erkenning van de lange duur van de overeengekomen samenwerking. Al met al is deze casus exemplarisch in dat de gecreëerde waarde heel specifiek kan zijn voor een casus, en dat door onderhandelingen aan wederzijdse belangen tegemoet kan worden gekomen.

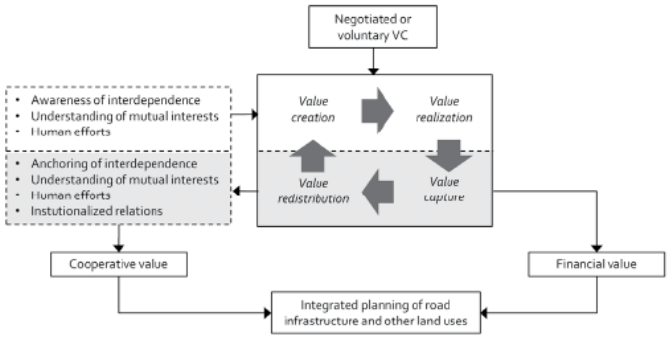
Cross case analyse

Waardepotentieel

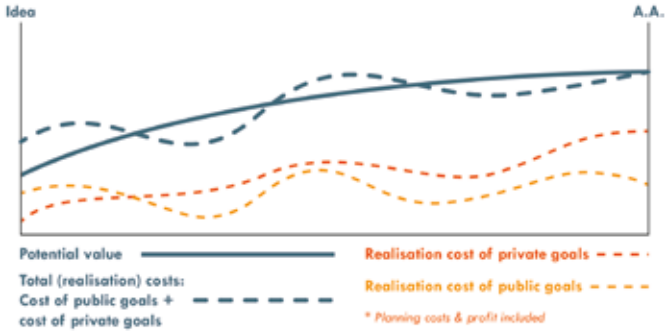
Door de casussen heen, waren er eigenlijk twee dingen die als eerste opvielen. Een, het is nergens echt gegaan om een speculatieve aankoop of een soort hit-'n-run development. Aan iedere casus is een onderliggend doel schuilgegaan, van herstructurering ten behoeve van ruimtelijke ordening of voor de toekomstige ondersteuning van primaire processen. Er was nergens echt sprake van winst omwille van winst. En twee, dat ongeacht de verschillen in de groottes van de betrokken partijen, hun belangen, en de wijze waarop men koos die te vertegenwoordigen, dat er in alle casussen sprake is geweest van een relatief lang traject aan onderhandelingen. Dat viel wellicht met name op, omdat het model van Heeres (et al, 2016, figuur 0.1) is gebruikt als beginpunt in het ontrafelen van de casussen. Het invullen van deze vier kwadranten geeft in principe een goed retrospectief inzicht in de gemaakte afspraken, maar de zoektocht was vooral naar hóe die afspraken tot stand zijn gekomen. De marktselectie in Aalsmeer bijvoorbeeld is in 2018 gehouden, maar de eerste documenten met betrekking op de casus dateren terug naar 2000. Volgens de literatuur is een bestemmingsplanwijziging een van de tastbare wijze waarop waarde gecreëerd kan worden, maar in het bestuderen van deze casussen, leek er een heel proces te zijn aan een soort langzaam tastbaar wordend waarde-potentieel voorafgaand aan het tekenen van de anterieure overeenkomst waarin die bestemmingsplanwijzigingen worden afgesproken. Maar deze onderhandelingen sloten niet aan op Heeres's cyclische rationaal over hoe dat waarde potentieel verdeeld zou moeten worden, maar leken eerder gebaseerd op de belangen van beider partijen om de ontwikkeling dan hun belang te doen behartigen. Hierin kosten zowel publieke als private doelen geld, en ontstond er een soort spel van geven en nemen. In iedere casus hebben de publieke en private partijen aangegeven tevreden te zijn met de resultaten, maar tegelijkertijd ook dat de respectievelijke wederpartij niet om méér had kunnen vragen – want dan was het project niet meer haalbaar geweest. Iets wat aan lijkt te geven dat de kostensom van beider ambities ongeveer gelijk zou moeten zijn aan het waardepotentieel van de ontwikkeling zelf. (Zie ook figuur 0.2)

Value capturing in een technische zin

Wat betreft value capturing in een technische zin, d.w.z. de manier waarop waardestijgingen worden gebruikt om de publieke doelen te betalen, is het in alle casussen ongeveer op gelijke wijze gegaan. In de zin dat elke anterieure overeenkomst voldeed aan het anderszins verzekeren van kostenverhaal. Toch waren er bij elke overeenkomst verschillende details in de overeenkomsten. Bijvoorbeeld door de



Figuur 0.1 - De wederkkerige relatie tussen het porcess van value capturing and samenwerking (Heeres et al., 2016, p 198)



Figuur 0.2 - Kwalitatieve visualisatie van het onderhandelingsproces over de verdeling van het waardepotentieel - illustratie door auteur

verantwoordelijkheid voor het realiseren van publieke voorzieningen, of het aanbesteden daartoe, te verleggen naar de marktpartij. En dat is interessant, omdat het enerzijds de private partij de mogelijkheid geeft om het zoet en het zuur van de ontwikkeling te integreren en misschien zelfs te optimaliseren, en anderzijds het risico van een mogelijke stijging van de realisatiekosten bij de publieke partij wegneemt. De consequentie is dan natuurlijk, dat als de prijzen dalen, de navolgende winsten dan ook ten goede komen aan de risicodragende marktpartij.

Gebruik maken van marktwerking

Het verleggen van risico's is interessant, want in de casussen zijn drie brede categorieën van risico's en onzekerheid herkend. Dat van onzekerheid tot het sluiten van de anterieure overeenkomst (AOK), waarin geen partij nog een absolute zekerheid heeft van de volgende stap van de wederpartij, maar ook na het tekenen van de AOK blijft er het risico op mogelijk bezwaar van belanghebbenden, of van marktwerking, wat kan leiden tot hogere realisatiekosten of mogelijk tot in daling in behoefte aan het te realiseren programma. In Aalsmeer en Ermelo ging men nog iets verder in het toespelen op zekerheden en marktwerking, door met een marktselectie de markt aan te moedigen de risico's zo laag mogelijk in te prijzen en hun bod te maximaliseren. Met name bij de veldwijklandgoederen in Ermelo, waar het publiekrechtelijke kader al bijna helemaal is bestendigd in de AOK, welke daar gekoppeld is aan de verkoop van de grond.

Het idee dat ontwikkelrisico's afnemen indien de verkoop na de AOK plaatsvindt behoeft overigens wel enige nuancering. De risico's zijn immers niet weg, maar verschoven naar de verkopende partij, opdat de markt ze niet hoeft in te prijzen. Daarnaast is het ook nog eens zo, dat de drie geschetste risicotypes hun eigen weging kunnen hebben. Dus als de onzekerheid van de markt hoog is, en die van het onderhandelen laag, zou het wel eens aantrekkelijker kunnen zijn om de AOK zo laat mogelijk in het proces te sluiten om de periode waarop marktrisico's van invloed kunnen zijn op het uit-onderhandelde resultaat zo kort mogelijk te maken.

Conclusie casestudies

De eerste helft van de derde deelvraag – "*Hoe heeft value capturing in zulke overeenkomsten plaatsgevonden in het verleden? Op welke wijze werd daarbij de waarde afgevangen, zijn doelstellingen behaald en privaatrechtelijke valkuilen voorkomen?*", kan daarbij beantwoordt worden in de conclusie dat drie mechanieken van value capturing herkend zijn:

1. Dat van inhoudelijke onderhandelingen, waarin publieke partijen onderhandelen voor het gebruiken van een groter deel van het waardepotentieel;
2. Dat van een overdracht van operationele verantwoordelijkheid en risico's, effectief toekomstige kostenstijgingen afvangend;
3. Dat van een marktgeoriënteerd herontwerp van het anterieure proces, om zo bandbreedtes van sturing en zekerheden te vorm te geven.

De privaatrechtelijke valkuilen uit de literatuur zijn reeds kort benoemd. Er waren er in totaal vier:

1. Betalingsplanologie: de situatie waarin publieke partijen hun publiekrechtelijke positie oneigenlijk zouden gebruiken om een privaatrechtelijk resultaat te behalen. Uit de casussen blijkt dat dit een redelijk grijs gebied is, gezien de publieke partijen door middel van onderhandelingen wél hebben getracht het beste resultaat voor hun zaak te bereiken, maar zolang iedereen tevreden is met het eindresultaat, is de uitgeoefende invloed wellicht niet oneigenlijk geweest. Er is nog steeds winst gemaakt, en de publieke partijen lijken in de casussen altijd gehandeld te hebben vanuit het belang van een kwalitatieve ruimtelijke ordening.
2. Transparantie blijft een lastig onderwerp. Partijen zijn voorzichtig in het delen van informatie die mogelijk déze of toekomstige onderhandelingen zou kunnen beïnvloeden. Desalniettemin waren partijen immer bereid informatie te delen over de merites van de ontwikkeling.
3. Staatsteun, was herkend als mogelijke valkuil, maar is in de casussen niet als zodanig aan bod gekomen.
4. De overdracht van operationele verantwoordelijkheid voor iets waar publieke partijen sociaal-politiek voor verantwoordelijk blijven: Een wat abstractere mogelijke valkuil, maar een die goed beheerst lijkt te kunnen worden middels contracten.

Discussie

Scope en definitie van VC

Value capturing zelf is een vrij abstract begrip, en het heeft door de literatuur heen menig definitie meegekregen. Alterman (2012) maakt een onderscheid tussen direct en indirect value capturing, waarbij het eerste gericht is op value capturing vanuit een rationeel van welvaartsherverdeling, zoals bijvoorbeeld belastingen dat doen, en 'indirect' zich met name richt op het verhalen van publiek gemaakte kosten van diegene die er profijt van hebben gehad, zoals bijvoorbeeld via exploitatiebijdragen.

In alle casussen zijn er anterieure bijdragen afgesproken, zij het financieel of in natura. Maar het markante is, dat het er in de casussen op heeft gelijkt dat de publieke partijen in staat waren te onderhandelen voor het behalen van méér van hun doel, iets wat suggereert dat het niet om alleen maar kostenverhaal kan gaan. Nou leek het onderliggende rationaal ook niet te gaan om het eerlijk verdelen omwille van het eerlijk verdelen, maar eerder vanuit het doel om de gecreëerde waarde te gebruiken voor publieke ambities, met de onderliggende legitimering dat als de publieke partij de bestuurlijke actie neemt van het wijzigen van de bestemming, zij ook de publieksrechtelijke verantwoordelijkheid moet kunnen dragen van kwalitatieve ruimtelijke ordening.

Voorstel definitie: Facilitative value capturing

Om vanuit deze theorie tot een bruikbaar resultaat te komen, doet deze thesis een voorstel tot een nieuwe, specifiekere definitie van value capturing binnen faciliterend grondbeleid, gezien de huidige definities de praktijk niet helemaal lijken te omvatten. Alle value capturing mechanieken in de casussen zijn vertrokken vanuit de publieke ambities, en hoewel faciliterend grondbeleid veelal gekozen wordt als publieke partijen een risicodragende rol niet kunnen of willen vervullen, hebben eerdere auteurs al beschreven dat faciliterend niet gelijk hoeft te staan aan laissez faire. Zonder risicodragende rol kunnen publiek partijen nog steeds een proactieve rol vervullen ten overstaan van hun ruimtelijke ambities. Om welke redenen deze scriptie stelt dat value capturing in een faciliterende context kan worden opgevat als een poging de manier waarop gebiedsontwikkelingen bijdragen aan publieke doelen te maximaliseren, waarmee het voorstel volgt om de beleidsvorm te koppelen aan een nieuwe, meer actiegerichte definitie van 'facilitative value capturing': "*Het maximaliseren van de wijze waarop de gebiedsontwikkeling bijdraagt aan de doelstellingen van het publiek ruimtelijk beleid door middel van onderhandelingen, overdracht van risico's of een marktgeoriënteerde herinrichting van het anterieure proces.*"

Voordelen en mogelijke risico's van VC middels het privaatrechtelijke spoor

Uit de onderzochte casussen komt een aantal voordelen naar voren van het privaatrechtelijke spoor naar de anterieure overeenkomst - in relatie tot de notie van facilitative value capturing, in vergelijking met een exploitatieplan samen met een bestemmingsplan. In lijn met de literatuur over de materie is dat het partijen de mogelijkheid biedt om samen te werken aan de mogelijke invulling van een gebied, en het daarmee recht te laten doen aan hun beider belangen. Bovendien lijkt het de mogelijkheid te bieden om belangen te integreren op een manier die posterieur eenvoudigweg niet mogelijk is. Onderlinge afhankelijkheid om doelen te bereiken stimuleert partijen om samen te werken, en via tussentijdse afspraken is het mogelijk geweest om de onzekerheid over de ontwikkeling geleidelijk te verminderen. Een inzicht dat in de literatuur niet direct werd onderkend, maar in 2 van de 4 casussen wel is geïdentificeerd, is dat door samenwerking tussen publiek en privaat er een potentieel aan winstmaximalisatie (en facilitative value capturing) kan plaatsvinden als het anterieure proces slim is opgezet. Een soortgelijk effect, maar dan op kleinere schaal, werd herkend bij de afspraken over de verschuiving van de operationele verantwoordelijkheid van de realisatie van publieke voorzieningen (of de aanbesteding daarvan), omdat met de verschuiving van de verantwoordelijkheid de potentiële stijging van de realisatiekosten effectief ex ante werd opgevangen.

Daarnaast behoeft het vermelding dat naast de privaatrechtelijke valkuilen die vanuit de theorie zijn geïdentificeerd, ook enkele potentiële nadelen en risico's in de casussen zijn herkend. Het belang ervan is afhankelijk van wie er een uitspraak over zou doen, maar het gaat om het volgende: Het proces naar de anterieure overeenkomsten is in alle casussen langdurig geweest. Dit maakt het proces gevoelig voor externe veranderingen in conjuncturele of electorale cycli, en zelfs voor intern personeelsverloop, mocht bijvoorbeeld de synergie in de onderhandelingen op een interpersoonlijk niveau liggen. Bovendien kan, als er de ambitie bestaat om bij te dragen aan de

overkoepelende stedelijke uitdagingen (energie-, klimaat-, duurzaamheidsdoelstellingen, enz.), de lange duur van het proces een risico vormen voor de publieke doeltreffendheid. Tot slot, er kan een mogelijk risico schuilen in de potentiële (economische) waarde van het vermógen van het publiek om tot een anterieure overeenkomst te komen. Het proces om tot een anterieure overeenkomst te komen geeft een gemeente duidelijk meer middelen om private ontwikkelingen, en de hoogte van anterieure bijdragen, effectief te beïnvloeden – in vergelijk met een bestemmings- en exploitatieplan. In theorie zou men kunnen stellen dat dit mogelijk resulteert in een perverse stimulans: Als een gemeente een bepaald gebied niet als woongebied bestemt, heeft zij in onderhandelingen een sterkere positie dan wanneer zij een gebied proactief als zodanig bestempelt. Terwijl het doel van faciliterend ruimtelijk ordeningsbeleid faciliterend zou moeten zijn, met als doel het begeleiden van ontwikkelingen door publiekrechtelijke kaders. Het privaatrechtelijke spoor daarnaartoe kan een elegant instrument zijn om via de belangen van meer partijen een gebouwde omgeving te creëren, maar als het leidt tot het tegenhouden van potentiële ontwikkeling om de toekomstige onderhandelingspositie te bevorderen, maakt het het planproces (nog) minder transparant en kunnen publieke partijen het risico lopen ervan te worden beschuldigd niet te handelen in opdracht van het algemeen belang.

Getrokken lessen

De vierde deelvraag van dit onderzoek richtte zich op de vraag 'welke lessen kunnen we hier nou uithalen?' En hoewel er interessante inzichten uit het onderzoek naar voren zijn gekomen, is het vanwege het exploratieve karakter -zoals verwacht- niet mogelijk gebleken om een eenduidig actieplan te formuleren. Het korte antwoord op de deelvraag leest dan ook: door het geven van een inzicht in de mogelijkheden, iets wat mogelijk de horizon verbreed van wie zich bezighoudt met het uitwerken van een value capturing strategie. En daarnaast ook met de propositie value capturing niet als een zuiver financieel vraagstuk te bezien, maar vooral ook als actieve opgave tot het behalen van publiek doelstellingen.

Conclusie

En daarin ligt ook het antwoord op de hoofdvraag – "*Hoe kunnen publieke partijen het potentieel van hun value capturing's strategieën binnen faciliterend grondbeleid vergroten door gebruik te maken van privaatrechtelijke overeenkomsten bij gebiedsontwikkelingsprojecten?*". – daar in conclusie deze thesis stelt dat dit gedaan kan worden door de meer actiegerichte definitie van facilitative value capturing als startpunt te gebruiken, omdat faciliterend niet gelijk hoeft te staan aan laissez faire. Dit suggereert dat publieke partijen een diepgaand inzicht in project specifieke interne, externe en contextuele factoren nodig hebben om marktgerichte mechanismen van value capturing in het anterieure proces te kunnen inzetten. Daarmee kunnen zij in potentie de bijdrage van een gebiedsontwikkelingsproject aan de publieke doelen van het ruimtelijk beleid maximaliseren, door middel van onderhandelingen, overdracht van risico's of door een marktgerichte, project specifieke herinrichting van het anterieure proces.

Normatieve suggesties

Zoals gesteld, wegens het exploratieve karakter van deze studie, is het lastig om een sluitend, empirisch onderbouwd antwoord of stappenplan te geven op de actiegerichte vervolgvraag 'hoe dan?'. In een poging desondanks boven enkel de empirische data uit te stijgen, worden er vier suggesties gegeven van een meer normatief karakter:

Om gericht, en bewust te komen tot facilitative value capturing, stelt deze thesis dat publieke partijen voorafgaand aan een marktconsultatie proactief de publieke ontwikkelingsambities in iets van een ontwikkelingskader zouden moeten schetsen, en zich goed moeten voorbereiden op dergelijke consultaties, omdat marktpartijen zulke momenten ook gebruiken om hun eigen belangen te agenderen. Ze moeten op de hoogte zijn van de (markt)trends, behoeftes en risico's die relevant kunnen zijn voor de ruimtelijke ontwikkeling, en een actieplan klaar hebben liggen om de benodigde gedetailleerde gegevens te verzamelen wanneer dat nodig is. Daarnaast zouden zij, mocht het door dit marktgerichte omgevingsbewustzijn blijken dat marktomstandigheden daartoe aanleiding geven, de potentiële marktcapaciteit voor sturing en risicodraging in kaart moeten brengen, bij voorkeur voorafgaand aan private grondtransacties, en 'last but not least', om al dat bovenstaande te doen, zouden publieke partijen de bestuurlijke governance capaciteit zoals nodig moeten inrichten, uitgaande van hun proactieve inzichten.

Report Structure

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GLOSSARY

Term or abbreviation	Translation or explanation
AA	Anterior Agreement / Anterieure Overeenkomst
Above Area	Bovenwijkse (voorzieningen)
Above plan	Bovenplans
Addendum to visiondocument	Addendum in this document is used in the GPAG case and refers to a 'oplegnotitie' to the strucuturevision
Areavision	Gebiedsvisie
CA	Collaboration agreement / Samenwerkingsovereenkomst
CC	Collaboration Convenant / Samenwerkingsconvenant
Environmentvision	Omgevingsvisie
GPA	Green Park Aalsmeer (the area)
GPAG	Green Park Aalsmeer Gebiedsontwikkeling (The intermunicipal development company)
GREX	Financial calculations to the area development / Grondexploitatieplan
IA	Intention agreement / Intentieovereenkomst
Land management plan	Exploitatieplan
LIB	Airport Zoning Decree / Luchthaven Indelings Besluit
LOIC	Letter of Informed Consent / Brief van Geïnformeerde toestemming
LUP	Land Use Plan / Bestemmingsplan
PIP	Provincial Land Use plan / Provinciaals inpassingsplan
Plancosts	Binnenplanse realisatiekosten
Planning compensation	Planschadecompensatie
Planning costs	(Ambtelijke) begeleidingskosten
PPA2	Partial Plan Area 2 / deelgebied 2
Principled Request	Principeverzoek
RPA	Regulations of Planning Act / Besluit Ruimtelijke Ordening
SPA	Spatial Planning Act / Wet Ruimtelijke Ordering
Structurevision	Structuurvisie
Two-phased multi-negotiated selection procedure	Meervoudig onderhandse selectieprocedure met twee selectieronden

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1. Introduction

Spatial and sectorial ambitions are growing, and – considering the challenges of our time – justifiably so. The Netherlands used to be an international example in the field of urban planning, and even made good profit from land management (Van Oosten et al, 2018; Dubbeling, 2014). Today, conversations about urbanisation in the Netherlands are led by arguments on affordability and market-price conformity, where discussions on the desired level of quality are determined by land-value and realisation costs (Daamen & Van Zoest, 2021). Yet, the costs of urbanisation have not diminished, and the spatial and sectorial ambitions have only grown, partially under the influence of (inter)national agreements on (e.g.) climate and energy. Urban area development is a main physical nexus where such ambitions meet the need to finance their realization. There are tested forms of the financing of urban area development, like public land development, public private partnerships or the building rights model. The methods are however, capital intensive for the public party and have a certain level of inherent risk to them, a combination that leads some municipalities to be hesitant to deploy such measures since the global financial crisis (Van Oosten et al, 2021; interviews 3 & 4). Facilitative land policy is also a tested means to guide land development, yet it becomes increasingly difficult to pay for non-economic-efficient developments or integrate them with profitable developments in the face of fragmented land ownership and a multitude of (sometimes opposing) involved interests (Interviews 1 – 4). The particular problem this research focusses on thus reads: It is difficult for Dutch municipalities to pay for unprofitable developments in area development, or integrate them with profitable ones through scope optimization, when there are multiple parties or interest involved, or when the landownership is fragmented and when municipalities cannot or will not adopt active forms of land policy.

This next section of this chapter will explore this topic through a brief narrative literature-review summary and the chapter will conclude with a research proposition that aims to learn from cases of urban area development that have successfully integrated such challenges in private law agreements.

1.1. Problem outline through literature summary

In order to get a better understanding of the theoretical context this issue resides in; this section will briefly discuss some of the academic debate on the topics that it encompasses.

1.1.1. Purposeful urban development

Because, "The built environment can be a source of everyday joy or everyday misery." (Adams & Tiesdell, 2003, p. 5), it is important to undertake sustainable urban development, which means "improving the quality of life in a city, including ecological, cultural, political, institutional, social and economic components without leaving a burden on future generations" (Müller-Jökel, 2004, p. 2). Something that can be achieved through good, integrative urban design, as this can positively influence the economic environment, deliver enhanced social benefits and encourage more environmentally sustainable development (Carmona, De Magalhães, & Edwards, 2002). Indeed, although good profit can be made from the management of land, its practice in the Netherlands is seen as a way to achieve spatial and sectorial ambitions (Ministry of Housing, spatial Planning and the Environment, 2001).

Moreover, in urban planning, the Netherlands has long served as an example for our eastern neighbours (Mielke, 2006), and its land management generally is greatly admired (Van Oosten et al., 2018). Dutch municipalities have exerted a strong active land policy for a long time, meaning that they would actively acquire lands for reconfiguration, provided it with the necessary infrastructure and sold it off for desired forms of development (Buitelaar, 2010). From this, it could be argued that in order to meet the great challenges imposed by the climate crisis, nitrogen problems, and the housing shortage, one needs great land management.

1.1.2. Active or facilitative land policy?

Still rooted in the early theories of Ricardo, the value of the land in the Netherlands is often determined residually (Buitelaar & Witte, 2011), indicating that the value of land can change due to market conditions or externalities like regulatory decisions or changing environments (McDonald & McMillen, 2010). Dutch municipalities have long been exercising active land policy, meaning that they would actively acquire lands for reconfiguration to provide it with the necessary infrastructure and to subsequentially sell it off for the desired forms of development (Buitelaar, 2010). By internalising the land development process, multiple goals are achieved; Land development can be used as a source of income, investment expenditures and rises in land value are internalized within one (public) party, inherently allowing for cost recovery and even value capturing, the public party gains additional control over the land development (Valtonen et al., 2017), and can even integrate welfare objectives (Buitelaar, 2010).

By deploying this active land policy, a municipality is, to some extent acting like a market party in order to achieve public goals (for which she can also use additional public instruments, such as expropriation). This is done in order to reap the rewards as described above, but inadvertently also exposes the municipality to the risks that go hand in hand with land development. The proverbial 'bathtub' of costs in order to acquire and develop land precedes the accruement of profits that occurs as land positions are sold off (De Zeeuw, 2018). Valtonen (et al, 2017) mention that the global financial crisis (GFC) has had a significant impact on the housing market. As prospective profits went down, the bathtub of costs could no longer be recuperated from land sale. Dubbeling (2014) estimates that municipalities saw around 2.6 billion in land values evaporate as a result of this. Indeed, through residual land valuation active land policy allowed for both an integration of recouping made investments, as well as sharing in the value increase of land that resulted from the public regulatory decisions or investments in public works (Interviews 1 – 4), but since the 2008 economic crisis, municipalities are more cautious when it comes to deploying an active land policy (De Zeeuw, 2017, 2018; Interviews 3 & 4), and there has been a long period were organic or bottoms-up forms of development were the only real option (De Zeeuw, 2017). But where cost recovery and a public sharing in risen land values were a real possibility through active land policy, both Hobma (2014) as well as De Zeeuw (2018) caution that cost recovery – let alone capturing added value – is more difficult without active land policy or the heavier forms of public private partnership. Cost recovery is not impossible in the Netherlands though, as the spatial planning act allows for relative efficient cost recovery of most investments made in order to facilitate development (Wet Ruimtelijke Ordening, 2021).

Without such active modes of land policy, when value is created because of changing the land use plan, a municipality can in principle only recover the costs they incur in order to facilitate development, related to for example supporting infrastructure (Hobma & De Jong, 2016; Interviews 1 – 4). Should the interests of both parties involved to be connected along two (or varied) projects, the profits of the one might be deployed to pay for the deficient of the other (Priemus, 2002; Interviews 2 & 4). The municipality cannot enforce this out of principle however, because that would lean towards payment planning. In the case of more facilitative forms of land policy, value capturing becomes increasingly more difficult, because there

seems to be a shift from more formal instruments to a more informal negotiating space. Interests of public and private need to be connected through either a formal use of the land management plan (Dutch, exploitatieplan) or through negotiation. Yet in case of the latter, the public is always bound by values such as integrity and transparency (Interviews 1 - 4).

1.1.3. The current role of development planning

Public parties have an explicit task to shape the environment (Adams & Tiesdell, 2013), and they do so through i.e., administrative and regulatory decisions or by investing in public works. But as land positions are residually valuated, such public actions inherently influence the value of the land. Between the notions of active or passive land policy, a Dutch municipality can realize this through either active acquisition of lands (amicably or through public law means, such as expropriation) and subsequentially realizing their objective, or by providing the market with the desired spatial framework within the market then realizes the desired objectives in their own pace. The latter is not always desirable, and the prior can take a long time and be quite costly, especially if expropriation procedures lead to holdouts and longsome court procedures (Müller-Jökel, 2004; Van der Krabben & Lenferink, 2018; interview 2).

At the time of writing there seems to be disagreement on the degree in which active forms of land policy are actually adopted in practice. Van Oosten (et al, 2018) and Buitelaar (2010), contend that public shifted from active to facilitative forms of land policy, in a reaction to the global financial crisis, as to reduce the expose to financial risk that goes hand in hand with active land policy. De Zeeuw (2017) reiterates the occurrence of this, as he explains the use of organic forms of planning, but argues that from 2017 onward active development planning will be back. Witting (2020) evaluates the extent in which municipalities opt for active or facilitative land policy, and concludes that active land policy can still be the policy of choice, although he adds that this might be based on more situational aspects then merely the overarching municipal policy. De Leve and Geuting (2021) perhaps give the most comprehensive answer, as they show through a benchmark that only 24% of municipalities adopts only active land policy, 35% predominantly facilitative and 40% a combination thereof. Although Dutch municipalities might be a bit hesitant of deploying active land policy (interviews 3 & 4), through interviews with practice it would seem that municipalities still use it to some extent. Maybe not as readily as they would prior to the economic crisis of 2008, but they certainly don't refrain from it altogether (as might be inferred from literature) (Interviews 1 – 4). Active land policy is simply very costly, not only because of the regular costs of land acquisition, deconstruction and redevelopment, but also because of the possible legal overhead, and the lengthy periods of time legal procedures might take when owners claim self-realization.

1.1.4. The neo-liberal challenge

As described above, a high-quality urban environment, that meets today's challenges begets a form of land management that can achieve this. Notwithstanding that active land policy is not completely gone, it is arguable that without a strong form of active land policy, the level of sweet-and-sour integration that is required is difficult to achieve. Planning practices have shifted from predominantly state-led to being largely market-led (Heurkens, 2012), resulting in that the conversations about urbanisation in the Netherlands have become led by arguments on affordability and market-price conformity, and discussions on the desired level of quality are determined by land-value and realisation costs (Daamen & Van Zoest, 2021), rather than the integrative quality that is required to 'shape a place'.

At the interface of these challenges, it is then thus interesting to explore to potential of market-oriented instruments that are deployed within a more facilitative approach to land policy. Heeres (et al., 2016) contend that through synergetic collaboration there is an opportunity for instruments of value capturing to be deployed more effectively in regard

to both the financing of urban development as well as the final realized quality.

1.2. Scientific and societal relevance

From the narrative above, perhaps the image of a daunting challenge might appear. Public parties are held responsible for the quality of urban areas, manage this through land management and land regulation, and furthermore invest in public infrastructure. A counterargument that could be made is that if public investments lead to private betterment, such investments might better be left to the market. From a market economy perspective, it could even be argued that the market would surely (and automatically) invest in that which leads to higher profits. However, this is not the case: This section will set out the societal relevance of looking into the problem stated, by arguing that 'shaping places' is an inherent public task. It will subsequentially set out the scientific relevance by pinpointing the gap in literature.

1.2.1. Societal relevance

Places matter, because "the way places and buildings are planned, designed and looked after matters to all of us in countless ways. The built environment can be a source of everyday joy or everyday misery" (Adams & Tiesdell, 2013, p. 5). Public bodies play an essential role in the creation and shaping of places, and the main instrument to govern the development of places is through land policy. Land policy is a means to realize spatial and sectorial policy, and is necessary because land is prone to external, yet societally undesirable effects that the market would not integrally solve themselves (Ministry of Housing, spatial Planning and the Environment, 2001). Adams and Tiesdell (2013, p. 102) moreover argue that "It would be unrealistic to rely on the real estate development process alone to produce successful, well-integrated places, and even more ambitiously to produce them consistently over time and space. For real estate development is primarily driven forwards by those who regards it as a lucrative business opportunity rather than by those who might see within it a potential to enhance environmental sustainability or social justice." Land policy, land management and shaping the institutional environment in which area development takes place is thus inherently a task for governments. Or in the words of Adams and Tiesdell (2013, p. 4): "places matter and (…) shaping places is an essential governance activity."

If the institutional framework, or the political landscape shifts towards a place that necessitates a different type of instrument that can aid the government in exercising this obligation to shape places, the societal relevance of exploring this possibility is unmistakable.

1.2.2. Scientific relevance

A considerable amount of research has been conducted into the socio-political morale and rationale for value capturing, just as extensive discussions have been held about public-law measures that might lead to value capturing. In the Netherlands the government is allowed to act both as a public party as well as a private party, as long as their (private-law) actions do not counter principles or interests of public law. In literature, private law measures for indirect forms of value capturing (those relating to a recovery of costs) are often incorporated in research, or even proposed as alternatives for public-law measure of direct forms of value capturing. Yet, despite the societal and practical importance of the topic, little research seems to have been conducted into the deployment of private-law agreements in a way that goes beyond mere cost-recovery.

The topic of value capturing as a governance activity is also well discussed throughout literature, ranging from discussions on value capturing through taxation, the inclusion of future profits, property rights, market risks and even the risks to renegotiable private law agreements. Yet, there seems to be little academic writing on how to improve the effectiveness of private law agreements for the achievement of mutual (public and private) ambitions in urban area (re)development. Moreover, apart from suggestions made by Heeres (et al., 2016), there appears to be no writing on how this might be done within the Dutch practical framework.

1.3. The proposed research

This section will set out what the study means to accomplish, by elaborating on its aim and the question that will be driving the research. Several sub-research questions are subsequentially formulated to provide structure and an outline to the study.

1.3.1. The problem to be solved: the purpose of the study

The aim of the proposed study is twofold: The academic goal is to contribute to filling the gap in knowledge on value capturing through private law agreements in a neo-liberal urbanity. The practical, and perhaps more holistic goal of this proposed study is to contribute to the quality of the built environment, by shining light on the private-law agreements used in past cases of urban area development and abductively draw lessons from those experiences. The aim of the proposed research therein is not to find the proverbial silver bullet, but rather to investigate how public parties can engage with the market in a way that allows for the creation of added value for all parties involved in urban area (re)development.

1.3.2. Research question

This thesis proposes to learn from past experiences in the same field, through conducting a number of case studies on cases of urban area development, where public and private parties have given the public's public-law obligation a private-law elaboration. Thereto four cases studies have been conducted, from which lessons could be drawn. Taking into account contextual factors, such as the modes of land policy and the influence of policy standpoints, from these lessons recommendations for future agreements in urban area development can be formulated.

The research question driving this research thereto reads:

> How can public parties increase the potential of their value capturing strategies within facilitative land policy using private law agreements in projects of area redevelopment?

1.3.3. Sub research questions

This research question is broad, exploratory in nature, and calls for a case-study approach for the research to be done. In order to understand the theoretical context in which those cases reside, what problems those lessons specifically should address, and to properly substantiate any advice given, several sub research questions (SRQ's) are formulated.

The first two SRQ's work in concert, and together inquire into the relevant theoretical and practical context the topic resides in, to outline a theoretical and practical framework. The theoretical and practical framework in this can be understood through answering the following two questions:

1. Why is value capturing through a private law agreement relevant, according to literature and practice?

2. How can value capturing through a private law agreement be achieved and also contribute to the development itself?

With this theoretical and practical framework cases of urban area development can be studied, in order to draw lessons from those cases where the public-law obligation to cost recovery has been given a private-law elaboration that goes beyond a mere financial contribution by the private party. The third SRQ sets out the question that will drive the case studies to be conducted, and the fourth SRQ sets out to draw lessons from them, and abductively translate them in order to work towards formulating a conclusion to the main research question of the study.

3. How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?

4. How can lessons drawn from such cases contribute to future value capturing strategies in Dutch projects of area development, given the theoretical and practical framework Dutch practices of value capturing is embedded in?

1.3.4. Conceptual framework to the study

The logic of the questions outlined above can be captured in a conceptual framework, shown in Figure 1.1. The goal of the method of the study is to understand better how value capturing has been achieved through private law agreements in cases of urban area development. To draw lessons from this on how such agreements work in relation to achieving the ambitions of the parties involved and the way that value is captured, and possibly used.

1.4. Thesis structure

This paragraph concludes the first of seven chapters of this thesis. The next chapter elaborates on the research design, by describing the methods of disclosure and analysis. Furthermore, it explains how the trustworthiness of the study is safeguarded, as this is a question that could very well be raised given the qualitative and explorative nature of the study proposed. The third chapter sets out the theoretical framework, and provides an answer to the first and second SRQ. The fourth chapter gives account of the case studies conducted, and subsequentially provides the cross-case analysis in which the insights from the cases are analysed, answering the third SRQ. The fifth chapter relates the findings thus far back to the theoretical and practical framework, in order to abductively move beyond the inductive empirical findings, and aims to answer the fourth SRQ. The sixth chapter concludes the study. Although the inductive and explorative nature of the study disallows the presentation of an empirically verified theory altogether, the chapter still makes a differentiation between conclusion and recommendations, to separate the more analytical findings from those of a more normative nature. The seventh and final chapter contains a reflection, on the research topic, its methodology and disclosure, some ethical and moral consideration to the results, and the graduation process itself.

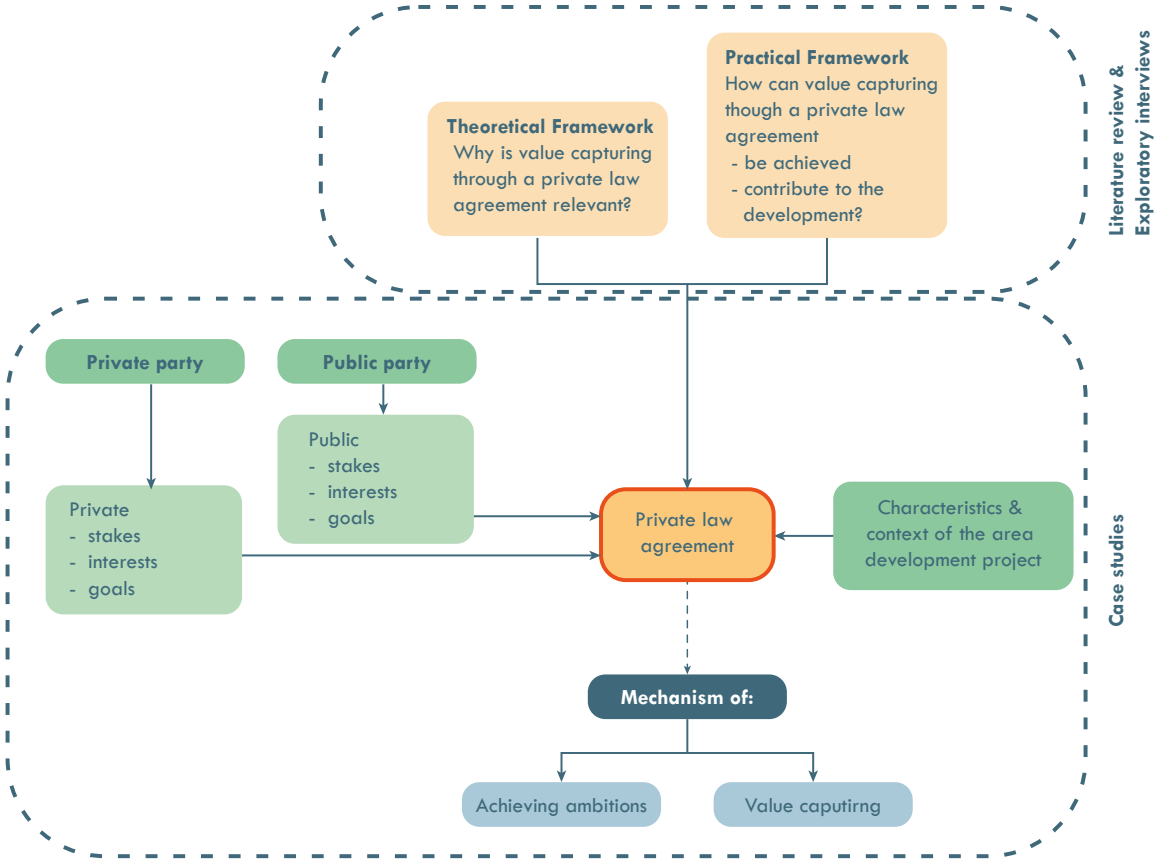


Figure 1.1 - Conceptual framework to the research - illustration by author

2. Research design

In order to get from the proverbial drawing table to a finalized research, many steps need to be taken. This chapter sets out those steps, by elaborating on the type of research and the involved logics of inquiry, setting out a conceptual framework and by discussing the research methods to be used.

2.1. Methodology and logic to the thesis structure

Despite substantial efforts to find anything of the sorts, no governing theory seems to exist about the potential to value capturing through private law agreements in area development within the Dutch system, and the internal mechanics thereof. The goal of this study is to set out an exploration in order to possibly find new insights about this broad topic. Developing new theory from empirical data is the defining characteristic of an inductive approach (Blaikie & Priest, 2019; Bryman, 2016). More specifically, it relates to grounded theory, as proposed by Glaser and Strauss (1967 as reprinted in 2006), who suggest that new theory might emerge through (the comparative analysis of) data, and argue that theories produced in this way are more valuable than theories logically deduced from a priori assumptions. They furthermore elaborate that the generation of new theory should not occur in isolation from theory, but that imposing existing theoretical categories on empirical data throughout the study might stifle the process of data collection, which should rather be controlled by the emerging theory itself; discussion between findings and the literature can take place thereafter.

This logic can be seen throughout the build-up of the other chapters to this thesis. The third chapter sets out to answer the first two SRQ's in concert, inductively, and elaborately through a narrative literature review and explorative interviews with senior consultants from practice. This provides a broad theoretical and practical framework to the study, not to a priori impose theoretical assumptions on the information that will inevitably emerge throughout the case studies, but rather to provide a theoretical (and mental) frame

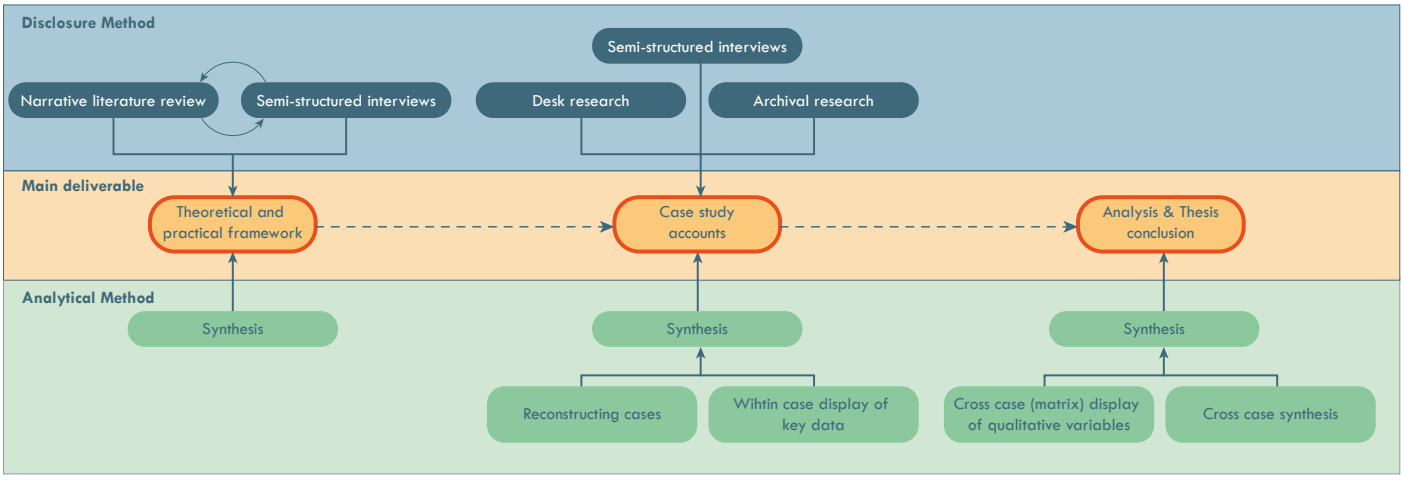


Figure 2.1 - Main deliverables, methods of disclosure and analysis - illustration by author

of reference during the fieldwork to the case studies – and against which the theoretical insights can be explicitly and analytically be reflected ex post. Chapter four provides account of these cases, driven by the third SRQ. The data for which is disclosed through desk study of project documents and semi-structured interviews with key actors. Through thick descriptions (Shenton, 2004), and a presentation of key data, the chapter will reconstruct the cases (Miles and Huberman, 1994), to the extent relevant to the study. The chapter will conclude with a cross case analysis, in which through comparative analysis, the emerged insights will be made more explicitly apparent. The fifth chapter will abductively relate the empirically gained insights back to the theoretical framework, and although no claims to causality will be made, the chapter will reflect and purposefully attempt to position the findings within the academic discourse, and then subsequentially answer the fourth SRQ. The point of this chapter not being to provide a comprehensive substantive or formal theory as might be a possible end goal to research through grounded theory, but rather to propose an initial theoretical understanding and present what Glaser and Strauss call "a running discussion" (1967 as reprinted in 2006, p. 31).

2.2. A CASE STUDY APPROACH

Yin (2018) describes that when the research question is a 'how' question, does not require control over behavioural events and regards a contemporary event, a case study might be favourable over other research methods. Moreover, "case study research is concerned with the complexity and particular nature of the case in question" (Bryman, 2016, p. 60). As the goal is to learn more about the potential and possibilities of private law agreements between public and private parties in projects of urban area development, and the intersection of such agreements in those projects for that goal is a highly complex matter, conducting a case study is therefore appropriate.

This section sets out to describe a couple of things. What does 'a case' entail within the boundaries of the research, such as its type and its scope. How many cases should be conducted to reach a satisfactory conclusion to the research, how are cases selected, what data is to be disclosed, how is that data disclosed and how it will be analysed to answer the research questions.

What a case entails

To reiterate the SRQ that drives the case study part of the research: How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and was the notion of payment planning avoided? Wherein the definition of a case can be given trough the underlying goal of the SRQ: to look at cases of urban area development where the public-law obligation to cost-recovery has been given a private-law a private-law embodiment in the elaboration, and where this agreement ideally has gotten, through negotiation and collaboration, another shape than merely a pecuniary contribution by the private party.

The number of cases to the study

As the goal is to explore, and to learn from past achievements, it might be worthwhile to look at more than a single case. Especially considering that within the scope as defined above, various solutions can exist. One case might thus be valuable to draw lessons from, but a multitude of cases allow for more lessons to be drawn. Yin (2018) proposes two cases when they are literal replications, and up to six if the theory is subtle and there is a high degree of uncertainty. For this study, considering its explorative character, an intermediate number of four thus feels appropriate. From the results of these four cases lessons can be drawn, and they might as well suggest a need for further study.

Case study design and sampling strategy to case selection

Within each case study there will be multiple embedded units of analysis (like the parties involved, their interests, the location, other stakeholders, etc),

that together shape the content and complexity of the case. The cases have a certain uniqueness to them, as they ought to represent special, tailor-made solutions. But, as the search is for such tailor-made solutions, the typology can be defined as the common case rather than the critical one. Indicating the need for sharp selection criteria. In line with the purpose of the study and the scope of the definition of a case, any cases should at least meet the following four criteria (cumulative):

1. Is a case of urban area development where there is a private-law agreement between public and private party (anterior or otherwise);
2. This agreement in some way (financial, in kind, sweet-sour equalisation or 'interest-integration') lays out how the value increments in the area are captured and possibly reinvested in the area (be it till the height possible through cost recovery or higher);
3. The case is not a text-book example of public realization, joint-ventures, building rights, space-for-space, or red-for-green; and
4. The negotiations are finished enough for the study to not potentially affect private interests, and its results are laid down in a researchable document (or set thereof).

Miles and Huberman (1994, p. 28) have listed sixteen different typologies of sampling strategies. Of which this study clearly uses the criterion-type. It does however beget mentioning, that the sampling strategy of convenience is also adopted. For this study, three out of the four cases are drawn from the portfolio of the internship company, consultancy firm TwynstraGudde, as this yields a high probability of access to the right information, and the risks of data availability to the graduation process are moreover reduced. Although having an immense body of knowledge, 'fishing from one pond' is a form of a convenience-based strategy.

Cases to the study

At the beginning of this study, it seemed eleven cases might have been viable given the criteria above. Yet after preliminary study, and testing them against the criteria, four possible cases remained. These four, listed below, all fit the criteria listed, and each is moreover different in its own regard, making them viable candidates for this explorative study.

NR.	Case	What?	Contact
1	Partial plan area 2 to Greenpark developments Aalsmeer	Public-private collaboration for the sale of private land through a private two-phased multi-negotiated selection of purchaser. Financial contribution to public plans included in bid.	Twynstra-gudde
2	The estates of GGz Centraal in Ermelo	A phased redevelopment of the estates of mental health care provider GGz Centraal. GGz central negotiated with the municipality about planning procedures, prior to competitive sales procedures, giving the anterior agreement a particular role in these developments	Twynstra-gudde
3	Bommelerwaard	Greenhouse restructuring, anterior agreement with in-kind contributions by the private party.	Twynstra-gudde
4	Campus Zuid Developments of The Technical University of Delft	Public-private collaboration between the university and the municipality of Delft about the future developments. The private developments are geared towards the primary processes, and most public facilities are realised on privately owned land, giving the process to the anterior agreement a different flavour.	CRE department of the university

TABLE 2.1 - CASES TO THE STUDY

Multiple case study procedure

Figure 2.2 shows the global procedure of a multiple case study approach as set out by Yin (2018). This figure is relevant to the study proposed, because it provides an idea of part of the linear analytical procedure followed. It is however not entirely applicable to this study, as Yin propagates a rather positivistic, deductive approach to case studies. This study takes an inductive approach, which does allow for intermediate iterations and adaptation to the manner the theory is understood in the overall context. Theory is not developed up front, but rather emerges from the cases, and is reflected against the theoretical framework. Nevertheless, each case is initially studied in its own regard, to ensure the integrity of the information therein.

Disclosure

"The basic criterion governing the selection of comparison groups for discovering theory is their theoretical relevance for furthering the development of emerging strategies" (Glaser & Strauss, 1967 as reprinted in 2006, p. 49). In order to disclose the relevant information from the cases, there are three main streams of information that ought to be understood as per the conceptual model shown in Figure 1.1 – not to be understood as deductive-oriented, a priori defined codes, but rather as conceptual categories to initially structure and understand the multiple embedded units of analysis to the cases:

1. The characteristics and context of the development
2. The mechanics of value creation and value capture
3. The extent in which involved parties consider the development a success (in light of the methods of value capturing)

In this, two distinct disclosure methods can be discerned, as shown in Figure 2.3. By combining semi-structured interviews with desk and archival research, the cases

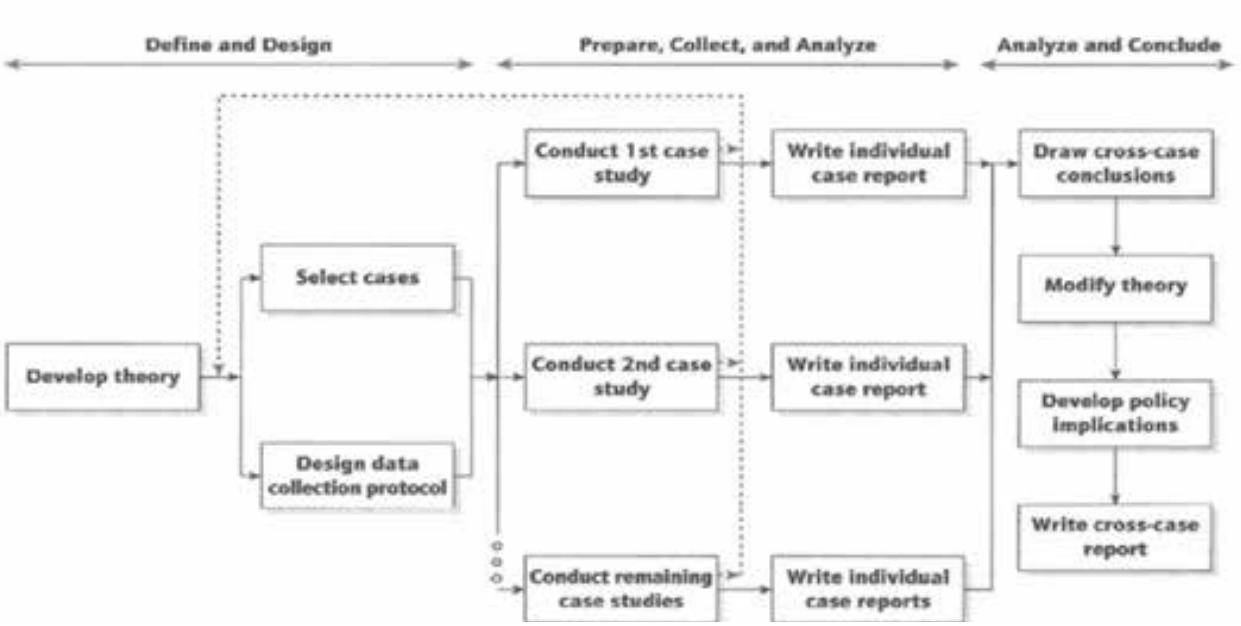


FIGURE 2.2 - MULTIPLE CASE STUDY PROCEDURE (YIN, 2018, P. 58)

can be reconstructed (to the extent that is relevant to the study) by using the 'harder' empirical records to provide the structure of the case and the 'softer' information of the interviews to better understand the case.

To understand the characteristics and context in which a case takes place, it is necessary to know which parties are participants in the development process and the current land ownership division. Moreover, it would ideally be nice to have an idea of the way the future of the area was envisioned by involved parties, prior to the actual agreements. This leads to three initial points of inquiry per case:

1. Where is the case situated?
2. Who participated in the process and how is the ownership of the land divided prior to any agreements?
3. What did the involved parties intend to achieve in the area or with the development(s)?

The actual mechanics of value creation and capture can perhaps best be understood by drawing from the model of value creation and value capture of Heeres

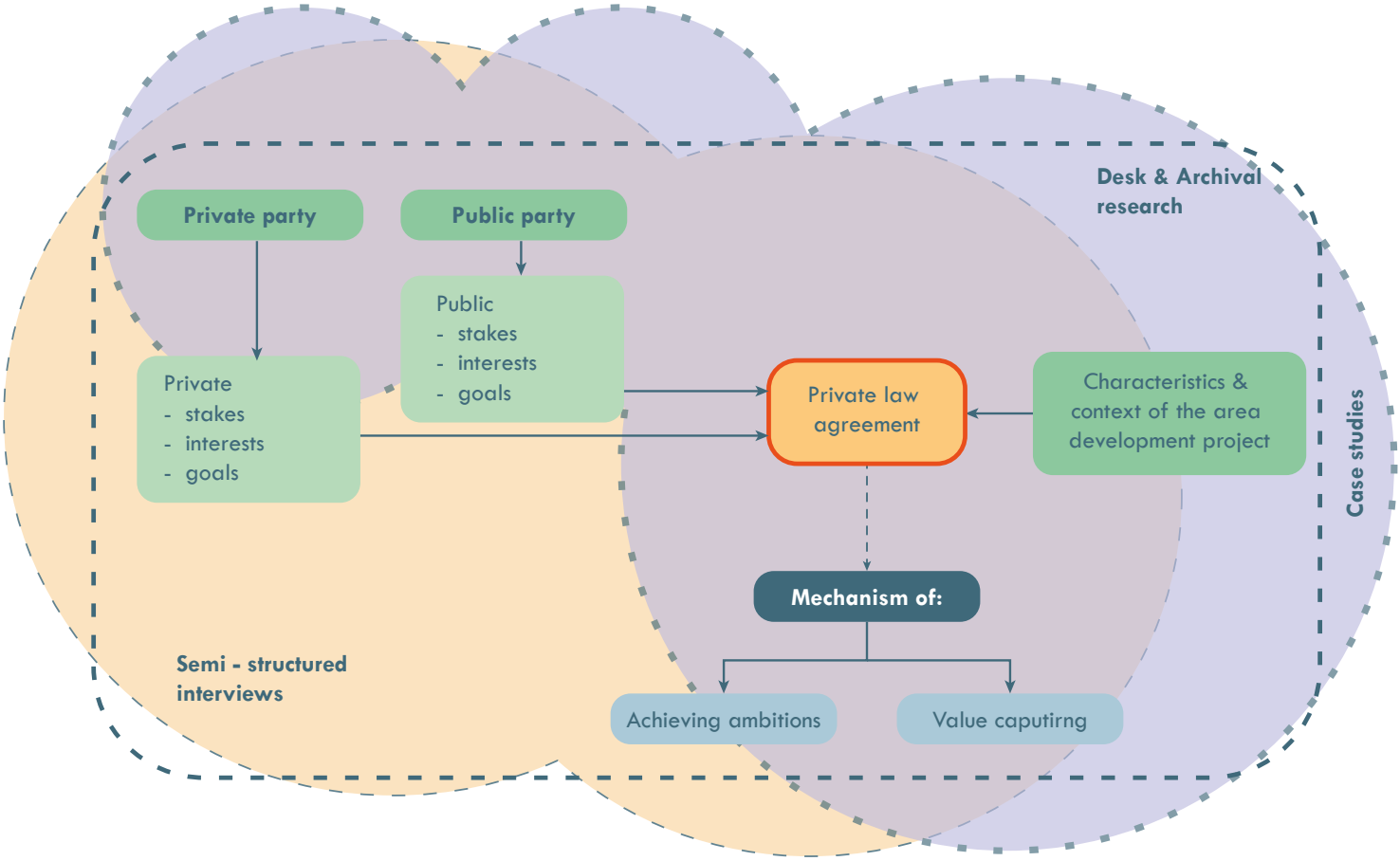


FIGURE 2.3 - DISCLOSURE METHODS TO THE CASE STUDIES - ILLUSTRATION BY AUTHOR

(et al, 2016), which is more elaborately discussed in section 3.7. It can be understood that there are a number of steps to capturing value that is created in a project of area development. The value is 'created' prior to any construction work, when regulations are changed, or a public infrastructure investment is decided upon. Actual realization makes this new value tangible, and thus 'capturable', which depends on the chosen methods and underlying rationale. As this value is 'redistributed' in the area of, or surrounding, the development, it further adds to the created value of the development. Collaboration and an understanding of each other's interests in the development can lead to a more efficient implementation of value capturing and can moreover add further value to the development. Because of these clear, per-phase-characteristics, the model lends itself to function as a framework against which the inner workings of value capturing mechanism can be studied. It begets mentioning, that the use of Heeres's model is not to deductively prove or debunk its merits, but rather to have a starting point for the inductive quest of unravelling the information within the cases. By focussing on the various steps in the Heeres's cyclical model, as well as on the whole, nine additional points of inquiry can be added (as shown in Figure 2.4):

1. How is the value created?
2. How, and by whom is the value/are the values realized?
3. In what way(s)/with what instrument(s) is the value captured?
4. What part of the realized value is captured, and with what rationale?
5. To what end is the value captured, or how is it redistributed?
6. How does the capturing of value benefit the development?
7. How is the process of negotiation and/or collaboration designed?
8. What elements of Heeres's cycle, which boxes, which arrows, are included in the negotiatory process?
9. Did, in any way, the capture and redistribution of value lead the creation of new value?

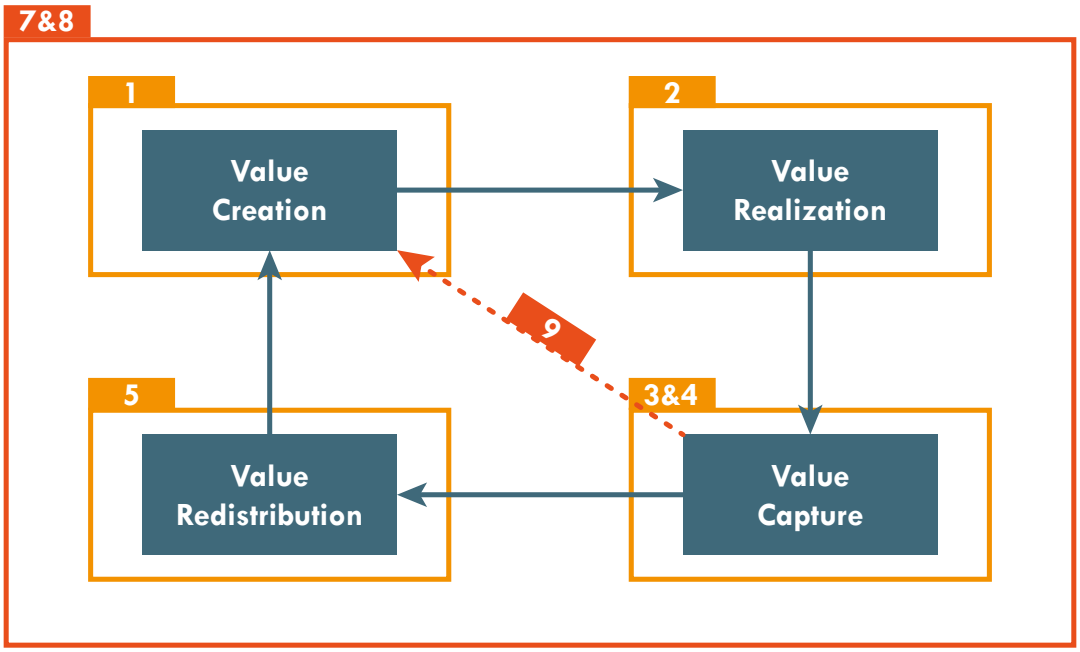


FIGURE 2.4 - NINE FOCUS POINTS IN HEERES'S MODEL - ILLUSTRATION BY AUTHOR, ADAPTED FROM HEERES (ET AL., 2016)

Finally, as success is 'in in the eye of the beholder', it is interesting to inquire into the extent in which the parties consider their ambitions met. This adds two last points of inquiry, that allow for an understanding of the correlation between achieving development ambitions and value capturing through private law agreements:

1. To what extent do the involved parties consider the project a success?
2. How do the involved parties perceive the agreements on value capturing to affect the manner or extent in which their development ambitions could be achieved?

These, in total 14 points of inquiry are broad in nature, and serve to describe the cases broadly in order to draw lesson from them. Where possible, information is disclosed through archival research such as maps, and project documentation. Additionally, interviews will be conducted to gather 'richer' information about the cases, and to map the interests of the parties involved. For each case, a minimum of two interviews is conducted, but more will be held, should it not yet be possible to narrate the various interests involved yet. The interview questions do not one-on-one follow the structure of the above points of inquiry, but rather aim to create a natural conversation between interviewer and interviewee in which the topics above are discussed. The interview guide for these interviews, including the interview questions, can be found in annex 1c.

Analysis

The within case analysis will occur through reconstructing the case narratively, supporting the narrative through within case displays of key data (Miles & Huberman, 1994). Each case will approximately follow the same structure, in the goal to reconstruct the method of value capturing similarly for each case:

1. The case
   - Situating the case in time and place
   - The parties to the case and their interest in the development
   - The intended development
2. The process and contents of creating and capturing value
   - The negotiatory process
   - The creation and realization of value
   - The (agreed upon) methods of value capture (be it financially or in kind)
   - Additional value through synergy
3. The result
   - The resulting development and the achievement of goals
   - The effect of the private law agreement and the process thereto

The cross-case analysis will depart with a discussion through a cross case matrix display of qualitative variables (Miles & Huberman, 1994, pp. 172 – 205), but to reduce the inherent reductionism of such a mere variable-based analysis, the cross-case analysis will incorporate comparative analysis and a cross case synthesis in order to draw conclusions on the emerging theoretical insights. In effect, the cross-case discussion will follow the same structure through synthesizing the respective sections.

2.3. Trustworthiness of qualitative research

As the explorative nature of this study seeks to unravel cases qualitatively, it might raise questions about the trustworthiness of the findings, as positivist concepts of validity, credibility and reliability cannot be as easily addressed (Shenton, 2004). Credibility (Shenton, 2004) or construct validity (Yin, 2018) relates to the extent the findings of the study are congruent with reality. Following Shenton (2004), the credibility

of this study is safeguarded by the adoption of appropriate research methods, the multiplicity of case studies, the debriefing sessions with thesis supervisors and through member checking the findings of the semi-structured interviews. The external validity and the conformability of the study and its findings relate to respectively the extent in which the findings are transferable to cases other than merely those that have been studied, and to the extent in which the findings are an objective representation of the study (Shenton, 2004; Bryman, 2016; Yin, 2018). Apart from the measures described above, an expert meeting is held with a group of consultants from the consultancy firm TwynstraGudde in order to discuss the relevance and external validity of the findings, to possibly gain additional insights into the studied material and to reduce the influence of the possible research subjectivity or bias.

2.4. Research plan

The graduation can be seen in five distinct parts, although the last (writing the p5 report and preparing the presentation) is past the official P4 mark. Figure 2.5 shows the steppingstones of the graduation process.

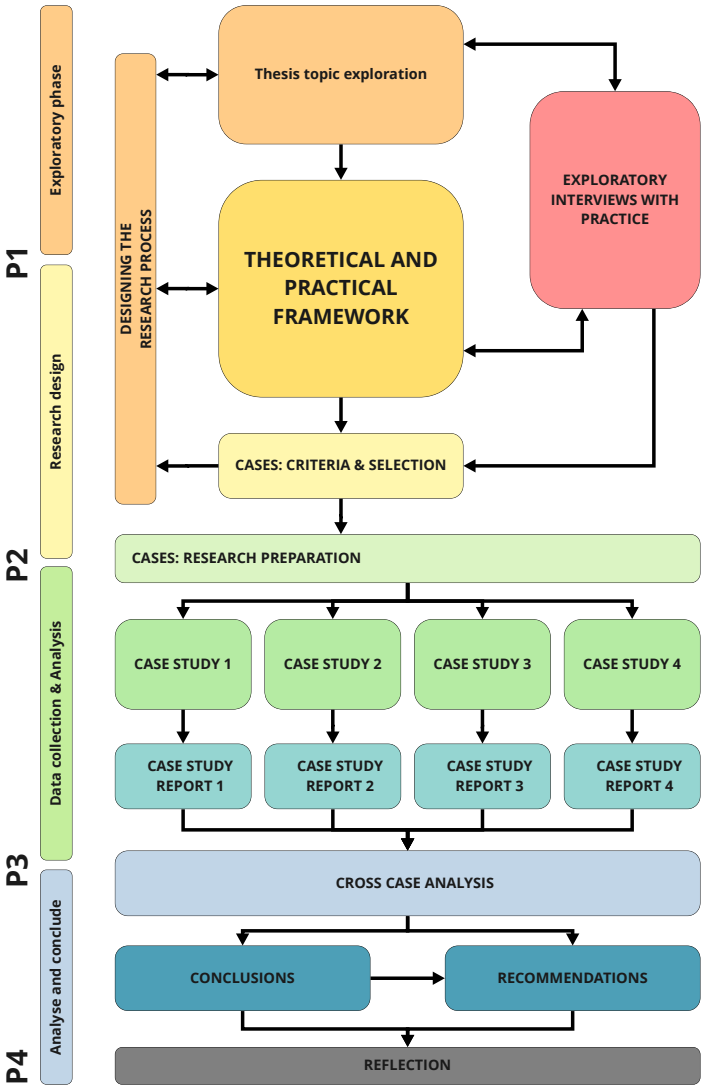


Figure 2.5 - Graduation plan and interrelatedness of process components - illustration by author

3. Theoretical and practical framework

This chapter sets out the theoretical and practical framework to the case studies to be conducted, answering the first two SRQ's, and effectively describing two things. One, why value capturing through private law agreements is relevant, and two, how value capturing through a private law agreement can one, be achieved, and two, contribute to the urban area development itself.

This chapter is structured into various sections in order to provide a narrative through which the problem underlying this study can be better understood. First, the national challenges to urbanity will be discussed, as well as the what the public intrinsic goal of area development entails. Next the valuation of land and property will be discussed, to subsequentially discuss the concepts of 'value increase', 'unearned increment' and 'value capturing', and the types of instruments thereto. Next the Dutch system of land policy, and the way these instruments are used in the Dutch system will be discussed. From here the need for resilient possible alternatives will be discussed, by setting out how various challenges might have risen from the neo-liberal political climate. Finally, the potential and pitfalls of private law agreements will be discussed, in relation to the aforementioned challenges.

3.1. National urban challenges

In September 2020 the Dutch Ministry of the Interior and Kingdom Relations published the "National Strategy on Spatial Planning and the Environment" (Dutch: Nationale Omgevingsvisie). This report sets out a strategic vision to meet (inter)national challenges on topics as climate, affordable housing, circularity, infrastructure, mobility and so on. It integrates international agreements such as the climate agreement (Ministery of Economic Affairs and Climate Policy, 2019), and the in 2015 agreed to agenda for sustainable development (United Nations, 2015).

Striking is the level of complexity in the challenges and their interdependency and the inherent conflict in the array of interests that are implicitly involved. According to the four priorities of the national strategy, the urban environment needs to allow for climate adaption, and contribute to the energy transition. It needs to ensure sustainable economic growth potential, in a circular and social-economic fashion. Urban areas need to be healthy, resilient and attractive for work, residency and leisure in a coherent fashion with goals of accessibility, affordability, sustainability and safety. At the same time greenfield locations and the natural environment needs to partially redeveloped in order to allow for the future need of urbanisation whilst safeguarding and improving the environmental quality (Ministry of the Interior and Kingdom Relations, 2020).

These, rather holistic, ambitions, as well as those preceding this document, lead to stringent demands on the development of the urban environment. Between 2019 and 2035 1.1 million houses need to be realized. Without a connection to gas, partially built from circular or renewable materials, having a low carbon footprint and being nature-inclusive. These developments preferably happen on brownfield locations, that need to remain attractive, accessible and vibrant.

3.2. The public goal of urban area development and land management

As Adams and Tiesdell (2013, p. 5) state: "The built environment can be a source of everyday joy or everyday misery". Indicating a strong relation between the practice of urban design and the perceived added value of the built environment. As the built environment moreover can arguably be seen as a physical nexus of the overarching ambitions elaborated above, it is worth looking into the underlying public goal. Adams and Tiesdell (2013, p. 102) argue that "It would be unrealistic to rely on the real estate development process alone to produce successful, well-integrated places, and even more ambitiously to produce them consistently over time and space. For real estate development is primarily driven forwards by those who regards it as a lucrative business opportunity rather than by those who might see within it a potential to enhance environmental sustainability or social justice." And if land is to serve public goals, especially in a way that the public is unlikely to integrally achieve on its own, public intervention is both required and justified. In order to do this, municipalities use land-policy, which is a means to realize spatial and sectorial policy (Ministry of Housing, spatial Planning and the Environment, 2001).

Carmona, De Magalhães and Edwards (2002) explain that better, integrative urban design can have positive externalities on the economic environment, deliver enhanced social benefits and encourage more environmentally supportive development. Which naturally is contingent to the contextual environment of the development and the involved stakeholders and the environment.

Up until the global financial crisis of 2008 Dutch municipalities used to make good profits from land management, with annual incomes over 600 million. (Dubbeling, 2014; Van Oosten, Witte & Hartman, 2018). However, as Coppens (et al, 2021, p. 686) summarize "The kinds of return on investment sought in urban design is not a purely financial return, but rather concerns larger societal and environmental benefits and positive externalities". The management of land, or the profits therethrough are never a goal in themselves; land management is a means by which public spatial goals or particular municipal ambitions can be attained (Van Oosten et al., 2018).

3.3. The value of property, land and urban area development

Before moving on to the notion of value capturing at behest of attaining the integral goals discussed above, its first important to properly introduce the concept of financial value of property and land. Still rooted in the early theories of Ricardo, the value of land in the Netherlands is often[1] determined residually (Buitelaar & Witte, 2011; Nozeman, 2010; De Zeeuw 2018). Which means that the value of the land is determined through subtracting all realization costs from the envisioned market value of a to-be-developed property. The to-be-paid value then furthermore depends on which party is to prepare (demolition, sanitation, etc.) the land for development (See also figure 3.1) (Nozeman, 2010). Because of principles of competition, market forces will seek to maximize the potential market value, residually resulting in a land value that is theoretically the maximum that can be achieved (Wigmans, 2003).

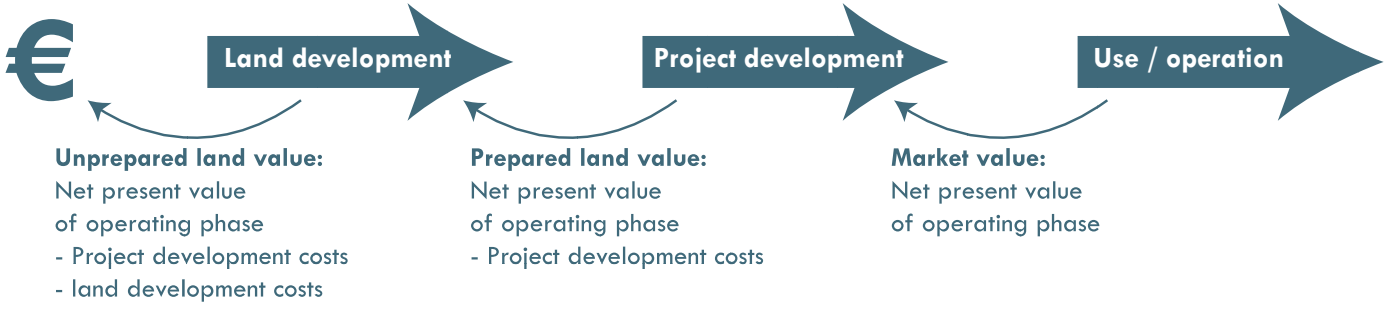


Figure 3.1 - land value determination - illustration by author, based on Nozeman (2010) and De Zeeuw (2018)

1. Sometimes the value of the land is determined as a fixed value, for example in the case of social housing, and sometimes based on taxation of similar properties. The residual calculation is, however, the main instrument for assessing the market value of the land.

From this a couple of things can be understood. There is a strong relation between the market value of a property and the valuation of the land. Should there be an increase in the market value of a property, regardless of the reason, this will positively influence the land value insofar the development costs have not exceeded the value increment. Furthermore, it can be also inferred that if the unprepared land has to be acquired from an existing user, and the 'end-of-life value' of the current usage has to be incorporated in the 'land development costs' of the proposed development, the new market value has to increase strongly to still net a positive 'unprepared land value'. Finally, this can also be used to explain that any regulatory demands that will increase the development costs will either have to result in a higher market value or a lower land value. Altogether, it becomes clear, that inner-city redevelopment ambitions resulting in a high-quality sustainable built environment, can lead to high land-development costs, and high realization costs.

3.4. Capturing the value increment?

The market value of the property (and therewith thus the value of the land) can increase in roughly four ways (Alterman 2012; Muñoz Gielen, 2010). The first, and perhaps foremost, is by an effort of the owner, who invests in his property and therewith the end-of-life value of the object increases. Secondly, through general economic or demographic trends, which can have a strong effect on the market value of a real object. Third, through public infrastructure investments, which affect the market value as a positive externality; the object for example becomes more accessible (because of a highway ramp) or more attractive (because of e.g., a park, or a new school nearby), and thus the property becomes more desirable and rises in market value. Finally, the value can also rise because of regulatory decisions on the permissible uses of the land. Should the permissible land use shift from e.g., a single dwelling to a multi-level apartment block, or from agricultural use to residential use, there is space (quite literally) for new development with a higher market value.

Of these four ways the value can increase, only one is directly attributable to the owner, any other value increases are what Alterman (2012) calls an ***unearned increment*** – as the owner has arguably exerted no effort to earn the plus value. Moreover, Alterman denotes an increase of wealth that is directly related to a regulatory planning or public works decision as ***betterment*** – a betterment of the owner as the direct result of efforts other than his own. The distinction above is important, because it provides an outline of an underlying debate about property rights and political interpretations of who land should and can belong to, and who such value increments should befall. Capturing either of these value increments Alterman calls a form of ***direct value capturing***, denoting that there is an underlying socio-economic rationale that seeks to equalize unearned wealth of individuals with all of the community. Its counterpart, ***indirect value capturing***, does not seek to equalize with the community, but rather deploys a business-economic morale that seeks to equalize public expenditure with private contributions.

A legal and political discussion

Value capturing has a very strong relation with the manner in which ownership is perceived. The notion of ownership is well protected in Dutch law. "Ownership is the most comprehensive right that a person can have over a thing" (Dutch Civil Code (CC), article 5:1, 1), "The owner of the property becomes, subject to the rights of others, the owner of the separated fruits" (Art. 5:1, 3 CC), and "Unless the law provides otherwise, the owner of a thing is the owner of all its parts" (Art. 5:3, CC). Ownership is thus a quite comprehensive right, and encompasses more than the 'having of a thing'. Perhaps best explained through the phrase 'bundle of rights' as conceptualized by Hohfeld (1917, as cited in Booth, 2008), ownership of land as a property can be seen as an "aggregate of rights (or claims), privileges, powers, and immunities" (Hohfeld, 1917, p. 746). In regard to the value of land in ownership; In the Netherlands the eligibility to planning compensation, should the value of your real property decrease because of public action, is

common practice (Hobma & Jong, 2016). The opposite of the logic however does not express itself in legal instruments. Booth (2008) explains that this in part due to the way the concept of land as property is (legally) understood. Dating back to a Roman understanding of property, the concept of 'dominium' indicated that all rights – present as well as those in the future – belonged solely to the owner-occupier. As opposed to the overarching powers of the state, expressed in the concept of 'imperium'. In such a system, the owner held absolute rights over his property unless reasons of state required intervention. A system quite opposite to the English feudal roots, where all rights to the use of land belonged to a single ruler, who could then grant tenure on a piece of land as the rewards for a service. In other words, the Roman roots denote a system where all the rights out of the bundle of rights belong to the owner, but reasons of state can limit some of those rights. The system that would arise from Feudal roots would favour a system where the entire bundle of rights of land belongs to the state, and a private person can only enjoy a part of those rights if so given by that state.

The legal system in the Netherland, and most of continental Europe, relates back to the Roman system. Article 1 Protocol No 1 of the European convention on Human Rights states that "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law" (Councils of Europe, 1950, p. 34). From a legal perspective, the question then becomes what the public interest is, and when this should supersede the human right to a peaceful enjoyment of property – which, in turn is a political question. From a libertarian perspective, government intervention should be avoided unless absolutely necessary because it is morally wrong (natural-rights libertarian) or because it could reduce welfare (empirical-libertarians). From a liberal perspective, capitalism is the most efficient system, but government intervention is desired to prevent poverty and ensure a level of equality. Collectivists would argue that resources (such as land) should be available for collective use, and therein favour government action, although there is a difference between the social-democratic school of thought, who argue that this can be achieved in concert with the market, and more Marxist or socialist schools of thought, who reject the concept of capitalism altogether (Barr, 2020). In the current political climate, two schools of thought can be discerned in relation to any notion of capturing the unearned increment. One is more a conservative liberal point of view, contending that any rise in real property value should in full belong to the owner, even if said owner has in no way laboured or contributed to the value increase. The alternative, social-liberal point of view would contend that any rise in value as a result of an effort of the public or community should befall the public good (Muñoz Gielen, 2010; Alterman, 2012).

The point to the discussion above is to gain a better understanding of the 'why' or 'how' value capturing could work and what opposition certain arguments could meet. The Netherlands' current political climate can perhaps be best described as neo-liberal (Van Oorschot, 2008), which provides an understanding as to why forms of direct value capturing are rather absent and instruments for indirect forms of value capturing are present in a multitude of forms (Heurkens, Hobma, Verheul, & Daamen, 2020).

3.5. Land policy & tested strategies for the financing of area development in the Netherlands

In the Netherlands there is taxation on property, but no taxation on land. As the question whether such taxations should be implemented falls outside the scope of this study, it thus suggests that value capturing instruments ought to be deployed to control land use or to finance infrastructural provisions. The management of land, its acquisition, sale and (re)development is the responsibility of the municipal land department, in collaboration with departments such as economic affairs and urban planning. The different departments

however, are merely cogs in the larger machine that is the municipality (Wigmans, 2003). And as briefly mentioned earlier, the management of land is not a goal in itself; land policy is a means by which public spatial goals or particular municipal ambitions can be attained (Van Oosten, Witte, & Hartmann, 2018).

3.5.1. A brief history of the land policy in the Netherlands

Land management has not always been an active instrument in steering spatial management. Until the end of the 19th century the government had a more facilitative role, limiting itself to provide necessary infrastructural works, leaving development initiatives up to the market. However, this more laissez-faire approach came under pressure because of growing dangers for public health, stemming from poor living conditions (Wigmans, 2003). Since after the second World War, Dutch municipalities started pursuing a more active land policy (Wigmans, 2003; Ploegmaker et al., 2013; Van Oosten et al., 2018), meaning that land was acquired, prepared for construction – including all necessary infrastructure – and sold off in subdivided plots for housing development (Buitelaar, 2010). An active, government driven, approach for a time where a huge housing supply was needed to answer for the traces of the war together with growing urbanization and industrialization (Van Oosten et al, 2018). This active land policy had put the government on the market as a private-actor in order to reach public goals, and as Van Oosten et al. (2018, p. 829) put it, "the profits of active land policy were a significant source of income". In the years leading up to the economic crisis of 2008, Dubbeling (2014) states that governmental incomes were over 600 million a year, yet the incorporated risk of active land policy became apparent in the years thereafter where the total of losses are estimated around 2.6 billion euros as land values evaporated. Many municipalities, as well as developers, came into financial troubles at that time, and although municipalities might still prefer the guiding influence that comes with active land policy (Witting, 2020, p.52), they will approach land policy under stricter accounting rules and with institutional innovations to reduce the inherent financial risk of active land policy (Van der Krabben & Lenferink, 2018).

3.5.2. The rationale for, and criticism on active and facilitative land policy

The rationale for both modes of land policy have already been implicitly discussed. If land is to serve public goals, in a way that the market is unlikely to integrally achieve on their own, public intervention is required and justified (Ministry of Housing, spatial Planning and the Environment, 2001). Apart from the desire to steer spatial development and reasons of welfare economics, Buitelaar (2010) contends that active land policy can also have a financial aim: Any investments made by the public, or even any increases in property value because of that are more easily shared by the public party if the land is in public ownership. Besides that, land development can simply be a lucrative ordeal. It is also herein that lies a strong note of criticism on the Dutch form of active land policy, in literature often discussed as the 'double-hat' dilemma: Municipalities take on two roles, one where they aim to regulate land use in a way that it contributes to public goals and political ambitions, and one where they are a private actor earning money from playing the game that they themselves have to regulate (Tennekes, 2018). Facilitative land policy far from equals a laissez-faire attitude, but is indicative of a form of land management where the municipality limits itself to laying down a public law framework through i.a. the land use plan (Hobma & Jong, 2016), which is possibly further substantiated with documents such as structure visions or area ambitions (Adams & Tiesdell, 2013). This strongly reduces the financial risk that a municipality has in the development of an area, while still allowing for a gentle shaping of the market. A strong disadvantage of a more facilitative land policy is however the lack of effectiveness when it comes to recovering costs (Muñoz Gielen, Maguregui Salas, & Burón Cuadrado, 2017), and arguably even more so when the public wants to share in any value increases that might occur because of, for example, a new land-use plan. Although it begets mentioning,

that this might be the case more so in an international context, and less in the Netherlands as the Dutch 'grondexploitatiewet' (part of the spatial planning act), ensures the possibility and feasibility of the recovery of costs for necessary infrastructure (Hobma & Jong, 2016).

3.5.3. Not black or white: 'Grey' Situational land policy

Active and facilitative land policy can be seen as the two extreme ends on a more subtle scale. Active land policy offers the municipality more steering capacity, but also exposes her to more risk. Facilitative land policy limits the public investments and risk, but reduces the steering capacity to a more guiding role. Each municipality has their own land policy note, drawn up by the college of aldermen, which determines the framework and mandate of the municipal land department. The 'mode of land policy' can differ throughout a municipality, and is determined through the criteria set a priori in the land policy note. These criteria range from the current, or the desired configuration of land ownership, financial capacities of the municipality, societal urgency, area potential, anticipated risks, etc. This results in a sliding scale of land policy modes, which determines for a large part the strategical role a municipality can or will play in a certain area development, as illustrated in Figure 3.2 (Ministry of the Interior and Kingdom Relations, 2019, pp. 32 - 39).

3.5.4. Public-Private interaction and collaboration

Kes (et al, 2019) show that the relation between the desired steering role of a municipality and the production role they have, or are willing to take, is a key factor in determining the ways of public-private interaction. In other words, a municipality that wants to steer developments, but has no land positions and no capacity to acquire these, will approach the market differently than a municipality who holds all

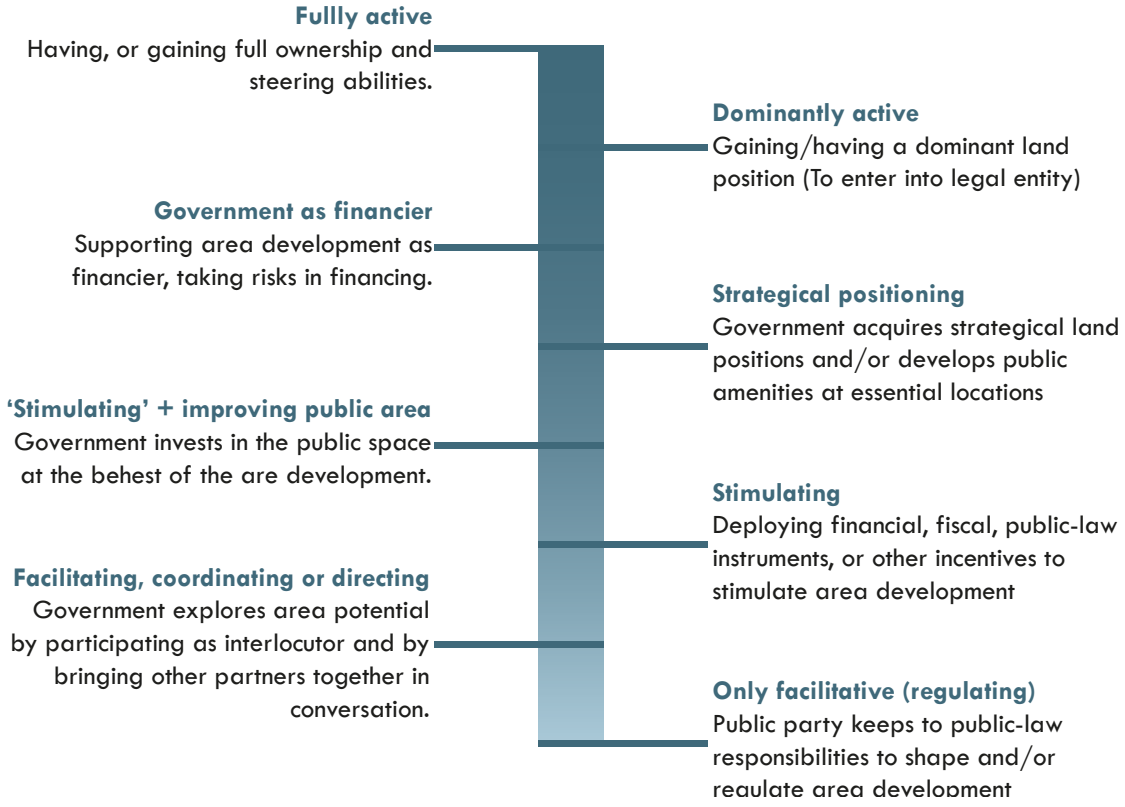


Figure 3.2 - Sliding scale of land policy modes – Illustration by author, adapted from Ministry of the Interior and Kingdom Relations (2019, p. 36)

the land, resulting in different forms of public-private interaction, collaboration or event partnerships. There are various approaches to the market, and those indicating a collaboration between public and private parties, can be considered ideal-typical forms of public-private partnerships. Since the emergence of such partnerships in the end of the 20th century, many such types have been named and researched (Kenniscentrum PPS, 2006; Heurkens, 2012, Deloitte, 2017, De Zeeuw, 2018). It has become clear that the choice for a particular form of partnership can be derived from what a municipality wants to achieve and their considerations of how to go about that. The ministry of the Interior and Kingdom Relations (2019) furthermore explains that notions from procurements law and competitions rules also have to be weighed carefully in choices to be made. Differences throughout the various partnerships are mainly found through looking at the way responsibilities are (implicitly) distributed. As can be seen in Figure 3.3, each such form has a different demarcation throughout the various phases of urban development.

These ideal-typical models are interesting in relating to value capturing, because they – in some shape or form – set out the way that investments are made, who carries the inherent responsibilities and who befalls the profit. Public realization is therein the result of the most active form of land policy: The public party acquires the land, reconfigures it, services it with infrastructure and sells it off or leases it out to private parties. The 'bathtub' of costs that have to be made to do so is financed by the public party, taking all the risks, but as a result all the resulting profits from the value increase in the land also befalls the public party, value capturing is integrated, and relatively clearly achieved.

A concession is slightly more complicated, as a public party 'tenders out' the public realization to a private party. The extent value capturing is achieved depends on the contents of the championing bid, and the way the its price relates to the extent in which value increments are internally used to finance the development.

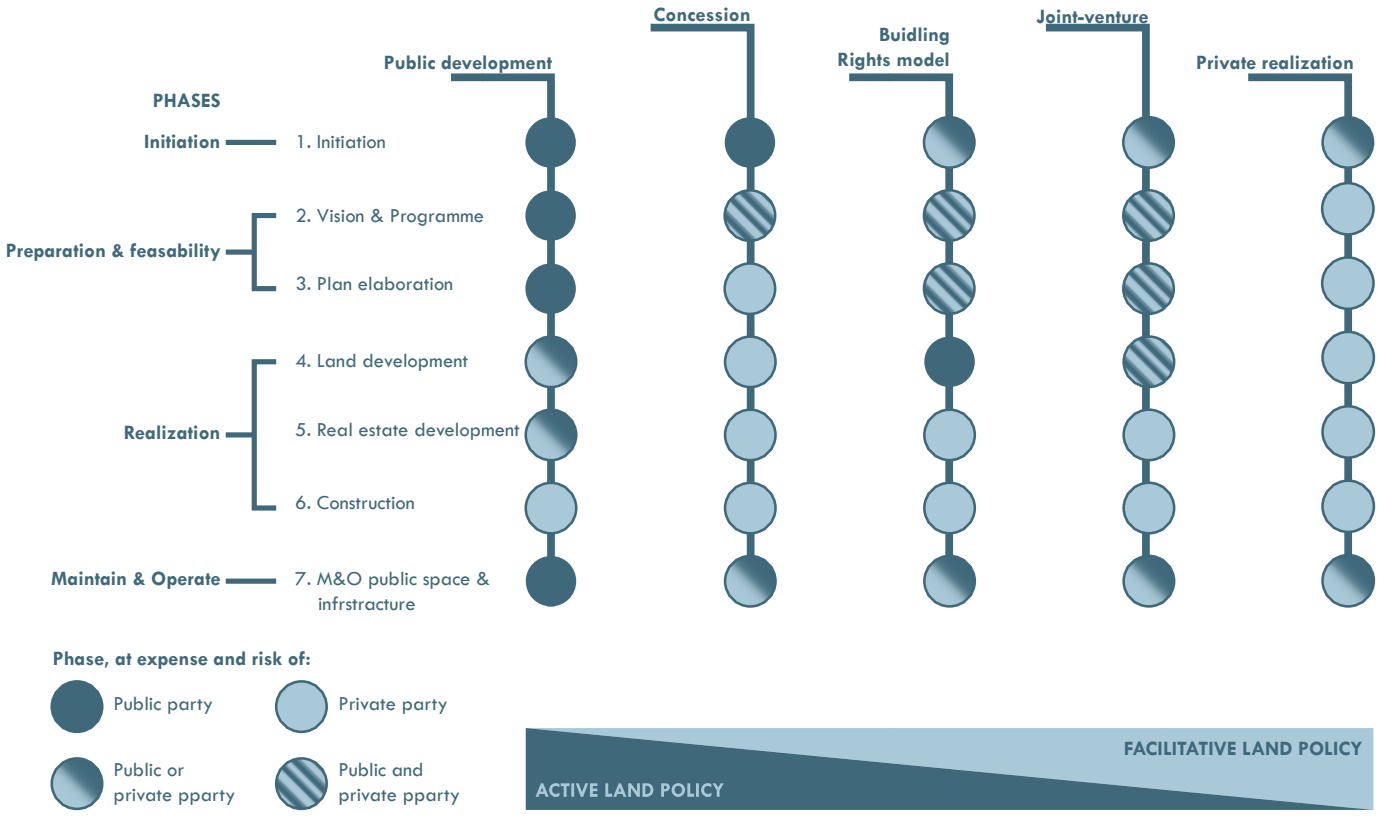


Figure 3.3 - PPP forms and distribution of responsibilities – illustration by author, adapted from (Kenniscentrum PPS, 2005; Heurkens, 2012; Deloitte, 2017)

The building rights model (Dutch: Bouwclaim) refers to a system where the municipality buys fragmentated land from one or multiple owners, in order to redevelop and sell back building rights. Value capturing therein is achieved as a municipality buys land from parties at a lower price than at which the development rights are sold. The difference between the two values contains a piece of captured value that can be used to pay for the unprofitable parts of the area development
.
A joint venture refers to a collaboration between public and private through a novel legal entity. Both public and private parties contribute to the entity by depositing land positions. Risk, responsibility and rewards are then shared, often in a ratio through either the financial or strategic value of the land positions contributed.

Private realization, perhaps the variant most relevant to this study, has a higher level of complexity when it comes to practices of value capturing. In essence, private realization is little more than a private party or person developing real property on privately owned land, without interference of a public party. Risk, responsibility, and thus also reward, all befalls the private developer. However, as the possible types of development in the Netherlands are governed by the land use plan, some interaction might be necessary if the private developer wishes to change the prevailing permissible use of the land. Moreover, depending on the type of development, additional public infrastructure might be required or desirable. Private development (nearly) always occurs in a broader public context, and as described earlier, such changes in the land use plan, or the provision of such infrastructure might affect the value of the to be developed property and therewith also the value of the land. Within the Dutch Spatial planning act, section 6.4 allows public parties to recuperate costs made to facilitate development on the developing party or parties benefiting from the public investment. In other words, in case of private realization, indirect value capturing instruments exist, albeit only in relation to the costs made, recuperated in proportionality to the developing parties that have gained tangible profit.

3.6. Neo liberal challenges in the fabric of land policy and value capturing

Throughout time Dutch municipalities have taken different approaches to land policy. Strong and clear active land policy from about the second world war up until the great financial crisis of 2008, after which a more facilitative land policy has gained momentum. But be it active or facilitative, public interaction with private parties, developers or contractors always occur. Yet, public private partnerships were not really a thing until 1986, when cabinet Lubbers II committed to new forms of public private collaboration (Deloitte, 2017). What changed over time, is the common understanding of what roles public and private play in urban development. In the ideal-typical Rhineland-model that applies to most continental European countries, Netherlands included, the emphasis is on regulated market economies with some form of government control, legitimized through Civic Law. Over time, the neo-liberal ideas of the Anglo-Saxon model influenced social institutions, namely ideas on more free market economies (Heurkens, 2012).

The Netherlands moreover has an interesting history as a welfare state, arguably starting as early as early as the implementation of the 'Kinderwetje van Houten' in 1874 and taking a more institutionalized form after the second World War (Van Oorschot, 2006). More neo-liberal and perhaps conservative schools of thought have certainly had their influence over time (Niewenhuis, 2012), to the extent that Boelhouwer and Hoekstra (2012) propose to label the Netherlands as a 'modern-corporatist welfare state'. Yet still: A welfare state, where objectives such as socio-economic macro-efficiency and reduction of inequality have a place in policy (Barr, 2020).

The point of this discussion is not to just cite interesting literature, as there is a relation to be considered between the role of the government, the instruments of value capturing and the rationale thereto. Buitelaar (2010) contends that active land policy can be understood as an instrument with which welfare

ambitions can be more easily integrated in land development. Such developments, non-economic-efficient at best, but sometimes simply unprofitable, will not be realized automatically by free market forces (Adams & Tiesdell, 2013), and thus necessitate and justify government intervention (Ministry of Housing, spatial Planning and the Environment, 2001). However, such government intervention is rather costly, which can be a challenge if it cannot be financed from the profits of urban development, and even more so if the costs are increased with costs of expropriation holdouts or litigation.

Furthermore, Booth (2008) contends that the civic-law system stemming from the Roman traditions of absolute dominium will have further landownership fragmentation as a consequence, which poses another hindrance to the realization of public or welfare amenities. Indeed, if the public party is unable or unwilling to acquire and unite all land positions prior to overall development, that same public party then has to deal with the interests of all parties involved. Interest which might not align with that of the public party, or even with each other, further complexifying the playing field.

At the time of writing there seems to be disagreement on the degree in which active forms of land policy are actually adopted in practice. Van Oosten (et al, 2018), Buitelaar (2010), contend that public shifted from active to facilitative forms of land policy, in a reaction to the global financial crisis, as to reduce the expose to financial risk that goes hand in hand with active land policy. De Zeeuw (2017) reiterates the occurrence of this, as he explains the use of organic forms of planning, but argues that from 2017 onward active development planning will be back. Witting (2020) evaluates the extent in which municipalities opt for active or facilitative land policy, and concludes that active land policy can still be the policy of choice, although he adds that this might be based on more situational aspects then merely the overarching municipal policy. De Leve and Geuting (2021) perhaps give the most comprehensive answer, as they show through a benchmark that only 24% of municipalities adopts only active land policy, 35% predominantly facilitative and 40% a combination thereof.

As liberal schools of thought tend to pursue the notion of a free market, as this – according to liberalism – will result in the most efficient distribution of welfare, the failure of private developments to realize public goals can arguably be put as a challenge within such philosophy. The Netherlands has a broader political spectrum than merely a single school of thought however, and public intervention at behest of welfare objectives has always had a position in Dutch policy. Should however the liberal influences of the Anglo-Saxon model further shape the institutional landscape, it might pose a threat to the ability of Dutch public parties to successfully achieve welfare objectives in urban development. Notwithstanding the fact that active land policy is not completely something of the past yet, it thus warrants exploration into the extent market instruments can achieve value capturing objectives in a framework where 'government' might shift further to 'governance'.

3.7. The potential and pitfalls of private law agreements

The section above can be read as an inquiry into how Dutch land management can retain the quality of its urban output when the form of governance shifts from a top-down coordinative model to one where there is a playing field, more open to multiple party interests. Martens (2007) would call this form 'open governance', in which an outcome can be reached through the interactions of public and private parties. In this definition of open governance, it is characterised by either competition or argumentation. Public and private parties however are dependent on each other, in such a way that without the adoption of more active modes of land policy, they cannot reach their goals without the other; A municipality cannot force a private party to develop, and such a party cannot demand a change in the land-use plan. In that, they can be seen as symbiotically interdependent

(Alexander, 1995, as cited in Heeres et al., 2016), indicating that open governance through a structure of competition is likely to be unfruitful and interaction through argumentation is thus required.

This argumentation could be used to contend for a return to joint-venture models, integrating the interest of public and private into a single legal entity, and therein thus allowing synergy to emerge in the cooperation. The point is however to explore how the same result could be achieved through private law agreements. Tjosvold (1988) argues that such synergies can be found at the point of cooperative interests, and Tjosvold (1998) moreover contends that cooperative approaches to achieving a point of mutual success can bear fruit, even in the face of intellectually different approaches. Heeres (et al, 2016) specifically observe that there is a positive correlation between the level of cooperation and the extent in which value capturing is achieved. They suggest that the positive correlation occurs in cases where value capturing is seen and discussed as a reciprocal process, rather than from a cause-effect point of view. To better understand this, it necessitates an introduction of the model that they use to explain the process of value capturing, and its relation with collaboration as shown in Figure 3.4. They contend four steps to the process of value capturing. The first step is where value is created, namely on the drawing board, as regulations are changed or infrastructure investments are agreed upon. The second is the actual realization of this value through the developments of individual plans. This value is captured, and used to for example finance infrastructure, in which the value is redistributed to those whom the value was captured from. As can be seen on the left of the figure, there is a cooperative value at the interface of i.e., an understanding of each other's interests and awareness and anchoring of the (symbiotic) interdependence.

The lesson to be learned from the model Heeres (et al., 2016) propose and the conclusions that they draw, is that if cooperation leads to an understanding of the each other's interests and an integrative collaborative understanding of the way value is created, captured and redistributed, such cooperative collaboration can lead to the creation of more value.

3.7.1. The position of private law agreements in the Dutch system of urban area development

In the Dutch system, should there be a form of private development, the municipalities are obliged to recover the costs they make in order to facilitate

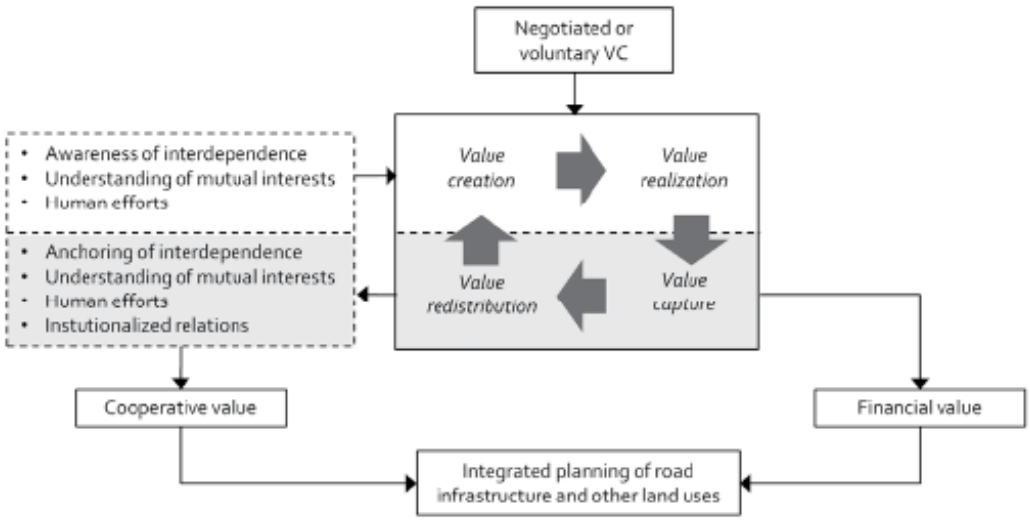


Figure 3.4 - The reciprocal relation between processes of value capturing and cooperation (Heeres et al., 2016, p 198)

that development. Moreover, in the case of investing in the public space, as is often the case in urban area (re)development, they are obliged to recover the investments made over all developments that would profit from those investments, in a rate that represent the part that those developments benefit from the investment made, to the extent that the developments can bear the cost recovery (Macro capping). To do this, municipalities can use the land management plan (Dutch: Exploitatieplan), which is a public law instrument, and can be used to impose a form of fee on the developer. However, municipalities are expected to pursue a private-law method first: To try and reach an agreement about the recovery of costs through an anterior agreement (Ministry of the Interior and Kingdom Relations, 2019).

3.7.2. The flexibility of contracts

This anterior agreement is form-free, and can encompass anything (within certain boundaries) both parties are willing to agree to, as long as it -at least- recovers the cost that would also be recover through the public law track. In this, not unlike the S106 agreement discussed by Burgess & Morrison (2014) and Burgess, Monk, & Whitehead (2011) the anterior agreement allows for private contributions either financially, or in kind. The S106 agreement of course focusses mostly on the development of social housing, but the negotiatory flexibility remains: There is a certain minimum percentage of social housing to be reached desired by the public party, and at the same time a negotiation space that intertwines private goals and the privately needed development permit. In both the English 106 agreement and the Dutch Anterior agreement there is a public-law determined minimum, but at the same time the negotiation space in which the interest of public and private parties can be incorporated. In the Dutch system this is the case maybe even more so, because the anterior agreement is determined on before a change in land use plan, effectively providing private parties a seat at the table in negotiating about the desired spatial quality.

3.7.3. The inherent potential of private law agreements, anterior or otherwise

As can already be inferred from the paragraphs above, there lies tremendous potential within the use of private law agreements. Within the Dutch system of obligatory public costs recovery, the anterior agreement can be seen as a private-law interpretation of a public-law obligation. Although the most basic of forms can be understood to be a private law agreement in which a pecuniary contribution of the private party is agreed to, thus avoiding the public effort of setting up a land management plan, more integrative forms can lead to mutual added value for both parties

3.7.4. Negotiatory pressure or payment planning?

Payment planning is often understood as public cooperation being contingent on a pecuniary contribution by a private party, above what the public party is obliged to recuperate (Heurkens et al., 2020). More specifically perhaps is that payment planning is when there is a case of substantial and demonstrable overcharging by a municipality in a private law agreement in regard to what could have been required through a public law track, and is prohibited (Vijverberg Lawyers, 2018). In a process of negotiation, the negotiatory strength of a party is in part determined by their Best Alternative to Negotiated Agreement (BATNA) (Fisher & Ury, 2012). In other words, the party that has more relative freedom to reject an agreement because of its BATNA, has a better position to influence the outcome. Yet this does indicate a thin line between acceptable negotiatory pressure and undesirable practices of payment planning. To illustrate: If a municipality has space for one development in one of two locations that applied for development permission, and its cooperation is contingent on which of the plans contributes better to the overarching ambitions of the municipality (like sustainability, liveability or accessibility), this in effect influences both parties to stretch their business proposition to ‘outbid’ the other

party. The question when it is no longer negotiatory pressure but rather payment planning can best be determined by a judge, but the illustration indicates that there is a thin line between the two.

3.7.5. A risk of non-transparency

Public bodies can undertake interventions that have the potential to impact the citizens' everyday life. Moreover, they do so with public funding, and with an (electoral) public mandate. Public accountability and transparency are values expected of the public, and the need for which are often laid down in legal, political and institutional structures (Finel and Lord, 1999). Moreover, Douglas and Meijer (2016) contend that transparency ought to not merely be viewed as an obligation or legal requirement, but should be seen as a value-adding tool in the interaction with stakeholders – which is entirely in line with Fisher and Ury's (2012) elaboration of principled (as opposed to positional) negotiation. However, "greater openness can make negotiations lengthier by making frank communication more difficult. Interest groups with greater access to ongoing discussions can derail, disrupt, or change the agenda" (Ball, 2009, p. 298).

Anterior agreements are concluded prior to the change of a land-use plan, and although the fact that an agreement has been concluded will be published, often with some summarized information of the contents; the actual contents of the agreement will often remain confidential (Brand, Van Gelder & Van Sandick, 2008). Making it difficult for outsiders to judge either the process or the content of such arrangements. From the paragraph above it moreover becomes clear that negotiating parties can have an explicit interest in confidentiality during ongoing conversations. Arguably, logically so, yet it does add to a risk of non-transparency, as it might be difficult to trace back negotiated positions, or determine precisely the concessions made at the cost of the public interest.

3.7.6. Public values and socio-economic responsibility

A counterargument to contributions in kind as the result of an agreement could be that private developers will not adhere to the same values as the municipality might. The example of social housing being on the least desirable locations of the development, whilst the public requirement was a 'pepper potting', as narrated by Burgess, Monk, & Whitehead (2011) shows just this. Using private-law agreements that allow private developers to contribute through in-kind contributions thus also as an inherent risk, because the realization of those 'in kind contributions' is often the realization of something that adds societal value. Complex contracts could be used to shift the operational responsibility of realizing the public value to a market party, but the public party will remain socio-politically responsible (Kuitert, Volker, & Hermans, 2018). Therein thus lies a risk for the quality of governance, but by knowing this, it can be managed through proper contracts.

3.7.7. Limitations of procurement law and the European single market

Should public and private parties agree to pecuniary or in-kind contributions, those agreements might be subject to rules and regulations regarding procurement law or state aid. This paragraph briefly goes over both.

As eloquently described by Chao-Duivis (et al., 2018), when an agreement of pecuniary interest above a legal threshold is made between a contracting party (parties governed by public law) and an economic operator (private developer for the sake of this report) it is likely to be a type of work that should be put to tender. This could indicate that anteriorly agreed to in kind contributions by developing parties, such as the delivery of a road, could be subject to national or European procurement law.

Furthermore, regarding the European single market; One of the main arguments for the European single market is to rise to the challenges of globalization and

to do so by allowing market forces to set out towards deploying continent wide economies of scale. In order to do so, tariffs on trade as well as non-tariff barriers need to be eliminated from within the borders of the single market (Tasan-Kok et al., 2011). As Barr (2020) explains, this can be understood to be based upon The First Fundamental Theorem, which "asserts that if a number of assumptions hold markets will allocate resources efficiently." (p. 83) This however necessitates the concept of perfect competition, as market forces will otherwise have to face others with an unfair advantage. Selective state intervention would result in a diminishment of the notion of perfect competition and would thus inadvertently counter the potential of the European Single Market. Such interventions, be it through grants, tax reliefs, guarantees, or otherwise, are prohibited (European Comission, s.d.). Apart from strict regulations on exemptions for services of general economic interests, the outcome of a private law agreement between a public and private party could be subject to the regulations of state aid if it the following conditions are met:

1. The intervention is by the state or through the resources of the state;
2. The intervention results in an advantage on the part of the recipient on a selective basis;
3. Competition may or will be distorted because of this; and
4. The intervention is likely to affect trade between member states.

In other words, if the amount of value realized by a public party befalling a private party exceeds the amount recuperated (financially or in kind) this might be subject to European agreements on State aid in the Single market.

3.8. Regulations on the scope of Anterior or private law agreements

According to section 6.4 of the spatial planning act (SPA, Dutch Wet Ruimtelijke Ordening), a municipality has a public law obligation to recover any costs made in order to facilitate developments from those developments that profit from said public investments. This is to be done through drawing up a land management plan (Dutch: Exploitatieplan). In such a plan it is elaborated what works and activities are needed to prepare area, install utilities and realize the public space, together with an estimated budget. Furthermore, the plan will contain an elaboration on how the relevant public investments will be recovered from which developments, and will contain a development phasing if need be. Costs are recovered through a development contribution due as a fee to the development permit (Wet Ruimtelijke Ordening, 2021).

This land management plan ought to be made public at the same time of the publication of the land-use plan and provides certainty to private developers, as they can be aware of development costs. Drawing up a land management plan is however laborious, and can also diminish flexibility for future developments. Article 6.24 of the SPA makes it possible for municipalities to enter into a private-law agreement with private developers, and to therein make agreements on development contributions, but also about a public willingness to change the land use plan in order to facilitate the private development. When this agreement is made prior to the adoption of a land management plan, it is called an anterior agreement. Although there remains a public-law defined minimum that has to be recovered from the developer, it opens up the negotiation space in which the interests of both public and private party can be incorporated, effectively providing private parties a seat at the table in negotiating about the desired spatial quality. Should such a private law agreement be made after the adoption of the land management plan, it is considered as a posterior agreement, in which the possibilities are more limited towards what has already been laid out in the land management plan.

Various articles of the SPA and RPA (Dutch: WRO & BRO), elaborately specify what contributions can precisely be recuperated through the land management plan. This varies between costs directly

related to the plan area (art. 6.2.3 – 6.2.6 RPA), above area costs (Dutch: Bovenwijkse voorzieningen – art. 6.2.4(e) RPA), and above plan equalisation (Dutch: Bovenplanse verevening – art. 6.13(7) SPA). When contributions are exacted through the land management plan, the amount that can be exacted is capped to never exceed the profits of the development (Dutch: Macro-aftopping – art. 6.16 SPA), and above area costs can only be recuperated to the proportion they contribute to the development (p.p.t. criteria – Dutch: Profijt, Propotionaliteit, Toerekenbaarheid – art. 6.13(7) SPA). Furthermore, art. 6.12(2) (SPA) denotes that the decision can be made to not draw up a land management plan if the recovery of costs is otherwise ensured, for which art. 6.24 (SPA) provides the possibility – as discussed above. The SPA does not elaborate on what costs can be recuperated through such an anterior agreement, other than that the agreed-to contributions need to have a basis in an adopted structurevision, or have to be geared towards the provision of planning compensation (Dutch: Planschade compensatie). The anterior agreement is a private-law agreement, and therein requires mutual agreement to its articles. Public law limitations such as the p.p.t. criteria or macro capping do not apply. The ministry of interior and kingdom relations (2019, p. 44) provides a non-exhaustive list of subjects that are negotiable in the anterior agreement: Land ownership, Involved parties, Plan area / land management area, Programmatic infill, Public-law cooperation, Planning compensation, Aspects of the environmental law and corollary risks, Land transactions, Infrastructure and parking facilities, Above-district and above-plan level contributions, Land preparation for construction and residential purposes (layout of public spaces and facilities), Construction of real estate, Damage and possible repairs, Project organisation, Communication, Fiscal contributions, and moments of payment. What can be inferred from this already long list, is that the anterior agreement allows for a wide range of negotiable aspects, opening up the possibility for a synergetic plan-elaboration between public and private parties. However, even in negotiations through private-law, public parties are still bound by certain rules and regulations guided in public law, regarding for example rules on procurement or state aid.

3.9. Conclusion

This chapter has set out to answer the first two SRQ's, and therein thus provide an answer to why value capturing through private law agreements is relevant, how it can be achieved and how it can contribute to the development. Through a narrative literature review and four explorative interviews with practice, a number of conclusions can be posited answering these questions.

Value capturing through private law agreements is relevant, because it can provide Dutch municipalities with market-oriented instruments through which planning objectives can be achieved. The fundamental role the built environment has in the everyday lives of its citizens, as well as its potential contribution towards reaching or failing overarching (inter) national ambitions, underlines the need for integrative places of high urban quality. However, a gradual shift has occurred since the mid 80's from 'government to governance'. A shift further consolidated by the global financial crisis of the last decade, and has changed the practice of urban planning from being a top-down government activity to one that has to also deploy market-oriented instruments that allow for a shaping of the system and a steering of the actors therein. Value capturing can be seen as the activity in which value increments are captured to be used for further achievement of public spatial goals in the area. As value capturing is an inherent part of active forms of land policy, and such forms of land policy are less readily or frequently used as they used to be, it is important to explore the applicability and efficacy of more market-oriented solutions; such as through private law agreements.

Through private law agreements it is possible to do more than a mere private law infill of the public law obligation to recovering costs. The mutual interdependency between public and private parties makes it possible to create additional value in area development through an understanding of each other's interests and a collaborative, open attitude

towards negotiations. Value increments are captured to be used at behest of public goals, meaning the 'capture' is not the goal, the public spatial objectives are. Such 'values' might sprout at the drawing table, but it is the private party that physically realizes the development that make such values tangible. Moving beyond a (partial) fiscal capture of the value increment in order to realize public goals, it could be possible to integrate such realizations in the private development; possibly increasing both the value of the private development as well as giving the public law obligation to cost recovery a private law infill through an agreed upon in-kind contribution by the private party.

The 'how' lies within section 6.4 of the Dutch spatial planning act, setting out that municipalities have a public law obligation to recover costs made in order to facilitate private development. This public law obligation can be executed through the elaboration of a land management plan (Dutch: Exploitatieplan), laying down the possible developments and public investments. This allows for an overview of prorated sums to be recovered per development, which private developers ought to pay as they apply for an environment permit. Article 6.24 however provides the possibility of a direct agreement between public and private party regarding the land management, prior the drawing up of a land management plan, preventing the need for such plan altogether. Such agreement can contain more than the cost-recovery elements of a land management plan, such as types of development, (public willingness to a) change of the land-use plan, phasing, and process-related contingencies. Effectively opening up the conversation to whatever might be relevant to the parties at that moment. There are some pitfalls to such agreements; Public parties are prohibited of exerting undue influence through payment planning, and the line between negotiatory pressure and such influence can be perceived as rather thin. At the same time, such negotiations are often conducted in mutual confidentiality, whereas a change of the land-use plan has multiple possibilities for a larger interested public to voice their views. Should agreements between public and a single private party be made about changing the land-use plan, it could become untransparent to the larger public as to what alternatives have been explored. Furthermore, in the case of in-kind contributions, it is imperative that relative public values are adhered to by the private party and that the in-kind contribution does not fall short of the economic value of the otherwise necessary compensation.

Although the pitfalls to the deploy of private law agreements seems lengthy, this chapter contends their potential more than compensates it. Actively being aware about such pitfalls makes them discussible, and part of the framework within negotiations take place, rather than only limit the negotiations altogether. Considering that the challenges urban planning faces regarding volumes, quality and sustainability, and moreover considering the political-urban context in which neo liberal influences continue to make their mark, private law agreements in which a synergy between public and private interests are possible have the potential to contribute in a valuable way.

4. Case study accounts and cross case analysis

The previous chapter provided an insight into the interface of land policy, urban planning, spatial ambitions and value capturing, and connected this to the question why it is relevant to look at this through the lens of a private law agreement and how such an agreement would technically be able to do so. In this, the previous chapter answered the first two SRQ's of the study. This chapter will focus on the third SRQ: "How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?" ¬– and in order to do so will provide account of the four conducted case studies, and will conclude with a cross case analysis.

Each case study account will roughly follow the same structure, in order to adequately describe the characteristics to the cases, the mechanics of value capturing therein, and the extent in which the involved parties have considered the development a success – in relation to the agreements made. To better understand the mechanics of value capturing within each case, Heeres's (et al., 2016) cycle of value creation and value capture has been used as a lens through which the information has been structured. Not from any intention to corroborate or debunk said model, but rather to have a theoretical starting point to structure and start understanding information with as units of analysis. In this inductive sense, the chapter would not be satisfied with only presenting the final structure of the value capturing agreements, and rather continues the inductive quest by further unravelling the process leading up to such accords. Therein not only describing the act of value creation through (e.g.,) a change in land use plan, but also narrating through the preluding documents or party interests through time that had led to why value could be created and captured, and how the agreements had come to be. The point of this elaborate quest, rather lavishly decorated with thick descriptions, is to make possible the potential uncovering of mechanisms to value capturing through anterior agreements in the cross-case analysis through comparative analysis of conceptual categories that have emerged from data.

Four cases will be discussed, the first of which is the case of partial plan area 2 (PPA2) in Aalsmeer, where three separate landowners in negotiation with the municipal proxy set out to deploy a private led two-phased multi-negotiated selection procedure, in order to anteriously realise an integrated housing plan. The second case focusses on the redevelopments of GGz Centraal in Ermelo, who sells of most of its estates, but where the moment in time of the anterior agreements holds an interesting position in the development process. Third is the individual extension of a horticulturist's greenhouse in Zaltbommel, and who through negotiation reaches a partially in-kind payment of the obligatory developers' contribution. Fourth is the development of Campus Zuid, a large private area redevelopment by the Technical University of Delft, who worked very closely with the municipality in order to reach flexible agreements.

Each case is different from the others in sense of size, location, scope, time, negotiation procedure, process and outcome. In order to appropriately compare and synthesize amongst the cases, each case study account will follow a similar narrative through four subsections: The first subsection will discuss the case, its characteristics, the stakeholders to the case and their interests, to introduce the cases, position it in time and place, and to paint a picture on the underlying goals of the intended development. The second subsection to each case will dive into the process of negotiation, to elaborate on the interactions and interdependency of the parties to the case, will furthermore explore the more tangible moments of value creation, be this a regulatory act or otherwise, will moreover also describe how this tangible moment came to be, what agreements were made between the parties involved in relation to value capturing, and what the role of synergy had been in the collaboration in regard to these agreements. The third subsection will then elaborate on the outcome of the process, and reflects on the use of the anterior agreement regarding the achievement of objectives and its technical role to value capturing. Finally, each section will conclude with a brief notion on accountability to the case information. The cross-case analysis will follow roughly the same structure, and will set out to analyse the cases through both a synthesis of case information, as well as an analysis of cross-case matrix display of qualitative variables.

4.1. Greenpark Aalsmeer, the case of Partial Plan Area 2

Abstract to the case

In partial plan area 2, a small part to the broader restructuring known as Green Park in Aalsmeer, three private owners have, in collaboration with intermunicipal development organisation GPAG, put to market their lands together with an integral housing plan through a private tender. The final developer was selected on price, as well as quality, and the bid would have paid for the lands, the development contribution, as well as the realisation of public space. In this, the market selection incited market parties to maximize on price, as well as substance. The collaboration between the landowners an GPAG allowed for an already elaborated development plan to be put to market, which entailed a low developer's risk, resulting in a 26% higher-then-expected bid by the winning party. Furthermore, the private-law track towards the anterior agreement had allowed a level of integration in the development plans, that wouldn't have been possible through the land-management plan. Value capturing in essence would have taken place through agreed-to contributions in the anterior agreement, and through the market selection, both public and private goals could have been attained. The process preluding up to this plan however has been long (2006 – 2018), and has been influenced by political influences and economic conjuncture cycles – the prior of which caused the plan to collapse in the form as studied in the end of 2018, due to lack of political support.

(Green Park Aalsmeer, s.d.)

4.1.1. Introducing the case of PPA2

This first case focusses on the development of a partial plan area, contextually taking place within a larger, integral, public-led redevelopment project in Aalsmeer. The case covers a longer period of time, and has had different potential futures, one of which almost culminated in a private law agreement between a developer, a group of private landowners trying to accomplish self-realisation, and the intermunicipal collaboration entity representing the public party. This is the only case in which no anterior agreement had been signed, but as efforts towards that end were coming to a close, the process leading up to that almost-agreement and the content discussed is documented in conceptual drafts, the case still lends itself for investigation. The case of partial plan area 2 (PPA2) is moreover of interest, because of its substantive 'specialness'. The larger part of the land in PPA2 is privately owned by three separate owners, and through negotiations with the municipality these landowners have come to propose an integral residential development for the area which they have put to market through a two-phased multi-negotiated selection procedure (Dutch: Meervoudig onderhandse selectieprocedure met twee selectieronden). The municipality would enter into an anterior agreement with the selected party, to which end stipulations have been integrated in the selection procedure – including the costs for public space, and the private development contribution to the public party.

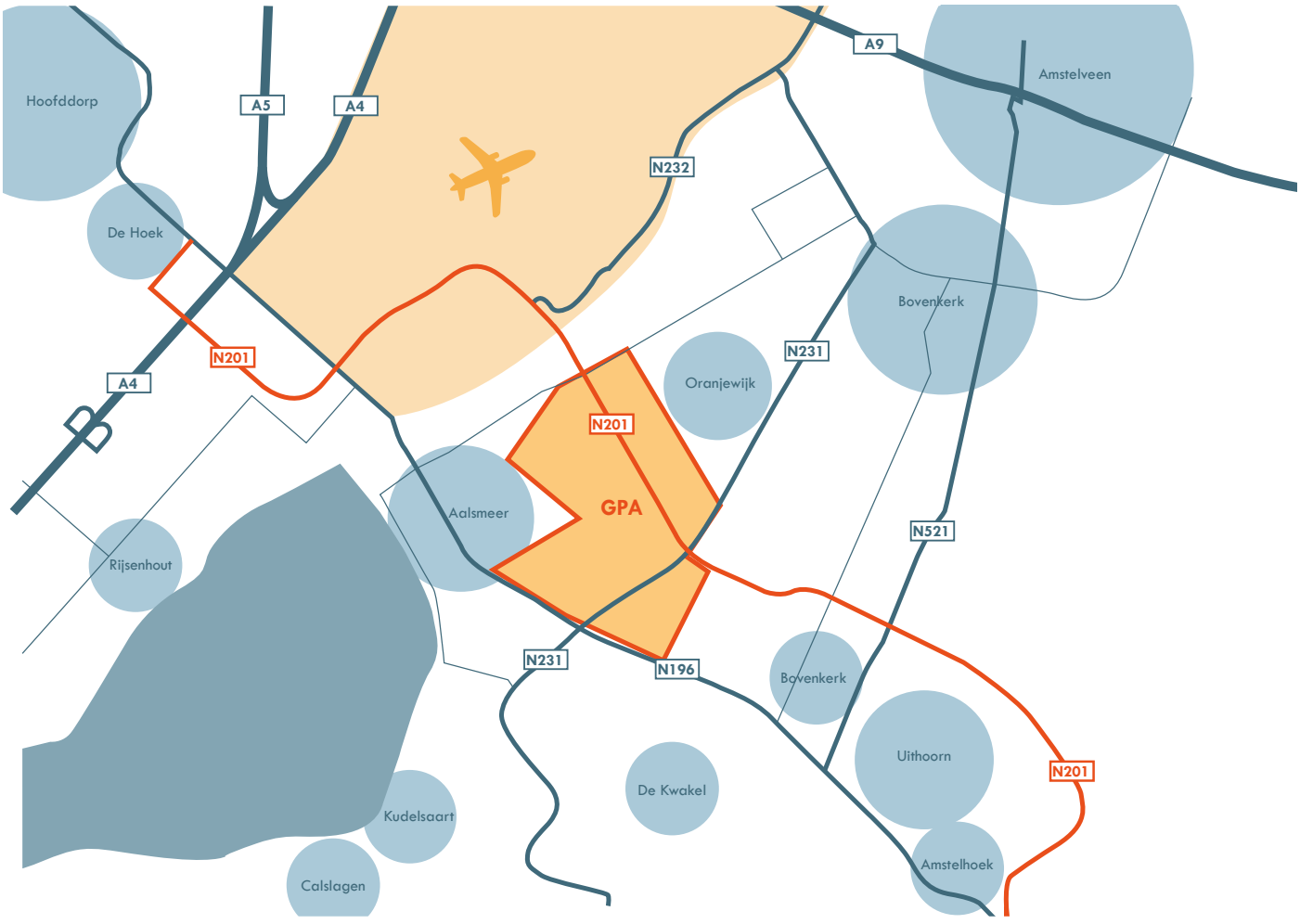


Figure 4.1 - The redirected N201 and the location of Green Park Aalsmeer - illustration by author, adapted from 2016 structurevision

Situating the case in time and place

The Netherlands has a renowned international reputation when it comes to agriculture and horticulture. In Aalsmeer, a city just below Amsterdam and the international airport Schiphol, a lot of horticulturist business takes place. The world's largest horticulture auction house 'Flora Holland' is located there, and many of these businesses have an international orientation. At the same time, greenhouses are huge energy consumers, and therefore have an important role in the energy transition. Not all businesses bloom, some expire, while some other better faring business relocate or concentrate their business, expand or redevelop. All in all, around the year 2000, there was a high traffic pressure through the city Aalsmeer, there was a strong need for sustainable expansion and because of rapid greenhouse scale-up, there was a lot of rundown small-sized greenhouse business in the area. Old greenhouses were used to provide cheaper, pseudo-legal parking spaces to Schiphol goers, which caused a lot of nuisances to the urbanity around it. To aid the sustainable growth, deal with the parking challenges, further stimulate business, and to reduce the traffic pressure on Aalsmeer, the municipalities Aalsmer, Amstelveen, Haarlemmermeer, Uithoorn, De Ronde Venen, the province of North Holland and the regional administration of Amsterdam signed the Intermunicipal Areavision N201+ in 2000. Laying down the relocation of the N201, reducing traffic pressure in Aalsmeer, and elaborating on the desired developments in the areas surrounding the relocated road. This document marks the start of the redevelopment nowadays known as 'Green Park Aalsmeer' (Figure 4.1).

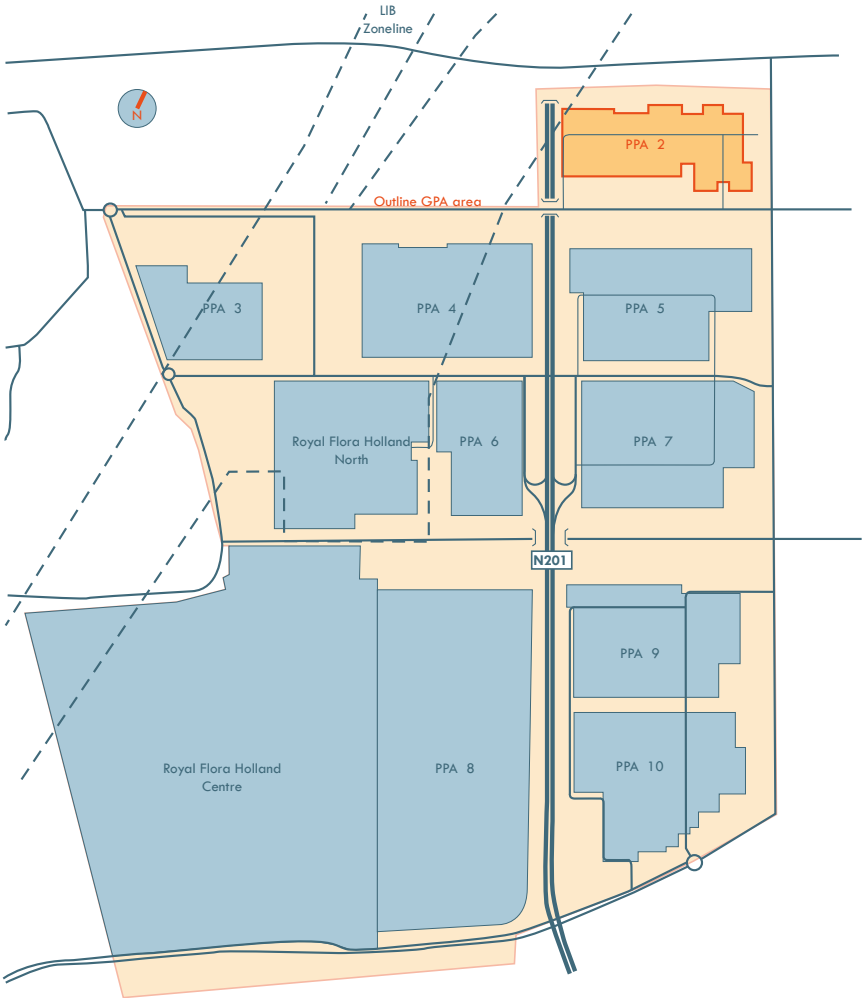


FIGURE 4.2 - THE DIFFERENT PARTIAL PLAN AREAS IN GPA. PPA2 MARKED ORANGE - ILLUSTRATION BY AUTHOR, ADAPTED FROM 2016 STRUCTUREVISION

In 2001 the intermunicipal areavision has been ratified by the same public parties through an administrative agreement. In the summer of 2004, the municipalities of Aalsmeer and Uithoorn agreed to the establishment of the intermunicipal collaboration entity GPAG (from the Dutch: Green Park Aalsmeer Gebiedsontwikkeling). The GPAG was mandated to implement the 2001 area vision. This led to the Masterplan Green Park Aalsmeer in 2005, and the first structurevision in 2011 – following the obligation thereto from the 2008 SPA. Redevelopment of the N201 commenced in 2006, and both the road and the Waterwolftunnel opened in 2013. The 2011 structurevision contained a paragraph on the cost recovery of the N201. Noteworthy difference between these two documents is the explicit shift from active to a more facilitative shift in land policy. The masterplan mentions active land acquisition by the GPAG, with a possibility to facilitating self-realisation, whereas the structurevision explicitly mentions that land use plans and land management plans will be drafted for each of the PPA's in GPA. Figure 4.2 shows the various partial plan areas, and PPA2 on the northside of the plan.

The 2011 structurevision however did not take into account the growing need for housing as the economy picked up from the 2008 financial crisis. To integrate this, in 2012 an addendum on housing was added to the structurevision. This addendum elaborated on the necessary studies, and laid out the possibilities for housing in the GPA. It was found that in PPA2 housing was possible, because it would not adversely affect future development options of businesses throughout GPA, and it fitted within the limitations imposed by the airport zoning decree (LIB). Where the 2011 structurevision had envision PPA2 a place for smaller local business, the more recent structurevision from 2016 integrates the need for housing and aims for spatial quality through a functional mixture.

The plans for PPA2 in GPA have changed a number of times throughout these periods. This section will go over these plans, from the GPAG's attempts to amicably acquire the lands in 2006, up to the final plans of self-realisation in 2016, which eventually failed in 2019, because of stricter limitations imposed by the 2018 update of the LIB.

The parties to the developments in the case and their interests in the area

There are a number of parties to this case. The redevelopment of the area is of interest to a number of public bodies, as has become clear from the plans dating from the start of the century. GPAG however, only has two distinct shareholders, namely the municipality of Aalsmeer and the municipality of Uithoorn, who both each have a 50% financial stake in the legal entity. Yet, the redevelopment of GPA takes place entirely within the borders of Aalsmeer. In other words, the public actors might seem to have the same interests, but Aalsmeer is the body that has a direct spatial interest, and arguably has more long-lasting interests in the types of developments taking place. GPAG in this is its own organisation, acting on a mandate shared by both municipalities.

Within PPA2 there are three private owners, who will be anonymously mentioned under owner A, B and C. Each have a specific interest in the area, owner A uses the old greenhouses on his land to provide 'illegal' parking places for Schiphol goers. B acquired the land speculatively when the former horticulturist seized business around 2015, and C owns a thriving supermarket, which has been realized in an old warehouse since somewhere in the 50's. The division of landownership is as follows:

Owner	Plotsize
Owner A	20.853 m^2
Owner B	5.000 m^2
Owner C	9.379 m^2
Mun. Aalsmeer	1.171 m^2

TABLE 4.1 - LANDOWNERSHIP IN THE PPA2 CASE

Finally, for this case also the developing contractor Thunnissen is a party. They had won the 2018 market selection, and were supposed to integrally develop the private parts of the development.

The intended development

The original plan was for GPAG to amicably acquire the plan area. After these attempts to amicable acquisition have failed in 2006, owner A started to make plans for self-realisation. The first plans stem from the end of 2008, when a principled request (Dutch: Principeverzoek) was made for municipal cooperation to make possible the realization of a selfcare and leisure centre. GPAG deferred the landowners to the municipality, who in the beginning of 2010 deferred the landowners back to GPAG, whilst permitting GPAG to investigate the potential of the leisure-plan with the landowners. The 2011 structurevision says little more about PPA2 then that it should contain local businesses related to horticulture or other forms of businesses, as long as the business does not negatively impact the environment. Yet at the end of 2011, when the Netherlands was climbing out of its financial recession, the need for housing grew steeply – and with it its potential for the creation of economic value. The LIB-zones stringently rule over the entirety of the GPAG area, but with the 2012 addendum (Dutch: Oplegnotitie) to the structure vision on housing, the economic potential that could be created became all the more tangible. However, it still took some time before the economy took on. The financial manager of the GPAG, Mr. Hoogmoed, said about the period 2012 – 2016 "Everywhere businesses went bankrupt. We have had land for years, but no one came to buy, no one wanted anything. The economy was simply bust."

Nevertheless, efforts towards restructuring continued, and in 2016 a new structurevision has been published for the entirety of Green Park Aalsmeer, in which each separate plan area has its paragraph regarding its planning intent. Plan area 2 is portraited as a local mosaic of functions, mixing local businesses with housing (Figure 4.3). Although the private plans to PPA2 have evolved over time, Figure 4.4 shows the residential developments as intended by the owners, which again was the result in 2018 of multiple years of negotiating. Conversations, which started up in around 2015, between GPAG and the three owners, in a collaborative effort to find a feasible plan for the area. Feasible financially, for the owners and GPAG, and also societally, in that it needed to provide an infill for the public policy goals, then last endorsed in the 2016 structurevision.

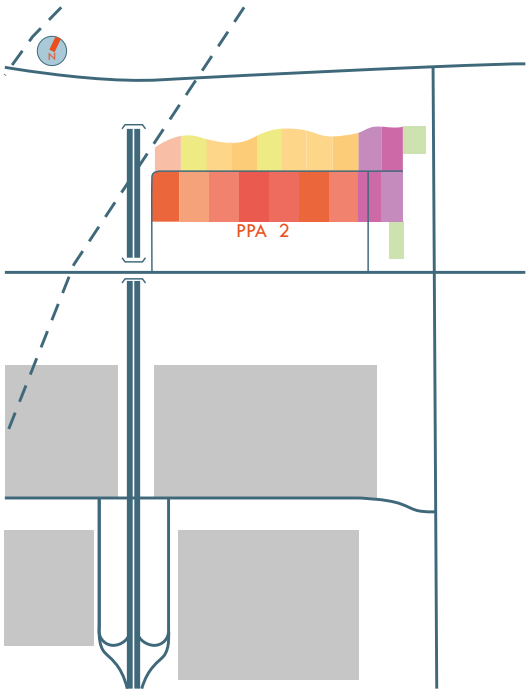


Figure 4.3 - Desired local mosaic as expressed in the 2016 structure vision - illustration adapted by autyhor

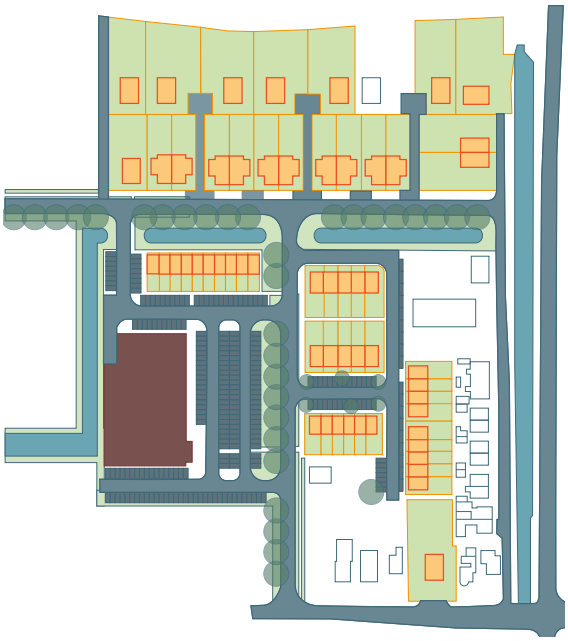


Figure 4.4 - The intended residential developments - illustration by author, adapted from original by GPAG

4.1.2. The process and contents of creating and capturing value

The negotiatory process

Throughout the timeline of the PPA2 development, two distinct cycles of negotiation towards an infill with a private law agreement can be discerned within the scope of the case study. The first cycle started with the rejection of the amicable offer by owner A, and his intention and claim towards self-realisation. Expropriation efforts were never really an option to GPAG, but with owner A being both willing and able to develop and operate, this marked a (somewhat forced) shift from a more active mode of land policy by GPAG to a more facilitative one. Some time passed between the 2008 principled request and the moment GPAG gained the mandate to join the investigation into the wellness centre, and by that time the starting economic crisis overtook the financial feasibility of the plan. Mr. Hoogmoed said about this: "In the end, it turned out that those who were supposed to rent it were not there, so then the financial mandate was lost".

The second cycle of negotiation started around 2015, after a period of lean years. Although it is difficult to pinpoint who exactly took the initiative, and when this took place, it is clear that owners A & B had a strong initiatory role. The need for housing was on the rise, and this was the most profitable development at that time. However, the public had desires for the PPA2 as well, as mandated by the 2011 and later 2016 structure vision. The semi-illegal Schiphol parking had to seize, the rundown greenhouses had to be demolished and the land remediated, and the warehouse supermarket needed to be moved into a qualitative building. And, beyond these desired towards PPA2, GPAG also had to exact an, arguably sizeable, contribution from the PPA2 developments towards the development pf the entire GPA. All-in-all, GPAG had a strong -mandated- interests in collaborating with the private owners towards a profitable development. The director of GPAG, Mr. Van der Harst, says about the process of integrating goals in the marketselection: "it also had to be, well, reasonably financially neutral, didn't it? So, in other words, they [all parties] had high expectations, so a lot of revenue had to be generated. Well, then we [GPAG] helped them with a tender for a housing plan."

These plans grew slowly over the years. Parties came together on a monthly basis, but through the many interests involved it is hardly a speedy or smooth process. Mr. hoogmoed: "Then we have to draw again, and then we have to think again, and then the municipality has to think again whether they want this plan." "So that game, between earning potential, costs that you want to recover, and what will be left for the landowners, that's actually what it's been about for 15 years." And although both parties have a strong interest towards redevelopment, it is important that their respective goals are met too. Mr. Hoogmoed: "Everything is negotiable in practice. The point is, is it balanced, is the total something of which the municipality says, I have achieved my policy goals, … … and the market party has to feel the 'I'm getting a reasonable plus on my value, because otherwise I'll just stay put'". Eventually, these collaborative efforts led to the plan shown in Figure 4.4, of which all parties agreed to put it to market through the private-led market-selection.

The creation and realisation of value

Value is created in one of four ways, as discussed in chapter 3. In regard to this case, value creation would occur at the changing of the land use plan, to make possible the desired developments. However, the first documents indicating a possible change of land use plan date back to 2000, when an intermunicipal area vision was drafted, and furthermore the 2005 masterplan and the 2011 and 2016 structurevisions. These documents, in providing a spatial mandate, outline the potential to value creation. Yet, the private landowners only moved towards development initiatives after the failed public attempts towards amicable acquisition and after it became clear the public would seek out ways to have the Schiphol parking seize. It would suggest however, that

insufficient research has been conducted into the private interests prior to these attempts, leading to an inability to effectively capitalize on the created value potential through active acquisition.

Taking the length of the negotiatory process into account, it can be argued that the private initiatives from 2006 onward, had to first overcome an institution of already elaborated plans. It took the municipality a good year to approve the GPAG to investigate the 2008 private proposition, and even from thereon onward there have been a lot of movement to-and-fro between private and public, through the GPAG. The various moments of collaborative efforts did lead to a potential for value creation, but the negatively trending economic conjuncture overtook the earlier plans and those efforts have not led to a private law agreement containing any substantial (realisable) spatial plans.

The 2012 addendum to the 2011 structurevision, and subsequentially the 2016 structurevision have provided and consolidated potentially including housing in GPA. This can be understood to lead to an economic value to private initiatives. A value capitalized on through the integral housing plan and the plans of a private market selection. However, here too reservations were in place, for which the 2016 structurevision already warned, cautioning for the executive power municipalities would gain through the new 2018 LIB, namely to more sharply impose restrictions if the municipality would deem it necessary in relation to the aviation zones (which would indeed in the end lead to the inability of realising the residential plan). From the 2016 structurevision onward, GPAG and the private owners worked together towards giving shape to the developments.

At the proverbial end of the negotiations, that is to say, at the moment that all parties agree to put the programme to market through the private-led market selection, it was calculated that the programme would allow for an achievement of all goals. The planned housing would provide enough value to pay the landowners for seizing their current business, to demolish and sanitize the lands, to relocate the supermarket, to pay for the public infrastructure within PPA2 and to contribute to the overarching GREX of GPAG with the development contribution.

The (agreed upon) methods of value Capture

In the case of PPA2 it is difficult to discern a method of value capturing that is agreed to, especially considering the (forced) shift from active to facilitative land policy with regards to the case. The entire GPA development is based on, and kickstarted by, the public investments in the rerouting of the N201, the Waterwolftunnel and the related policy documents. The GPA development started as a public realization, and although the 2002 administrative agreement voiced a preference for a public-private partnership, a public land management company was set up in 2004 (GPAG). With such a form of active land policy, it is possible to internally equalize profitable developments with less profitable functions, and the GPAG would also inherently enjoy any rise in value that could occur over time – for as far as she was already in possession of the lands. This was not the case for all land plots, although pre-emption rights (Dutch: Voorkeursrecht) had been established for the entire GPA area in 2002.

Between 2006 and 2008 GPAG made an effort to amicably acquire the lands in PA2. This failed, and landowner A made a claim to self-realisation; for which the first plans were submitted in 2008, as part of a principled request to municipal collaboration. This entailed a (forced) shift in regards to value capturing instruments, insofar that (according to the then recent SPA) only a developer's contribution through a land management plan or through an anterior agreement remained a possibility. As either of these arguably offer less financial certainty for GPAG, the public execution body has an interest in collaborating with the private landowners. This collaboration started in 2010, after GPAG had gained municipal authority to investigate the potential of the initial plans submitted by landowner A. The intention to look for a shared solution was formalized in the summer of that year;

however, the plans thereafter quickly lost their grounding as the economic conjuncture overtook the financial feasibility of the plan. With no financial fuel, the plans were put aside, and little happened until around 2015, when talks started up again.

By 2018, negotiations were coming to a close, and the two other landowners (B&C) had joined the conversations about redevelopment around 2015. More integral parcellation studies had been discussed, and the plan for a market-led multi negotiated tender procedure had been adopted. In this, the developer's contribution had already been determined through negotiations between GPAG and the various landowners, just as the general quality of the public space had already been determined in the tender documents. The tender would then consist out of two rounds; the first round selecting 3 out of ten bidding parties based on the highest bids. The bid would cover 1) the acquisition of the land from the landowners, 2) the developer's fee to GPAG and 3) the realization of the public space in the plan area. In the second selection round, parcelling optimization was allowed as the remaining market parties were required to provide their own parcelling plan and selection in this round was based on quality as well as price. The winning party would enter into a largely predefined anterior agreement with the municipality, and would only receive and pay for the land if 70% of the plan would be sold and the new land use plan would be irrevocable. Minimizing both development risk and public uncertainty this made it possible for the developing parties to minimize the profit/risk ratio, and maximize their bid in the market competition. As the director of Thunnissen, Mr. van Drongelen said about this: "which allows you as a developer to simply generate a high higher bid, because all the risks have been filtered out along the way. That's how we approached it, so we put in a fairly high bid."

Through this procedure, each party stood to gain from the result of process. The market was incentivized to optimize on integral quality as well as costs. The profits for the landowners were residual, as the developer's contribution was deducted from the bids in its determination. The financial risk was on the part of the owners, but they also stood to gain the most. Meanwhile GPAG had (relative) certainty to the coverage of the developer's contribution, whilst maintaining a baseline spatial quality. The final bid was 26% higher than what GPAG and the landowners had calculated; suggesting a useful effect when it comes to deploying private-led market selection instruments whilst integrally including the proverbial sour of the development contributions, at least in the booming 2018 economic context.

In relation to cost recovery as defined by the spatial planning act, this means that the contribution exacted through the anterior agreement manages to cover expenditures related to the entire GPA area. Presumably even more effectively that would have been possible through a land management plan, as the anterior agreement less heavily depends on the application of the PPT criteria, and the market selection instrument has arguably got the most out of the market. Synergy through an interplay of value creation and value capture arguably occurred through incentivizing market parties to find optimisations of the programme, leading to an increased bid, achieved objectives, and relative financial certainty. However, no anti-speculative measures seem to have been incorporated in the agreement, insofar that the value of the contribution was set and would not be influenced by a rise or decline in future value of the development. Mr. Hoogmoed notes this to be a theoretical endeavour and sharply disagrees to the use of such stipulations, because the opposite of the argument doesn't hold either: "If it goes down... Is someone going to pay back the entrepreneur or something? I've never heard of that. So that would be a very strange mechanism, I think. At some point you fix something, and that's it."

Additional value through synergy

Mr. Hoogmoed: "It starts with the landowners who want the highest possible price for their land. For that, they need a change of the land use plan, and for that they need the municipality." At the same time, Mr.

Hoogmoed notes, GPAG is working towards giving infill to their mandated policy ambitions, which had to be achieved at least financially neutral – "So, [in a sense,] both parties are looking to optimise the land value or their interests." Synergy occurred at the interface of the interdependent interests of the parties involved. Although the development and negotiation cycle nearly covers two decades, in the end, it was through the process itself that potential value was created. Parties worked together because it was in their mutual interest to do so, and the integral solution set out to the market would not have been possible without the collaboration of multiple private parties with GPAG. The solution put to market had additional value compared to the original plans because it grew over time in order to meet the prevailing ambitions and policy goals. In all this, the transaction cost might theoretically be high because of the length of the process, but in the end, the profits made would cover this sufficiently.

4.1.3. The outcome of the process

The resulting development & The achievement of goals

Unfortunately, the new LIB and Schiphol prevented the development as intended to go through. In accordance with the 2016 municipal vision, there was every intention from the municipality of Aalsmeer to cooperate with the planning procedures, but the political context had shifted to much over time in relation to the airport. At the one side, the municipality being in conflict with the airport for their nuisances, and at the other side wanting to realize more housing surrounding the airport. The new LIB provided the municipality with the option to make a broader contextual deliberation towards the development, leading to a loss of political support for the housing project in the proposed form, in fear of a weaker negotiating position towards the airport.

That being said, at the end of the market consultation, all parties and their interests had aligned, and everyone was ready to sign the deal. A deal which would mark the start of the planning procedure and would allow for the achievement of all goals, both spatially as well as financially.

Reflecting on the use of a private-law instrument

In comparison to the original more active mode of land policy, the main counterargument to the use of the facilitative track is that it was lengthy. Although area development always takes a lot of time, especially in complex developments such as GPA. This might be construed as disadvantageous, because it hindered a speedy development, or as advantageous, because it protected the GPAG from a sizable purchase just prior to the economic crisis. Mr. Hoogmoed mentions that these processes simply are sensitive to the conjunctural cycle, and that the (in this case semi-forced) deploy of facilitative track is simply another precondition to the negotiations. Expropriation did not fall within GPAG's mandate, but even if it did, it would have been very costly even to only expropriate the supermarket, as it was well run. The private-law framework in which the negotiations took place might have taken a long time, but it allowed for a collaborative process of calculating-and-drawing, to a point where all parties were satisfied with the result. In these negotiations, GPAG had their cost recovery budgets as a mission target, just as the policy goals that were ought to be met. And although 'everything is open to negotiations', it was in the interest of all parties to find a solution that was satisfactory to everyone, as to not end up holding each other (proverbially) hostage.

GPAG is operationally distanced from the political cycle. It's mandate is to realise the objectives from the various policy documents through time and the task to do so in a financially sound manner. The combination of a private law agreement with the municipality through the proxy of this intermunicipal entity seems to be an effective in that it can do so through either a land management plan, anterior agreements or active acquisition. It has its own GREX which lays at the basis for the negotiations within the various PPA's. In the negotiations it had a target budget for direct PPA-related costs (in-plan) and more generic

GPA related costs (above-area). GPAG seemed to be effectively capable of achieving its spatial and financial objectives through the negotiations towards a private law agreement in PPA2. It effectively would capture value that would have been created through the change of the land use plan in order to pay for the public objectives, but also managed to influence the programme in such a way that it contributed to those goals.

As Mr. Hoogmoed stated, the potential to value creation would've been fixed at a point in time through the anterior agreement. No attempts were made to capture future value increase, and in the interview the question was raised as to the legitimacy or desirability of such a proposition would it have been imposed. Furthermore, the private-led market consultation was a collaboratively sprouted initiative, with certainty for GPAG, and risk, but also potential reward for the private owners. With the second selection round not only selecting on price, but also on quality, the market consultation ended up also substantively being beneficial for both public and private party.

4.1.4. Accountability to the case information

For this case the three people listed in the table below have been interviewed; explicit consent has been given to cite their names. Unfortunately, it was not possible to interview any of the previous landowners, nor the project leader from the municipality. This would have been of added value to gain additional insight in the extent in which those parties perceived the process as a success, as well as provide insight in the political relation between the municipality. However, with these three interviewees, and through a synthesis of policy and project documents, it is contended that the case has been sufficiently reconstructed, and its characteristics, as well as the various value capturing mechanisms have become clear.

Furthermore, for this case a number of project and policy documents and publications have been analysed:

2000; (summary of) Intermunicipal area vision (Document itself no longer available)
2001; (summary of) Administration agreement N201+ (Document itself not available)
2005; Masterplan Green Park Aalsmeer
2009; Area Vision Aalsmeer
2010; Intention agreement care and leisure cluster
2011; Structurevision 'Green Park Aalsmeer'
2012; 'Oplegnotitie wonen'
2016; Structurevision 'Green Park Aalsmeer'
2018; Market selection document
2018; 'Concept Samenwerkingsovereenkomst'

#	Name	Function / relation to the case
1	Henk Hoogmoed	Financial Manager GPAG
2	Dick van der Harst	Director GPAG
3	Roel van Drongelen	Director of winning market party.

Table 4.2 - Interviewees to the case of PPA2

4.2. The estates of GGz centraal in Ermelo

Abstract to the case

GGz Centraal (GGZC) is a mental health care organisation, that has had to undergo a shift in their real estate strategy, because of a shift in the way mental health care is provided throughout the country. As a result of this, their real estate and primary processes were no longer aligned. In Ermelo GGZC is, in phases, divesting a large part of their estates, in part to fund the development of future proof care facilities on the southwest corner of the remaining estates. The divested lands are to be residentially redeveloped by external developers who are sought through a competitive market selection, where market parties are incentivized to maximize on price, and also think about substance. Two different parts can be discerned: Hooge Riet (East of the train station), and Veldwijk (west). For both parts, GGZC has negotiated extensively with the municipality about the development plans prior to the moment of sale, increasing substantive certainty for all parties involved. But in case of the Hooge Riet the market party still had to close the anterior agreement with the municipality, whereas in the case of the Veldwijk estates, this agreement had been made between the municipality and GGZC, and will be attached to the sale of the land as a precondition. In both cases, the private-law process to the anterior agreement had been cleverly designed in order to increase substantive certainty for the municipality and GGZC, and subsequentially reduce development uncertainty for the market party, in effect influencing market forces, and allowing market parties to maximize their bids. All in all, value capturing has taken place through agreed-to contributions in the anterior agreement, but in anticipation of the market-selection, comprehensive agreements have been made about the quality of the plan. Furthermore, the operational responsibility of the procurement of the realization of public space has been transferred to the developer, reducing the municipality's risk of facing a rise in realization costs. A clever approach, nigh solely possible because of the form-freeness of the anterior process.

(Veldwijk Villa, 2022)

4.2.1. Introducing the case of the mental care institution

GGz Centaal (GGZC) is a specialistic mental health care organisation spread throughout the central parts of the Netherlands. In some areas, they own significant areas of land and real estate, where they facilitate long stay care. Such is also the case in the municipality of Ermelo. However, due to developments in the way care is organized and transition to ambulant care, GGZC had been forced to concentrate their primary processes on a smaller part of their estate, and rethink the way their estate was organised. This case focusses on the redevelopments of GGZC within the municipality of Ermelo, and covers two distinct, yet intertwined anterior agreements: The sale and redevelopment of Hooge Riet and Veldwijk. For development in both cases, private tendering is used to entice the market to maximize on price and substance, however in the case of the Hooge Riet, the anterior agreement had been signed after the sale, whereas the anterior agreement in case of Veldwijk had been signed prior to any marketselection.

Situating the case in time and place

In 1884 the Association for the Christian Care of the Mentally Ill and Nervous Diseases was founded on the Veldwijk estate, located north of the city centre of Ermelo. The Hooge Riet was opened on the other side of the train station in 1939. GGZC as a single organisation throughout the centre of the Netherlands only saw the light in 2011, but sprouting from a collection of smaller organisations, they own all land and real estate on the care-estates shown in Figure 4.5.

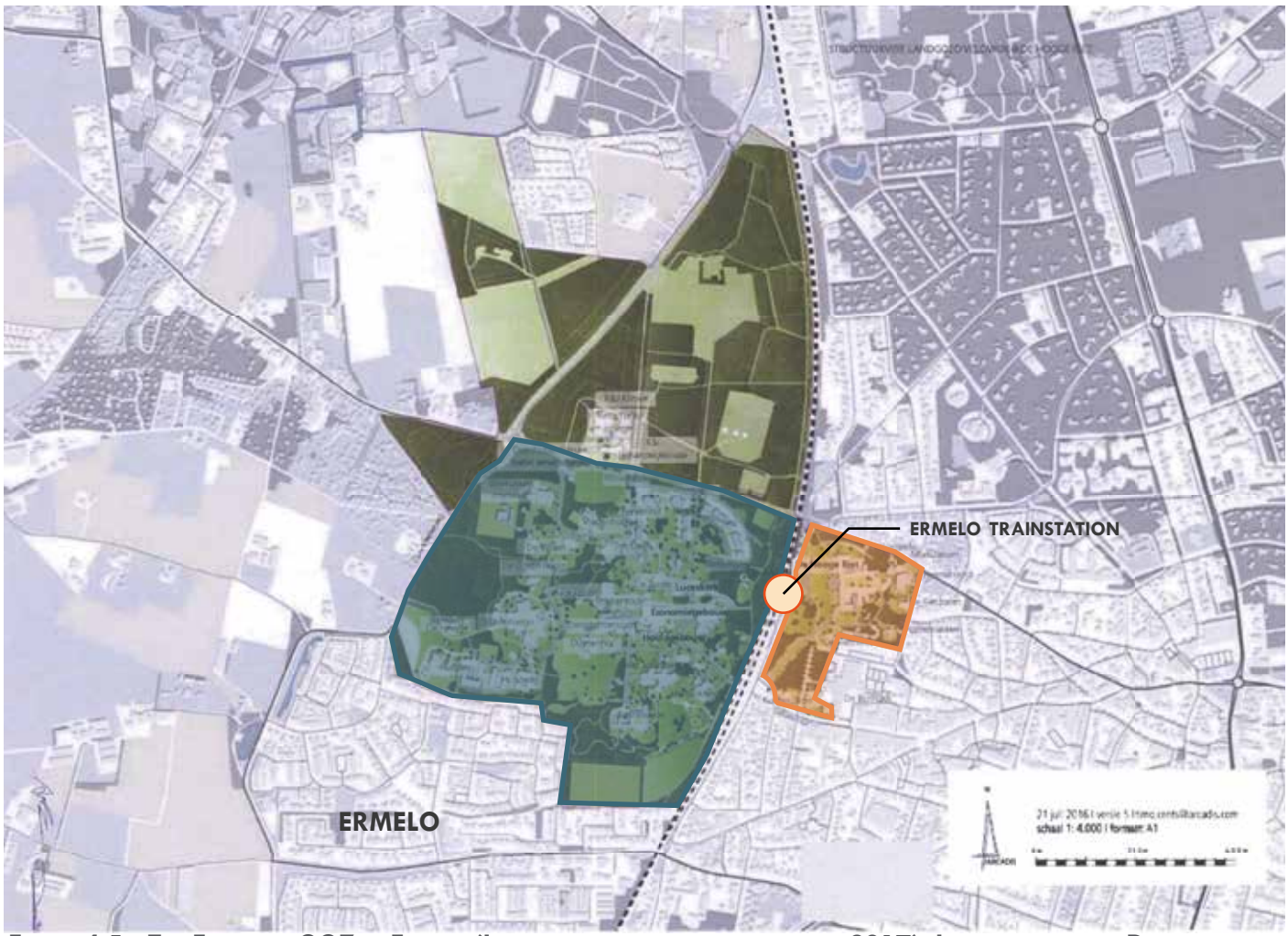


Figure 4.5 - The Estate of GGZ in Ermelo (Illustration from structurevision 2017). Indicated in blue: Developments Veldwijk, in orange: Developments Hooge Riet

The past decades, through political changes and the decentralisation of care the way care is provided on the GGZC estates in Ermelo has changed. Different types of care are provided than a century ago and it is provided at the patients home more often. Together with some of the buildings on the estate being outdated, this leads to a necessary clustering of care within the estate, vacancy and unused buildings elsewhere and therewith an inherent potential for redevelopment, and also GGZC's desire to do so.

The parties to the developments in the case

In effect, there are two parties at the heart of this case. GGZC and the municipality of Ermelo. The prior owns all land positions, but does not necessarily have use for these in the future. The latter holds no ownership in the area, but is a necessary partner to GGZC, because the prevailing land use plans, dating from 2013, offer no regulatory space for the intended development. At the same time, Ermelo, just as arguably all other Dutch municipalities struggles with the current housing challenges, and therein thus sees a potential for collaboration with GGZC.

Because GGZC is a large organisation, the ownership of lands and real estate is facilitative of the primary processes of the care organisation. It is however relevant to realize that within this case, because GGZC wants to realign their estate with their primary processes, it is their intention to part with most of this land, and mobilize the incomes therefrom towards the financing of the redevelopments of the care facilities on the southwestern part of their lands. This is relevant, as it is not GGZ's intention to retain these lands, and the intended income manifests itself in lump-sums. In other words, their interests towards the development remain relatively decoupled from the interests stemming from their primary processes.

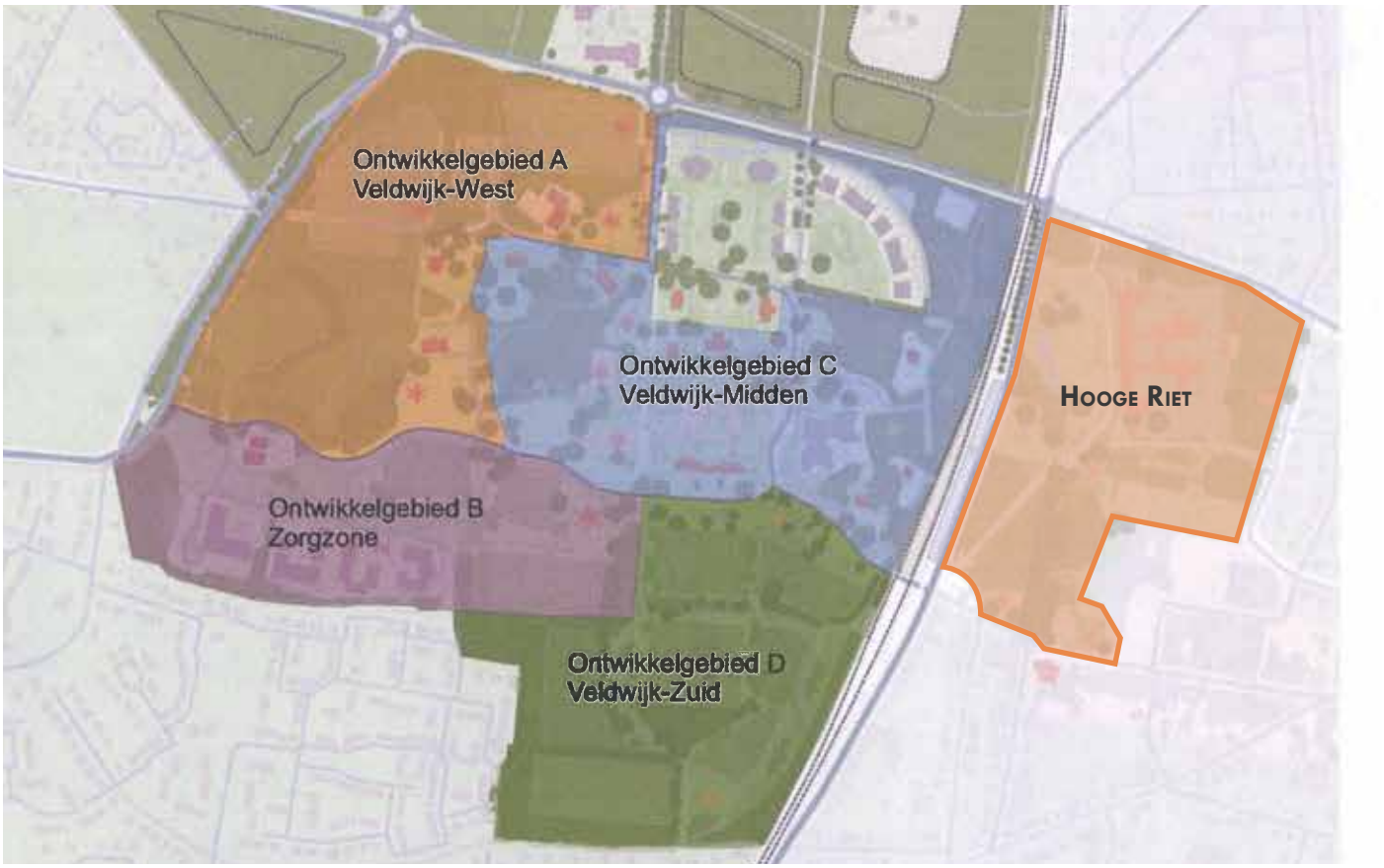


Figure 4.6 - The Intended development areas (illustration from masterplan 2019)

Although not entirely, as GGZC remains in Ermelo as a large organisation after the redevelopments, and in its relation with the municipality and the inhabitants might implicitly be held accountable for the resulting quality of the development.

In case of the Hooge Riet, the estates have already been sold to Heijmans, and this developing contractor is a third party to this part of the case. Heijmans has been selected through a market selection, in which price and creativity were primary selection criteria.

The intended development is shown in Figure 4.6. Development cluster B is where GGZC will concentrate and intensify their primary businesses. Hooge Riet has been, and cluster A, C & D will be sold for the purpose of residential development. However, the processes to these sales differ. In the case of the Hooge Riet, the land is sold prior to the signing of the anterior agreement, which is signed between the developer, GGZC and the municipality. For the clusters A, C & D, an anterior agreement is signed between GGZC and the municipality, outlining future designation, space and spatial quality, but the clusters are then put to market as a tender with the anterior agreement being inseparably coupled to the sale. This process is shown in Figure 4.7.

4.2.2. The process and contents of creating and capturing value

The negotiatory process

What stands out from the process outlined in Figure 4.7, is the position of the two anterior agreements in relation to the respective moment of sale. In the case of the Veldwijk estates, an elaborate masterplan is drawn up to precisely outline the bandwidth of public and private development ambitions prior to the sale – almost a bidbook, as it were -, whereas in the case of the Hooge Riet, there was still room for negotiation after the sale as the developing party would come into play prior to a fixation of such ambitions in an anterior agreement. GGZC in no case intends to act as a residential developer, but did enter into extensive negotiations with the municipality about the potential futures of both areas. Instinctively, it would seem a speedy sale is in the interest of GGZC, as they stand to make the capital necessary for their intended spatial reorganisation, however, from the start of the process GGZC has expressed to not be in a rush. Sale is not a necessity because of troublesome liquidities, but is a question of strategic portfolio management. Furthermore, with the redevelopment of cluster B, they also remain part of Ermelo after all redevelopments conclude. Integral development offers GGZC thus not only potential additional profit, but also allows them to exert influence on the spatial infill, and to ensure they remain a 'good neighbour'. The municipality also has a socio-economic interest

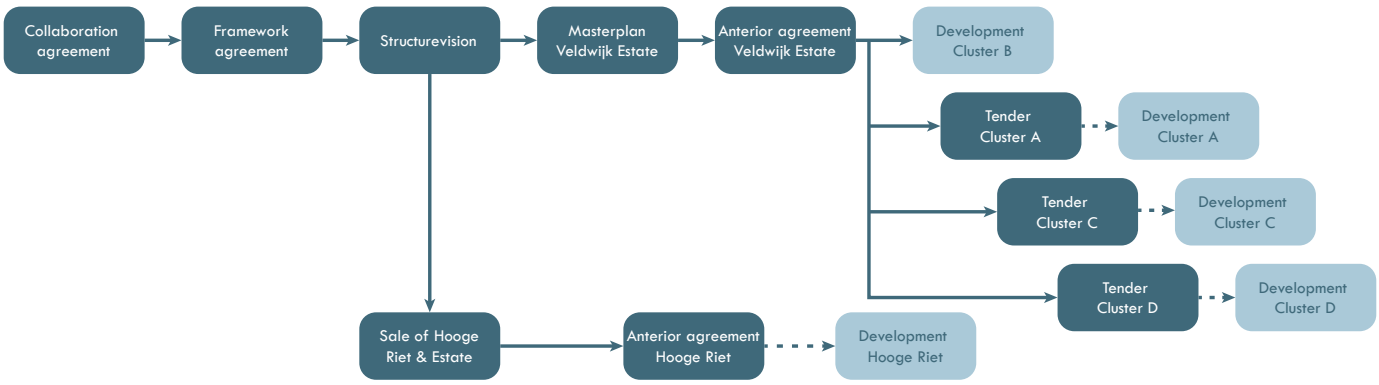


Figure 4.7 - Implementation process of total redevelopment - illustration by author

in the redevelopment, as residential development falls within the housing challenge that Ermelo too, faces – mentions of which predate the negotiations, in for example the municipality's 2012 structure vision. Ermelo however also has a strong interest in a development process that is as integral as possible, as opposed to fragmented sale and development of the estate, as such an integrated development would decrease transaction costs and increase the potential for spatial quality.

First discussions between the municipality and GGZC about the possible redevelopment of the estates date back to 2015. This was in a time where the relations were somewhat tense. National politics just changed the centralized regulatory landscape on mental healthcare, and GGZC had attracted a director of real estate in order to strategically outline the future of its portfolio. The mere fact that change was imminent clouded conversations, as there could be a possibility that GGZC would move away from Ermelo and the many citizens who worked at the estate would become without a job. To counter this veil and get a better understanding of each other's underlying interests, there was a 'session on the heath' in that same year. From hereon it became clear that GGZC had no interest in leaving, but that it did have to change, but that this need not be a bad thing, as with the change plenty of opportunity would arise – both in new jobs as well as in development potential. It was from this moment that positional negotiation changed to a principled, value-based form, and the two parties started to collaborate on a possible infill to the development: A number of programmatic and environmental studies were conducted, the public was informed frequently, and also some participatory events were held between 2015 and 2017. The progression of the collaboration was documented and consolidated in a collaboration agreement in 2015 and culminated in 2017 in the structurevision on both estates, a news publication of the intention to sell the Hooge Riet, a document on the quality of public space of the Veldwijk estate, and a framework agreement perpetuating the mutual intentions and ambitions on the entire redevelopment. The structurevision was adopted by council in 2018, and in the end of that year the Hooge Riet and its estates were sold to Heijmans.

In case of the Hooge Riet, the redevelopment of the monumental real estate as well as the (obligation to publicly tender the public space) was put to market integrally, with the structurevision as a basis to the selection. Market parties had a relatively broad creative freedom and Heijmans was rewarded the development because of both the bid, as well as the creative infill – "finishing the symmetricity of the monument". However, because no public law framework or private law agreement had been finished yet, Heijmans still had to negotiate with the municipality on the details of precise spatial infill. A process that was not entirely coordinated by the public, as Mr. Sinte Maartensdijk, the developer from Heijmans, argues "In the beginning, you notice that there was not one person in charge within the municipality" leading to an array of, sometimes even contradicting desires: "everyone comes with their own wish list, which sometimes diametrically oppose each other and are not aligned". However, a mutual interdependency remained, as Heijmans had the resolutory condition of land use plan irrevocability to the agreement of sale. In other words, both Heijmans and the municipality, as well as GGZC, had an interest in finding a mutually acceptable solution. Mr. Sinte Maartensdijk: "If finally, you do manage to talk to each other, and that happened a bit more during the course of the project, things went much better".

In the case of Veldwijk, the 2021 anterior agreement to this part of the estate plays an entirely different role to the upcoming sales procedures. A similar resolutory condition is integrated (establishment, not irrevocability of the land use plan), however, the 2019 masterplan to Veldwijk is inseparably attached to the anterior agreement, the statues of which itself are transferred to whichever market party ends up purchasing, as a precondition to the sale. Mr. Uil, project manager to the development plans of

GGZC explains why: "You often see that the public conditions to development are not clear yet and that a municipality or a private individual puts it on the market, just to have the market make an offer. Under what conditions? That often remains vague. So, what can a tendering party expect? What does he get and what doesn't he get? And if that remains open, then it is apparently a point for negotiation or elaboration at a later stage. And you don't want that because, well, the plan has to be worked out, but a number of points have to be fixed" Of course this means that the effort to acquiring clarity to the public law framework for the development lies with GGZC as the selling party and the municipality. But in order to achieve the integral development sought for, it is easier for the municipality to deal with a single party – which also allows for a learning process over the various development clusters.

The creation and realization of new value

In a technical sense, additional value is created at the moment the land use plan designation is changed from 'societal' to 'residential'. Value that can be capitalized through the realisation and sale of dwellings. For the Hooge Riet the consolidation of this value occurred through the new land use plan, adopted in 2021, following the anterior agreement signed between the developer, the municipality and GGZC at the end of 2020.

The potential for this value creation however, predates the anterior agreement back to around 2015, when there was a first (closed door) meeting between GGZC and the municipality. Between 2015 and 2021 there have been numerous news articles on the website of GGZC about the future developments, the first one five days after this private meeting, elaborating on how potential futures for the estate will be investigated. News articles were followed by an informational 'brainstorm meeting' with the inhabitants of the municipality, and subsequentially the signing of a collaboration agreement between the municipality and GGZC. The framework agreement was signed in 2017 and in 2018 the area specific structure vision (Estate Veldwijk & Hooge Riet) was adopted. The intention to part with Hooge Riet was first published in the summer of 2017, just after the final draft of the structure vision had been finished and sent to the municipal council. The sale of the Hooge Riet did not occur until the end of 2018, after which the private developer and the municipality continued to collaborate on finalized urban and spatial plans. All in all, the value that was created for the Hooge Riet with the adoption of the 2021 land use plan, sprouted in the form of potential value six years earlier, and its tangibility slowly accrued over time, through the continuous effort towards a goal embodying the various interests of both parties.

The sale of the lands to the developer could be dubbed as a speculative purchase by the developer, as value has not yet actually been created. However, the measure of certainty that was inherent through the preluding process, together with the resolutory condition of land use plan irrevocability provided enough certainty to outweigh the acquisition and development risks. In a sense, it could be argued that there was a tangible economic value to the level of potential value, valid enough for market parties to be interested in taking the investments risks. It is in large part this same value potential that led to the plans for the other development clusters, located on the Veldwijk estates, but with one additional step, namely to close the anterior agreement between the municipality and GGZC prior to the selection of market parties. Reducing development uncertainty for market parties, as well as increasing substantive certainty for GGZC and the municipality. The obligations of the anterior agreement, as a private-law agreement, can be transferred to a third party, although this is generally prohibited through the articles of the such an agreement.

The anterior agreement signed between GGZC and the municipality of Ermelo in 2021 regarding the Veldwijk estate is more voluminous that the one regarding the Hooge Riet. This is because it integrates an obligation for the eventual developer to a) realise

the public space according to the standard of certain specifications, which are precisely documented in an appended programme of requirements regarding civil works – including the obligation to follow the municipal procurement procedures where relevant, b) to sell and transfer this to the municipality after realisation (see also Figure 4.8), and also because the anterior agreement has development cluster specific parts, next to a more general part pertaining to the entire estate.

This construction of integrating developer obligations does a number of things. It creates a high level of certainty for future contesting market parties, as they place a bid on a businesscase that is already thought through to a high level of detail. GGZC has a high level of certainty in regard to the complete sale of both 'sweet and sour' parts of their estate. For the municipality it entails a higher level of certainty when it comes to the level of integration throughout the development, and the quality of the public space, but there is also a risk involved, as both the responsibility to realize public value as well as to properly put that task to market is put in the hands of a private party, through an agreement made with another (semi-) private party (GGZC is a semi-public organisation). That being said, this risk is managed contractually, i.a., by a resolutory condition releasing the municipality of the obligation to purchase the public space should it not meet the requirements laid out in the programme of requirements regarding the civil works, which is an appendix to the anterior agreement.

The inherent methods of value capturing

By embedding the task to realise the public space to the respective market parties, the value created (Hooge Riet) or to be created (Veldwijk) by the changing the land use plan, the proverbial sweet and sour are integrated within a single party (per cluster). Moreover, through the anterior agreement, developer contributions are exacted from the respective developers, to compensate the municipality for their efforts over time. In relation to cost recovery as defined by the spatial planning act, this means that the contribution exacted through the anterior agreement covers the planning costs of the municipality. Cost recovery for infrastructure investments is not needed, as the operational responsibility to realise these are shifted to the developer. Other theoretical forms of value creation are through the realisation of infrastructure or general economic trends. Of which the prior is not directly applicable, as the realized infrastructure within the plan area only facilitates the functions of the plan. Some (semi-) anti-speculative measures have been agreed to through the AA's, but this predominantly relates to the developer's responsibility for the support from the general public in regard to land-use plan irrevocability on the Veldwijk estates, or the possibility to integrate changes to procurement procedures should legislation require this. The last form of value creation does not seem to have a position in the anterior agreements; agreed to prices are mentioned as fixed numbers, and not coupled with the market prices at time of the value's realisation.

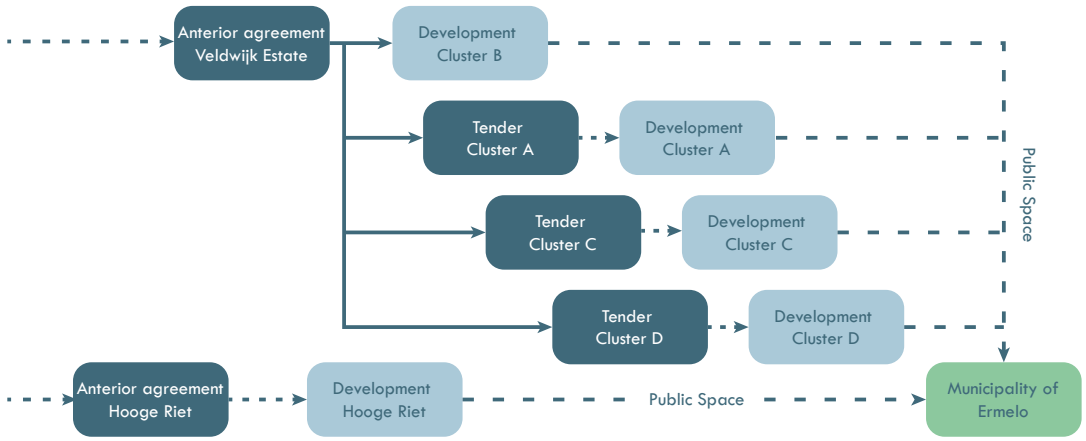


FIGURE 4.8 - TRANSFER OF PUBLIC SPACE TO THE MUNICIPALITY - ILLUSTRATION BY AUTHOR

Additional value through synergy

There are no single identifiable parts to the development that can be circled out as the parts that have been created, or only could have been created because of the synergy between parties. Nevertheless, the term 'synergy' can be used for the development as whole. Predominantly after the 'heath-session' in 2015, the collaboration between municipality and GGZC had been geared towards the continuation of the development through the eyes of their mutual interests, that this is perceived as synergetic by both GGZC as well as the municipality for both the development of Veldwijk as well as Hooge Riet. Mr. Sinte Maartensdijk (Heijmans), had a role in the development of Hooge Riet and, as a tendered developer, was more distanced from the synergetic collaboration of the other two parties. He expresses that there was a constructive collaboration between Heijmans as developer with the municipality as well as GGZC, but he would not dub it as a form of synergy.

4.2.3. The outcome of the process

The resulting development and the achievement of goals

For GGZC the main goal of the redevelopment has been to reorganize their estates in Ermelo, concentrating their care on a part of their land and divesting the other parts in order to generate income to finance the prior part. For the municipality the development of housing is important, but of almost equal importance is the quality of the development and the retainment of a certain level of character. Both with the sale and redevelopment of Hooge Riet, as well as with the signing of the Anterior Agreement towards the sale and redevelopment of Veldwijk the goals of both parties have been intricately integrated. Hooge Riet is currently undergoing redevelopment, and the sales procedure for development cluster A is about to commence. The municipality has had intricate opportunity to negotiate for their interests in both the redevelopment of Hooge Riet and Veldwijk, however in the latter case has done so solely with GGZC, where the agreed to bandwidths of development ambitions have been laid down in the attachments to the anterior agreement, where the obligations arising from its articles will be transferred to the winning contestant of the market selection.

Reflecting on the use of a private-law instrument

The two anterior agreements signed are the private-law instruments used by the municipality to ensure the recovery of costs and to allow the municipality to ensure public goals of qualitative urban planning were upheld. The two private-led market selection procedures were market instruments deployed by GGZC to incentivize market creativity, ensure market-price conformity and maximize profit to be used towards facilitating their primary goal.

The anterior agreements have done what the SPA lays out for them to do, albeit that the height of development contributions towards public planning costs have been part of the negotiatory process. The negotiations between GGZC and the municipality, outlining development ambitions prior to either procedure of sale, have increased substantive certainty for the municipality and GGZC, and reduced development risk for interested developers, as there was relatively more certainty for a public-law framework allowing for the development. The resolutory conditions regarding the land use plan establishment or irrevocability further reduced this risk, as the winning contester could forgo the obligation to purchase the land if the land use plan would not be ratified. That being said, purchase naturally was not without free of obligation, as with a ratified land use plan, the developer in question would be obligated to realize the plans within an agreed timeframe – in turn providing certainty to the municipality. In case of the Hooge Riet there was still a lengthy negotiation procedure between the municipality and Heijmans, between the moment of sale and the signing of the anterior agreement. Shifting the position of the anterior agreement to be prior to and part of the sale of the Veldwijk clusters, further reduces development uncertainty for market

parties, as substantive negotiations have already been concluded. Moreover, it also reduced uncertainty for GGZC and also for the municipality, who through the a priori signed anterior agreement in the case of Veldwijk gained substantial clarity on the quality of the to-be developed public space, and had already otherwise ensured the recovery of costs. The instrument of a market selection incentivizes market parties to creatively optimize plans: Contenders will maximize on the goals required in order to win the competition. The realization of public space is an integral part of the sale and development, but is included as an obligation for the winning party to tender the public works as per procurement regulations. In this it thus allows for both optimization as well as an integration of the proverbial sweet and sour.

4.2.4. Accountability to the case information

For this case the following five people have been interviewed; explicit consent has been given to cite the names of those participants for whom so is done. With the information disclosed from these interviewees, including a brief synthesis from project and policy documents, it is contended that a thorough image of the characteristics and the mechanics to value capturing has been painted for the redevelopment of both Hooge Riet as well as Veldwijk.

For this case a number of project and policy documents and publications have been analysed:

2012; Structurevision 'Gemeente Ermelo 2025'
2015 – 2021; all GGZC's news publications pertaining to either redevelopment
2015; Collaboration agreement between the municipality of Ermelo and GGZC
2017; Structurevision 'Landgoed Veldwijk & Hooge Riet'
2017; 'Afspraken kwaliteitsniveau buitenruimte Landgoed Veldwijk'
2017; 'Raamovereenkomst'
2019; 'Masterplan Veldwijk'
2019; 'Beeldregieplan Veldwijk'
2020; Anterior agreement Hooge Riet
2021; Anterior agreement Veldwijk
2021; 'Programma van Eisen voor de inrichting van de openbare ruimte in de gemeente Ermelo Betreffende Algemeen Veldwijk-terrein Ermelo'

#	Name	Function / relation to the case
1	Erwin Uil	Advisor to GGZC, Partner of TwynstraGudde
2	Hans Hoepel	Director to GGZC Real Estate
3	Macel Sinte Maartensdijk	Developer at Heijmans
4	Jorn Thoomes	Co-owner of, and consultant at TND Real Estate, JLL consultant at the time of the project on market selection and sale of Hooge Riet
5	*C2_I5*	Project leader area development - municipality

Table 4.3 - Interviewees to the case of GGZC

(Hooge Riet, 2022)

4.3. Greenfield restructuring in the Bommelerwaard

Abstract to the case

In the Bommelerwaard a broad greenhouse restructuring is taking place under the coordination of intermunicipal organisation PHTB. Partially through active land policy, partially facilitative, through a provincial land use plan. Mr. Kreling is a private horticulturist who during this same period wanted to expand his horticulture business and had had to negotiate with the PHTB for planning permission. The first contact was in 2013, and the anterior agreement had been reached in 2016. In the anterior agreement, Mr. Kreling agreed to a developers' contribution, which was based on the PHTB's GREX (Dutch: Grondexploitatie), however Mr. Kreling was provided a pecuniary discount in for realising an access road to a northernly greenhouse. Mr. Kreling realized this access road on another plot of land of his, and even had to demolish a part of his other greenhouse in order to do so. In result, the heavy traffic to that northern greenhouse, no longer had to travel through the inner city of Zuillichem during school hours. In essence, value capturing took place through agreed-to contributions in the anterior agreement, but the process leading up to the anterior agreement had allowed for a level of goal-integration that would otherwise only have been possible with (very) active land policy.

(Kreling's Greenhouse, 2022)

4.3.1. Introducing the greenhouse restructuring and the case in point

This case focusses on the development of a single private owner in Zuillichem, which contextually takes place in a larger, integral, public-led greenhouse restructuring process of the Bommelewaard. Within the case, the public is represented by a separate intermunicipal collaboration entity, the PHTB, which is empowered to close the anterior agreement with the private developer. The private owner, Mr. Kreling; a horticulturist, in the anterior agreement settles to pay a developer's contribution, partially in cash, as well as partially in kind, by realising some of the public objectives.

Situating the case in time and place

In 2008, the municipalities of Zaltbommel and Maasdriel, the province of Gelderland and the water authorities Rivierenland signed an intention agreement (IA) in which they agreed to collaborate to work together on creating a strong economic horticulture and mushroom cultivation sector. Sectors which were spatially under pressure, and were in need for room for growth. In order to provide an administrative and spatial framework in which such growth could take place, whilst integrating principles of spatial planning, water quality and quantity, infrastructure, green structures liveability, the environment and energy, the IA set out for the parties to collaboratively lay down the framework for restructuring and concentration. Figure 4.9 shows the entirety of the restructuring plans; encircled is the location of the case in point.

The municipalities consolidated their cooperation in 2009 through a collaboration agreement (CA), in which they agreed to establish a public executive entity, and laid down its mandate. In the CA there was also a main discernment made between intensification areas and extensification areas. For the latter the mandate was to limit future developments, but through facilitative land policy. For the intensification areas, the starting point of the mandate was formulated as active acquisition, but passive where needed out of respect for existing landownership. The public entity, the PHTB, was founded in 2010, with its own daily administration, in which the four public bodies mentioned acted as shareholders.

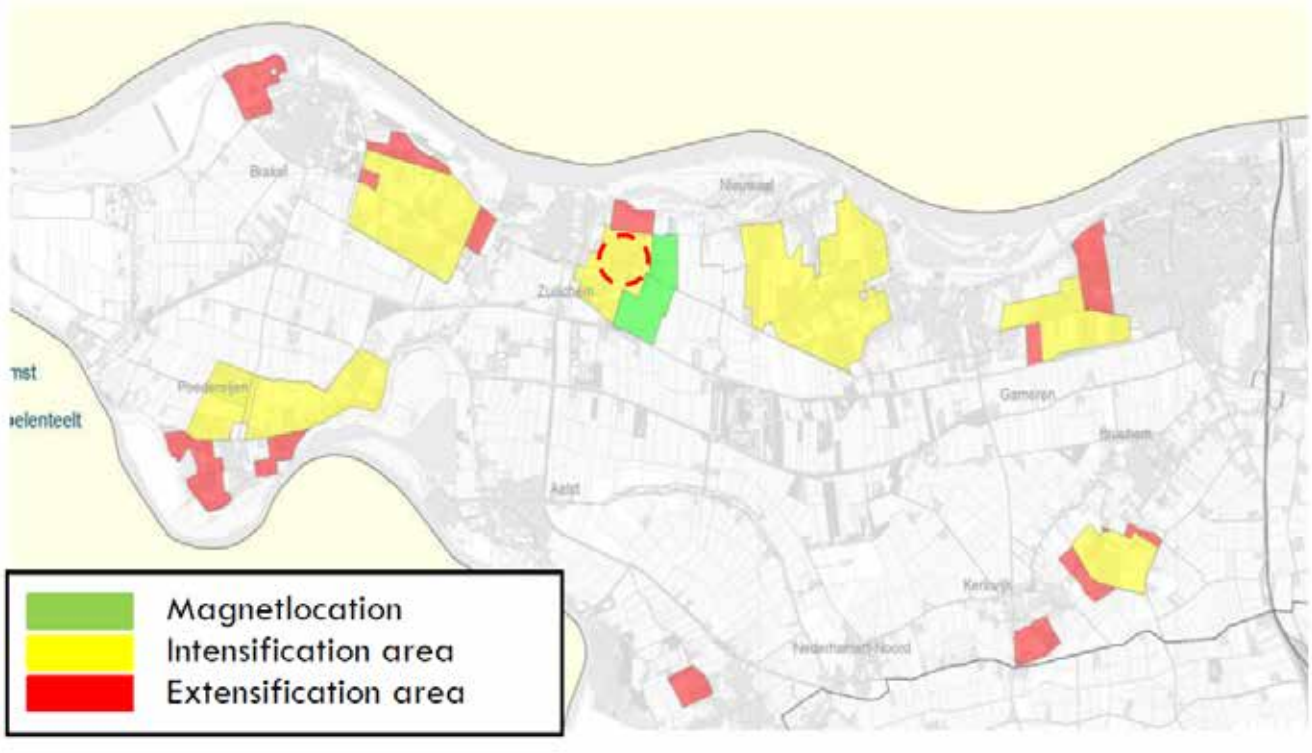


Figure 4.9 - Map of restructuring plans Bommelerwaard (illustration from 2012 structurevision)

Mr. Kreling is part of a collaboration between 5 separate horticultural businesses, with a combined production volume of approximately 140 million flowers annually. They strive for biological means to horticulture and an automation of their production line to optimize quality. In Zuillichem, they own three separate business locations, and around 2013 they sought to expand to grow along with growing demands. This expansion ought to take place on a plot that was in his ownership, but did not have the right land use plan destination. Through negotiations with the PHTB, he came to terms in regard to gaining planning permission and the height, and method of payment of a developer's contribution.

The parties to the developments in the case

In effect there are six parties that can be discerned within the case. The four public parties, which have various interests in the restructuring. The water authority is not a financial shareholder to the PHTB, and their interests are purely qualitative and administrative. Most of the restructuring plans take place in the Bommelerwaard, which is a conglomeration of small housing cores. The Bommelerwaard is part of both Zaltbommel and Maasdriel, but most of the restructuring projects outlined are located within Zaltbommel. Interlocal competition is reduced through provincial coordination, yet Zaltbommel arguably has a stronger interest in the restructuring plans, as the realized spatial quality will impact that municipality the most. The PHTB is a fifth party here, and because it has its own daily administration, it depoliticises the collaboration. The private party, Mr. Kreling, is also representative of a collaborative enterprise, but in the development in the case only the interests of Mr. Kreling are involved.

The division of landownership

The land necessary for the development of the greenhouse development is entirely in ownership of Mr. Kreling. The public objectives realized (which will be elaborated upon in the next paragraph) are partially on the privately owned land. Figure 4.10 shows the privately owned land parcels (Hatched blue and green). The intended private development takes place on the green coloured plot.

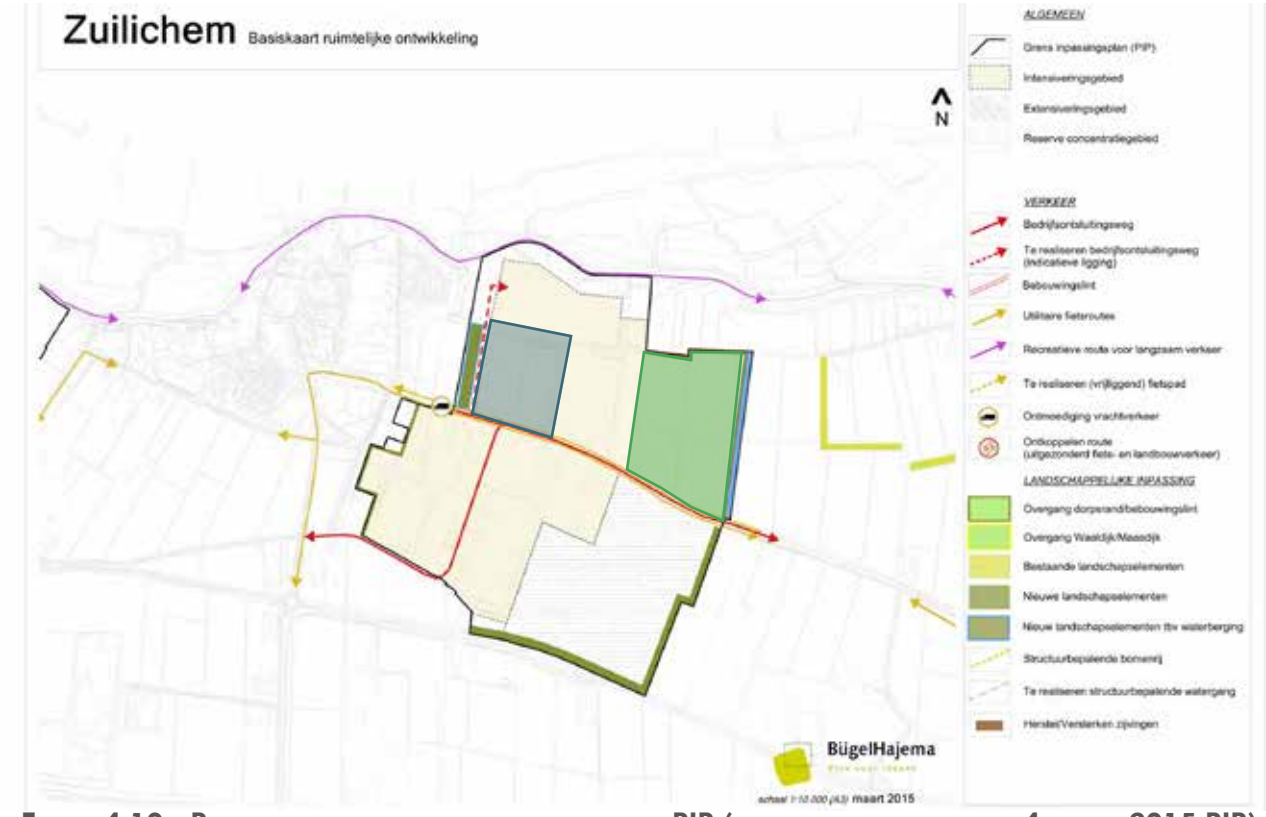


FIGURE 4.10 - PLOTS IN OWNERSHIP INDICATED ON BASEMAP PIP (ILLUSTRATION FROM ANNEX 4 TO THE 2015 PIP)

The intended development

The intended development by the horticulturist is the realization of an additional greenhouse business, about 13 hectares in size. The intended development falls within the spirit of the 2011 structurevision, but not within the textual regulations of the 2015 provincial land use plan (PIP), which through article 4.1. (Destination Horticulture) only allows greenhouse exploitation on areas explicitly designated as such. The parcel has been given the designation 'horticulture – agriculture', but not 'greenhouse exploitation', effectively blocking the intended development.

The developments around the land of the horticulturist which the province (by proxy of the PHTB) intends to develop, are shown in Figure 4.10.

4.3.2. The process and contents of creating and capturing value

The negotiatory process

The negation started to the development started in 2013, when Mr. Kreling sought planning cooperation from the municipality, through proxy of the PHTB, in order to expand his business. The parties entered into conversations shortly thereafter, and between 2013 and 2016 met up approximately once a month to discuss plans and progress.

It should be noted that the PHTB as an intermediate agency was not necessarily perceived as advantageous, or, as Mr. Kreling put it: "At that time, everything around here went through the PHTB. Of course, you have to apply for an official permit from the municipality, but if you haven't arranged it with the PHTB, you'll never get anything. That also upset the whole of the Bommelerwaard at the time." – which is recognized as well by the PHTB themselves, as the PHTB account manager, Mr. Wellner states: "In the early years, people were very much against it. The population, let's say, the greenhouse growers, they felt a little bit pecked; they were really free entrepreneurs." Yet, in a sense, the negotiations were expected, or at least anticipated, as Mr. Kreling noted about the entirety of the negotiation process: "Well, the initiative to get the permit was with us, of course. And then they came up with countermeasures, of course. We could cooperate, but then you have to do something... A bit of a game, of course. They were willing to cooperate, but we had to ensure that an access road was built there. But in order to build that access road, which we built all by ourselves, we had to demolish part of our other company's greenhouse. So, we had to demolish part of that company in order to be able to lay the access road there." It seems that the willingness to cooperate in this sense was also incentivized by the height of the development contribution, as Mr. Wellner says "Then the developer's contribution came into the picture. Well, then he just about went crazy. I think he could hear him in China. Yes, and he says, but what on earth do you charge for that road? Yeah, well, I think I can do it for half... Well, then the pieces are going to come together. Well, that's the way it also went with the green facilities". Mr. Kreling was not always happy with the content or progress of the negotiations, and felt the public party was trying to get the absolute most out of it: "It was a real drama. Every time the plans were changed, and every time something had to be added. But there was always more added than subtracted. It has become very expensive." However, looking back he is content about his new business: "We are glad that we took the step, but that is in hindsight", and also about the people with whom he negotiated: "…there was nothing wrong with the cooperation. There were some good... The contacts with those people who were at the table…" Although he notes that the positiveness in the negotiation was also because they needed each other: "We always had to remain close friends, because if we had a conflict, we had nothing at all." In the end, perhaps it was more about what the PHTB got out of the negotiations, together with the planning permission on part of Mr. Kreling, as he says: "What we had planned, that is exactly what happened. No more, no less. We were able to stick to our plans, but it took us about four years to... I think... We started at the end of 2013, and by the spring of 2017, the company was up and running." – and of these four years, three had been spent on negotiating.

The creation and realization of value

The theoretical creation of value occurred with the change in the PIP in 2016, but the potentiality for new value creation was first consolidated with the signing of the IA in 2008, when the public parties to the restructuring set out the concentrate and intensify the horticulture and mushroom cultivation in the area. The PHTB was established in 2010, and between then and 2015, programmatic, environmental, infrastructural and functional studies and participatory events have led to the creation and adoption of the structure vision in 2012 and the PIP in 2015. These processes in part also made possible the extension of the horticulturist's businesses, although Mr. Kreling partly disagrees, as he mentions that the greenhouse destinations have always been possible, but have been removed by the province when the PHTB was established. The legitimacy of such a regulatory decision is beyond the scope of this study, but it begets mentioning because it makes clear that on the one hand, public caution should be taken when removing or changing land use designations, as it can create negative sentiment, and on the other hand timely lodgement of objections is imperative from the private perspective.

In regard to the intended development, like stated, it has been realized as envisioned. The potential value creation is capitalized in the form of the greenhouse development (private), an access road to a neighbouring business and a green buffer zone (public), which consists of natural embedment, space for water storage and the construction of a water basin. In the totality of the development, the realized value consists of financial as well as spatial and natural value.

The (agreed upon) methods of value capture

Overall, it can be posited that there has been a long(er) process when it comes to value creation. With the public's effort towards restructuring, there is financial as well as a spatial component involved. Cost-bearers (those elements that create value) are discussed in a spatial context together with cost-letters (elements that cost money, and don't directly contribute to the creation of new value). The intention in the 2011 CA for active acquisition and redevelopment op lands, arguably contributed to this methodology, as originally it was the PHTB that was made responsible for both the financial as well as spatial aspects of the development. The PHTB is staffed with professionals that are aware of this value cycle, and tend to think about these matters integrally.

However, not all developments in the restructuring are approached through active land policy. Policy documents are drafted to facilitate private initiative. In the 2015 PIP the potential for value creation and value capture is consolidated (in relation to the plot in this case) in two articles: Article 4.1 designates the plot for horticulture, but only allows greenhouse exploitation on areas explicitly designated as such. The plot has not been given this explicit designation in the 2015 PIP, but it did get the area designation 'intensification area'. This last designation is elaborated in article 28.2.1., which grants the deputy state of the province the power to partially change the permitted functions in the PIP, whilst ensuring that such permission is subject to various qualitative requirements imposed on the private party. In other words, the 2015 PIP incentivizes private initiative by providing potential economic value, but at the same time integrates the desired public goals. Article 28.2.1. then provides a way to capitalise the interests of both public and private party in an anterior agreement. The adoption of the PIP occurred when negotiations between the PHTB and Mr. Kreling were well underway, indicating that either negotiations were progressing positively, and the articles in the PIP were an expression of mutual ambitions, or that the municipality had wanted to increase negotiating pressure towards Mr. Kreling, and the articles were supposed to strengthen the grounding of the public demands. Mr. Wellner contends the former, as he argues that the process of the PIP was tweaked in order to better express their aligned ambitions: "I think we had a bit of a moment when the PIP was being developed, so from preliminary draft to the final establishment, that some nuances had been made that meant there was actually little discrepancy left.".

Either way, Articles 4.1. and 28.2.1. lay at the basis of the anterior agreement signed between the province (by proxy of the PHTB) and Mr. Kreling in 2016. The height of the developer's contribution agreed to in the anterior agreement had been determined by the PHTB's GREX through broader negotiations with the agricultural sector in the Bommelwaard, and is paid for by Mr. Kreling partially in cash and partially in kind – although the 'in kind'-part ought to be understood as a discount on the 'in-cash'-part. Initially, the road would seem to be subject to principles of procurement, however, both the road, as well as the land it is realized on, is in the private ownership of Mr. Kreling. The paralegal to the PHTB expresses this as "It is a road that can only be used by a company for which the access has been provided, and actually is almost like a private road. Yes, Kreling uses it himself, of course, but I think that's where your question comes in. If it were a public road, then I agree with you, then it would be more difficult." The PHTB, as a proxy of the province and the municipality, was willing to provide a discount on Mr. Kreling's financial contribution, as the – privately realized – road, would contribute to the public goal of reducing heavy traffic in the town core: "lorries started roaring through the village early in the morning at around 4 a.m., but they came back in the evening when school was out. So it was an eyesore to the public, and one day we were told: gosh, couldn't we make a short connection from that company to the main gardener's road? Well, we needed one man for that and that happened to be Mr Kreling's other company." (Mr. Wellner), and the attainment of that goal would have otherwise been unachievable – a construct not unusual to the PHTB: "We have done a lot of searching here... What we cannot do and could only achieve with a strong arm and a lot of resistance, we have also asked the horticulturists very often." (Mr. Wellner)

In relation to cost recovery as defined by the spatial planning act, this means that the contribution exacted through the anterior agreement manages to cover expenditures related to the entire area within the mandate of the PHTB, but does so – technically – partially in a financial sense, and partially in a contribution to the spatial quality of the city. Presumably more effectively than what would have been possible through a land management plan (Dtuch: Exploitatieplan), as the anterior agreement less heavily depends on the application of the PPT criteria, and through the land management plan, the access road would have been unachievable. However, no anti-speculative measures seem to have been incorporated in the agreement in respect to the risk of the public party, insofar that the value of the contribution was set and would not be influenced by a rise or decline in future value of the development. However, the public obligation to maintain the public works for two years was also passed on to the horticulturist. Not an anti-speculative measure in itself, but operationally risk-reducing for the PHTB, as any change in maintenance costs falls outside of the public scope for that period of time. The passing on of these responsibilities does entail a risk for the public parties when it comes to their socio-economic accountability – which ought to be considered managed contractually.

Additional value through synergy

Through the interviews with Mr. Kreling, no direct synergy seems to have occurred from the negotiations. Mr. Kreling notes that none of the public items realized contribute to the value or accessibility of his business. From his perspective, the negotiations have merely allowed him to work towards his business goals; the expansion of his greenhouse. On the other side, the access road Mr. Kreling realized, as stipulated by both Mr. Wellner, as well as Ms. Van den Oetelaar, was partially on his land, for which he had agreed to demolish a small part of his other greenhouse in order to realize the road. The access road in its current form would thus not have been possible without the collaborative efforts towards the change in the land use plan. And even though this does not lead to mutually added value per se, it does make possible the achievement of a public objective (to reroute heavy traffic), through an understanding of the negotiatory process, albeit it in its form of 'being part of the game'.

4.3.3. The outcome of the process

The resulting development and the achievement of goals

The restructuring of the Bommelerwaard sprouted from an intermunicipal intention to consolidate the greenhouse businesses, provide structured room for growth and do so in a spatially sound manner. This section focussed on the development from a single private developer within this larger restructuring. At the end of the process, all has been developed as intended. Mr. Kreling has had to make some contributions to the public cause, but is still content with his choice to develop. Moreover, he says that although the realisation of the public objectives has cost him a lot of money, the expansion of the business is still netting profit at the end.

The various public parties too, have set out an array of goals, predominantly in relation to the restructuring of the Bommelerwaard, but the PIP nicely shows how these goals have consolidated themselves in tangible implementation objectives (Figure 4.10). Not every goal has a direct relation to the development of Mr. Krelingen, but the mandate of the PHTB had been to realize these objectives and to do so in a financially sound manner. For this, an overarching GREX has been drawn up in 2014 (appendix to the 2015 PIP), through which the development contributions have been determined. This contribution has also been exacted from Mr. Krelingen's development, albeit in part through the operational responsibility of realizing some public facilities and maintaining those for two years, through the provision of a discount on the financial contribution in return for the private realization of the public goals.

All in all, both parties consider the development a success. Mr. Krelingen is positive, but retains a sharp tone in his comment: "You can call it that [successful]. But you have to be willing to forget certain parts." As opposed to the perspective of the PHTB, of whom Ms. Van den Oetelaar refers to the mutual achievement of goals: "Well, the road is there. The greenhouse horticulture has been built. We only have one issue left... ...and even there they really do want to make something of it for the sake of public support. I can't say it hasn't been a success. I don't want to call it a super achievement either, but something beautiful really has been achieved."

Reflecting on the use of a private-law instrument

The potential to value creation has accrued through a process that was mostly public-led, yet, during the ongoing negotiations, has been consolidated in the PIP-articles in such a way that it incentivized private development action through the proverbial promise of profit, whilst maintaining public control over the quality of the spatial development. Value capturing occurred through these same articles, enabling the PHTB to impose the developer's contribution as a proxy of the public shareholders. The private law (anterior) agreement acted as a fixation point on the proverbial horizon, in which the negotiated terms could be elaborated. However, because the PHTB stood between the developer and the municipality, Mr. Krelingen (in this case) expressed that he had to come to an agreement with them, as otherwise he would be unable to realize his objective. About the attitude of the PHTB's negotiator in this he said: "Well, then you don't build. At least, that's what it came down to. He said it more politely, of course, but that's what it came down to. We also were not obliged to build the new company." Whether this comes down to payment planning is impossible to assess without specific external legal expertise, but is indicates that the public party – or intermunicipal agency in this case – has a very strong starting point to negotiate from, and implies that caution remains to be kept when negotiating in order to be able to discern negotiation pressure from payment planning. Ms. van Den Oetelaar explains that payment planning is not in order, as each decision or regulation imposed can be spatially substantiated: "payment planning is something that we really don't want to do, but of course that's just part of your anterior agreement. You pay this and you get that in return. But at the end of the day, you justify that in the spatial process, simply

on the basis of your public arguments. And of course, it's not, I pay a bill and then by definition I get to build a very large apartment building there, right? You have to be able to justify it in the end."

For the PHTB the private law agreement allowed an exploration of how to operationally give infill to the structurevision within the area of Zuillichem. The access road to the northern business wouldn't have been possible through a land management plan (Dutch: Exploitatieplan), as it is partially located on land that was previously built up with a greenhouse. In this it seems that the anterior agreement, and the process thereto allows for more integrated forms of development, something explicitly recognized by the PHTB, as Mr. Wellner mentions that sometimes it's easier for private parties to realize certain goals, simply because they don't have the same level of public accountability.

When it comes to value capturing, it is clear that the private law track allowed for sufficient methods of cost recovery. There is no plan equalisation (Dutch: Bovenplanse verevening), but above area (Dutch: bovenwijkse voorzieningen) contributions are part of the calculated development contribution, as are the in-plan related costs. The anterior agreement fixates the potential to created value in time, and makes no claim on any potentially future creation of value. However, it does shift some of the operational responsibility (and inherent risks) towards the private party in the case. Of particular interest here is the shift in operational responsibility when it comes to the realization and maintenance of the semi-public facilities. However, total size of these facilities not incredibly large. Failure to realize would lead to disappointment and frustration, but not societal disarray. The desired quality and maintenance has been very precisely documented, minimizing nearly all risk of non-compliance. Moreover, the agreed to period of maintenance period is only two years, which is relatively brief, and therein clear and manageable, and mostly meant as a safeguard to the quality of the road. After this period, the road remains in private ownership. Principles of procurement law have not been deemed applicable because the facilities are, and remain, in private ownership, it was a discount provided in return for the achievement of a spatial goal, and the spatial goal could not have been realized in any other way than the way in which it has been.

4.3.4. Accountability to the case information

For this case the three people indicated in the table below have been interviewed; explicit consent has been given to cite their names. With the information disclosed from these three interviewees, including a brief synthesis from project and policy documents, it is contended that a thorough image of the case characteristics and the mechanics to value capturing therein has been painted.

For this case a number of policy documents and publications was analysed:

2008; Intention agreement 'Glass & mushrooms'
2009; Collaboration agreement 'Glass & mushrooms'
2012; Structurevision 'Buitengebied Zaltbommel'
2014; Businesscase PIP Bommelerwaard
2015; Implementation covenant
2015; Provincial Land use plan
2016; Anterior agreement 'integral approach to Zuillichem East'
2016; Change to the provincial land use plan

#	Name	Function / relation to the case
1	Jan Krelingen	Horticulturist / private developer
2	Jolanda van den Oetelaar	Paralegal to the PHTB
3	Erwin Wellner	Account manager to the PHTB

Table 4.4 - Interviewees to the case of the Bommelerwaard

4.4. TU Delft 'Campus Zuid'

Abstract to the case

The technical University of Delft and its municipality collaborate closely. In fact, they are intertwined through mutual history and mutual goals. In the end of the 2021 they had signed an anterior agreement, agreeing to a change in land use plan of the University's southern lands, 'Campus Zuid'. Interestingly, this change in land use plan will not make possible new, or more functions, but rather encompasses a flexibility in time and zoning, which is desired by the university to organically grow and facilitate their primary processes. Value creation has to be understood through a different lens, as this change in the land use plan thus doesn't create more value per se, but rather creates a value that is specific to the university. Naturally, the anterior agreement encompasses stipulations on developers' contributions, but therein too, most public facilities are realised by the university, on its own land. Value capturing is more difficult to define, as the created value is difficult to express pecuniary. Rather, value creation and value capture had been possible because of a mutual understanding between the university and the municipality on each other's goals. Through negotiation, substantive agreements have been reached about the height of the contributions, but also about an organic approach thereto, having public investments grow along based on developed metrics, rather than specific moments on time. Furthermore, through the text of the agreement parties have agreed to be open to future negotiations on the use and necessity of public facilities, and possible private contributions thereto, in and outside the plan area. Not a card-blanche, but a mutual recognition of the longevity of the agreed-to collaboration. All in all, this case is exemplary in showing that the creation value can be very specific to the case, and that through negotiations, mutual interests can nevertheless be met.

(Campus Zuid, 2016)

4.4.1. Introducing the University Case

The Dutch municipality of Delft is nearly inseparably intertwined with the Technical University Delft (TU Delft), located as a campus university at the southern part of the city. The TU Delft owns most of the land within the campus borders, and its campus real estate continuously evolves over time. Recently (19th of November 2021) an anterior agreement has been signed between the municipality of Delft and the University finalizing collaborative efforts towards the future growth in the southern part of the campus – 'Campus Zuid'. This agreement, and the processes leading up thereto are at the heart of the case described in this section.

Situating the case in time and place

The university was founded in 1843, as the Royal Academy of Engineers, and was then located at the centre of Delft. As it grew it changed names a number of times. In 1864 the university was known as the Polytechnical college and in 1905 as the Technical college. By this time the university grew and expanded throughout the city centre. By 1940 it had grown so much, that a relocation to the southern part of the city was agreed upon. The bridge connection the campus area to the city opened in 1963, and served as a major connection improvement. The current name, technical university, arose in 1986, to avoid confusion with the Dutch higher professional education (Gramsbergen, 2018). The current typology of 'campus university' stems from around the 20th century, in which the TU Delft was not a unique event, as universities throughout Europe established monofunctional university campuses outside their respective cities after the second world war. However, over the last two decades universities have reconnected with their cities, whilst at the same time businesses have been popping up on university campuses because of potential mutual benefit (Hoeger & Christiaanse, 2007).

Figure 4.11 - The Campus of the TU Delft within its regional context (image from Delft's Areavision, 2021)

Over these past two decades, the university has had a number of spatial and culture-historical studies carried out by external consultants or designers, in parallel to continuously evolving its own strategy towards education, research and valorisation – its primary processes. The development plans within the scope of this section are the result of these studies and intensive collaboration with the municipality.

The parties to the developments in the case

In a technical sense, there are two parties to the developments. With the municipality on the public side of the table, and the university on the private side. However, to appreciate the position of the developments in regard to the university as a whole, it is important to note that real estate developments within the university are managed through the office of 'Campus & Real Estate', which is merely one of the many cogs of the university's organisation (Figure 4.12).

The intended development and the division of landownership

The urban plan, drawn up by Posad Maxwan for the TU Delft, is the prelude to the to-be-adopted land use plan, as is agreed upon in the anterior agreement. This urban plan elaborates on a number of spatial quality principles, and seeks to facilitate the growth of a future proof Campus Zuid, in which education and research is integrated with the provision of (office) space to collaborative partners, in order to really become an all-round campus that can keep providing an innovative ecosystem to its users. The functions will be integrated and connected through high quality public space, with plentiful presence of green structures, sport facilities, and (on the municipally owned land) some student housing. The entirety of the area development is phased over the span of 20 to 30 years, with the currently intended zoning shown in Figure 4.13. The area development manager for the TU Delft, Mr. Kunen, indicates that the proverbial dot

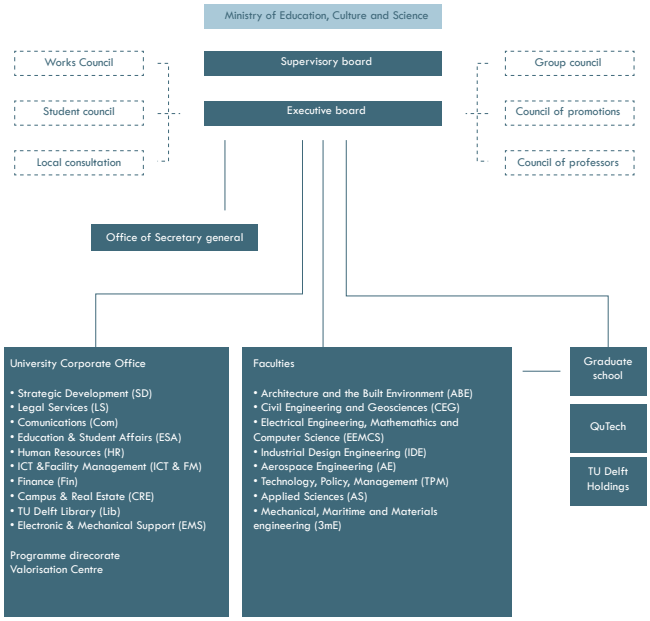


FIGURE 4.12 - ORGANISATIONAL DIAGRAM TU/D (ILLUSTRATION BY AUTHOR, ADAPTED APRIL 2022 FROM TU WEBPAGE)

FIGURE 4.13 - THE ZONING AS PER THE URBAN PLAN. BLUE: EDUCATION & RESEARCH. GREEN: SPORT. ORANGE: BUSINESS. YELLOW: HIGHWAY FACING PLOTS (URBAN PLAN, POSAD MAXWAN, 2020)

on the horizon to the development is relatively clear, but that the road thereto is not clearly predictable – "We want to pursue organic area development; no one can say exactly how it will be developed in thirty years." – and that therein there is a preference to a land use plan that facilitates flexibility. The purpose of the development is not so much to outline exactly which developments will go on what particular plot, contrary to what the currently prevailing land-use plan suggests, but rather to pave the way for a natural growth of the university for the coming decades.

Intriguing, in relation the topic of this thesis, is that most of the land necessary for this development is in ownership of the university. The university itself has a public goal, and the real estate on the campus has a role facilitative to the primary processes of the university – education, research & valorisation. For the intended developments this means that the developments aim to support these primary processes, but at the same time it means that the university has planned both private as well as public space, and its business case has to account for it in totality.

4.4.2. The process and contents of creating and capturing value

The negotiatory process

The negotiatory process for this case is a particular one, as both parties have been collaborating for many years. Previously, in 2011, an anterior agreement has been signed laying out the mutual development intentions of that time, and on an administrative level, a collaboration covenant has been signed in 2016. In this, on an administrative level, public and private goals are almost aligned. Mr. Kunen expresses that the university's goal of the development is to contribute to its primary processes: Education, research and valorisation. The public counterpart of Mr. Kunen, Mr. Bijsterbosch, says about the interests of the municipality regarding the development of the university: "The greatest interest is of course that the university can maintain its top position, isn't it? and that education and research that has a prominent place, well, in the world and in content, next to the importance for Delft Naturally as a city. People who study there and live in the city, but also the less educated people, that is actually the whole city, benefit from the presence of the university. That is, that is the greatest importance for Delft and that the university can carry out its daily activities. And that there is a climate in which the business community develops so that it attracts all kinds of parties, companies, people." Goals that resonate with the spirit of the newly adopted (2021) environment-vision of the municipality. Which is logical as "about 1/3rd of our city, is land of the university" (Mr. Bijsterbosch).

This is not to say that negotiations have been without obstacle, as both Mr. Kunen and Mr. Bijsterbosch express that there are a number of issues on which, at least on this point in time, they could not agree. Be it particular public transportation measures, positioning of housing, or the logic of the property tax – which is traditionally levied to pay for the public maintenance of infrastructure, which is, in this case, predominantly privately owned and maintained. However, "you don't want all that to get caught up in these negotiations, because then yes, you will be at demolition level, as then everything will have to get a focal point in the zoning plan" (Mr. Bijsterbosch). Parties explicitly try to not hold each other in a vice, and work towards the mutual goal of allowing for the development. And, it's not that the university and the municipality avoid the 'tough talks', about these negotiations toward the anterior agreement Mr. Kunen says: "Of course, an anterior agreement is primarily about the recovery of costs, where the municipality will say, I want to recover as many costs as possible and TU will say, I want to pay as little costs as possible, so yes, by definition there is a conflict of interests. Look, if you put the common interest first, namely we want to continue, because this development is so important and you understand each other's interests and you can talk constructively about and what is a realistic amount and what does it depend on or what do we have to agree on? Then you have in any case started a good conversation"

It could be posited that the goal of the negotiations has been to establish a basis for future collaboration, as Mr. Kunen says: "The anterior agreement is never a goal in itself, but it is a very important means to achieve the goal, namely a fully-fledged campus as described in the urban development plan. And that is only possible if you also have a public law framework for that, and we have come a long way in doing that." The anterior agreement signed therein not concludes all negotiations, but it fixates the agreed upon framework into an agreement that serves as the basis for the future development, allowing the desired room for organic growth, and also (textually) providing a basis for possible future negotiations.

The realized value

In the case of the TU Delft's Campus Zuid, it is difficult to pinpoint when in time the potentiality for additional value creation sprouted, and even more difficult to express pecuniary what that value exactly entails. Currently there are two prevailing land use plans in power throughout the plan-area, of which the larger one dates from 2005, and the smaller one dates from 2014. And although these land-use plans are relatively broad in their set-up, they do not directly allow for the current development plans, albeit it mostly because they are too rigid, allowing only for plot-specific development, and not the organic growth aspired for.

Over the past two decades there has been a plethora of studies conducted into the spatial potentialities of the university area, both by the university itself, as well as by the municipality. The private (to indicate the university's) studies have focussed mainly on the history, quality and position of the university campus in relation to the whole of the municipality, whereas the public studies lead to documents as the 2010 structurevision or the 2021 environment vision, take the whole of Delft as a starting point and integrates the role of the university. A subtle difference, but through these studies the overlay in the interests of both parties becomes more tangible. The similarities in interests had been noticed by both parties themselves as well, and led to explorations into possible administrative-level collaboration over the course of 2010, a college meeting in 2011, and the first strategic discussion in 2015, when the spatial and economic 'battle for brains' was put on the agenda. These careful explorations into collaboration formalized in 2016, when the two institutions signed a collaboration covenant (CC) in which it was agreed to collaborate formally and continuously. Always as two separate institutions with their own administration, but to align administrative processes, inform each other proactively and have eye for each other's interests. In this the parties agreed to investigate and elaborate on themes as 1) city as campus, and campus as city, 2) ecosystem for knowledge and economy and 3) University community, city and inhabitants.

In relation to the intended change in land use plan is interesting to note that the intended change as well as the intended developments aims to support the university's primary processes. The change in land use plan does not really allow for new functions, but rather allows for a more flexible approach to the development. Commercial zoning naturally brings with it a certain profitability, but the new zoning does not really allow for more commercial zoning. In that sense, it seems that potential value ought to be understood not directly in a financial sense, but rather in the manner and extent in which these seem to contribute to strategical goals of the TU Delft. When asked, mr. Kunen explains this: "Normally, an increase in value as a result of a change of zoning is very evident. You have agricultural land and in one go you can do a lot more, so that's where the leap in value occurs. But now, you already can do a lot and now [with the new plan] still do. Only, it's from a very detailed zoning plan to a global zoning plan, so there's not so much of an increase in value, is there? Well, real estate-wise. It is worth something, of course. There's more freedom there, so to speak, but that's the main thing... ...you simply reserve the full flexibility to be able to fill in the plan at your own discretion, based on progressive insight." This gives another take on understanding value creation, and makes it interesting to reflect on the collaborative growth over time, as the potential for this more holistic form of value creation

arguably consolidated when the CC was signed. From thereon it becomes difficult to untangle the interest of which party led to the strive towards the high quality as envisioned in the urban plan set out by Posad Maxwan. It is clear that the question of 'what is the value that is created?' does not get a straightforward answer. Rather, the value created by the agreed-to change in land use plan seems to provide spatial and economic infill towards the goals of both the university (place for education, research and valorisation) and the municipality (+ 3000 workplaces on the campus).

The agreed upon methods of value Capture

Value gained by the Municipality of delft, from the development of Campus Zuid is therein also difficult to concisely express. The anterior agreement sets out some explicit contributions from the university to the municipality, relating to plan and planning costs, and to above-area facilities, such as infrastructural investments. Most of the within-plan infrastructure related developments are on private land, and part of the private development, for which thus no fee is exacted. The public value accruing from the development is however, perhaps to be understood broader, as the developments of Campus Zuid explicitly contribute to various municipal goals through adding workplaces, the development of a substantial plot within the municipality's borders, and contributes to the image of Delft as a university-city.

Cost recovery, as meant by the SPA (Dutch: WRO), seems to take place effectively, albeit true that the height of the contributions has been part of the negotiations. Parties have negotiated about the contents of the development in a global, future-oriented fashion, using the anterior agreement not the fix the absolute content of the development, but rather to fixate the spatial-economic framework in which the development takes place over the coming decades. In the agreement, no public claim has been made on future values arising from or after the development, although parties have agreed to be open to future negotiations on the use and necessity of public facilities, and possible private contributions thereto, in and outside the plan area. Not a card-blanche, but a mutual recognition of the longevity of the agreed-to collaboration. Interesting to note is the fact that land allocated by the university to private businesses, is done so under temporary leasehold. On the one hand, a private law agreement, with its own advantages in terms of grip and control on both the development process as well as the operational phase, and at the same time an implicit value capturing instrument. The leasehold is bought off by lessees for 99 years, allowing the university to both renegotiate about the use of the land in due time, as well as gain any value increments on the land that have occurred by that point in time.

Additional value through synergy

Through the interviews with both Mr. Kunen and Mr. Bijsterbosch, synergy seems to have been an invaluable addition to the process. Predominantly it has been of value in the negotiation process, in discerning positional stances from the common mutual goal. About this, Mr. Bijsterbosch says: "… in all those places you see that we are working together towards a higher goal or towards an end goal. And that therefore those conversations are much easier, as we're in it together." This also makes it difficult to assess whether a specific point or object of added value has arisen through synergy. Rather it would seem that synergy adds to the continuation of the development and mutual propagation of its goals. Or, as Mr. Kunen says: "I just find it very difficult to pinpoint what shows it [the synergy]. You actually act as a kind of unit towards potential initiators or towards the province… … you talk with one mouth, actually." Moreover, given the length of the process and the intensity of collaboration, synergy also arises on an interpersonal level, as Mr. Bijsterbosch says: "So it can really happen on a human level. The cooperation I have with Tristan [Mr. Kunen], but also with his predecessor. Well, they are very pleasant and you notice that the two of you understand what each other's interests are, but also occasionally that, yes, we agree to disagree."

Tangibly these points of mutual understanding also show in the agreements made – or those purposefully not made at this point in time. For a number of subjects, it was agreed that the anterior agreement would not be the place to 'dish it out', as intricate and detailed agreements on a subject in the favour of the one would lead to the need of integrating intricate and detailed agreements on a subject in the favour of the other, when neither of the subjects might be a necessity for the continuation of the development. Furthermore, the to-be-adopted land use plan will be flexible in its zoning, as it will be designated for certain mixed uses, rather than a single predetermined function, furthermore with no fixed phasing, and a number of within-plan and above area elements (and subsequent contributions) are based on quantitative development thresholds: Only if certain metrics have been developed, certain (e.g., infrastructural) facilities will be necessary, and will the relevant contributions be levied.

4.4.3. The outcome of the process

The resulting development and the achievement of goals

The overall – mutual – goal has been to proceed with the development of the university, as a spatial entity of its own, but also as a spatial interdependent part of the city and the image thereof. Both the municipality as well as the university have additional ambitions to the overall development, but these are strongly aligned. For example, the commercial developments where business-university interaction and valorisation can bloom add to the desired labour places in the city, and together with the places for research and education the university also further adds to the image of the city. Moreover, it also adds to the supraregional function of the city and to the university's position of being a campus of international importance.

The collaboration between public and private has been a long-standing partnership in spirit, and whilst risk and reward are not directly shared it does best describe the intensive collaboration. A collaboration that has gained renewed soil for continuation in an anterior agreement that allows for flexible, organic development, with respect to progressive insight within the plans. While the actual developments and the adoption of the land-use plan is not actually here yet, both interviewees express to perceive the project, with the anterior agreement as its current crown as a success. Mr. Bijsterbosch says about this: "Yes, I think it's a really great success and a great result that we have achieved together. I am very proud that we have succeeded, and the package that is now on the table is, I think, for both parties, it really ties a nice bow around a big dossier."

Reflecting on the use of a private-law instrument

For the development of Campus Zuid, the use of an anterior agreement was the only real alternative to the use of a land management plan (Dutch: Exploitatieplan). Given the role of the university, with its strong landownership and liquidity position, reflecting it against active land policy, or a public private partnership would almost be non-sensical, even apart from whether this would fall within the range of the municipal mandate or not. In the development of Campus Zuid the private-law track that leads to the anterior agreement seems to be the ideal instrument in allowing for the exercised level of collaboration. Moreover, Mr. Kunen expresses that an anterior agreement also is a more logical choice, not necessarily influencing the negotiations, but rather allowing for discussions on substance, rather than technical, annual actualisations of the land management plan: "an anterior agreement is often easier to agree on than a land management plan and all that comes with it. Not only when bringing the plan into the procedure, but then also, how are you going to update it annually and make the final settlement, when are you going to send which invoice and why is that possible, etcetera, so there is just a lot of work involved for the municipality. So, I don't think the choice for an anterior agreement has influenced the negotiation process that much. It is a very logical choice that is almost always made."

When it comes to cost recovery as specified by the SPA (Dutch: WRO), the anterior agreement does what its supposed to do. By agreeing to contributions on planning costs, within plan and above area costs, cost recovery is 'otherwise ensured'. Moreover, the gateway-wise agreement to some of these elements and contributions (to the extent that they are not realised by the university itself), also add value to both parties, through allowing flexibility towards the university's development, and clarity and certainty to both parties. The anterior agreement makes no claim to future value, but does express the possibility of future discussion on the use and necessity of facilities based on progressive insight – although without an enforceable component to the text. It could be argued that the university as a landholder does lay a claim on the future value of land-positions, through allocating the land in leasehold, rather than sale – yet this does not add to any form of public value capturing.

4.4.4. Accountability to the case information

For this case the following two people have been interviewed; explicit consent has been given to cite their names. Although with only two interviewees the amount of information might seem limited, it is believed that the information disclosed through the interviews fairly represents the case for two main reasons. One, these were the people 'at the table', collaborating for the common goal, negotiating to preserve their respective (mandated) interests. Two, there are little to no contradictions apparent from the interviewees, indicating that whilst they represent two entirely different parties, the information gathered represents the truth.

Furthermore, for this case a number of project and policy documents and publications was analysed:

2005; Land use plan Technopolis
2010; Structurevision Delft 2030
2019; Area vision: TU Delft, developmentperspective
2020; Area image quality plan
2021; Anterior Agreement (including appendices)

#	Name	Function / relation to the case
1	Tristan Kunen	Area developer at TU Delft Campus and Real Estate, senior manager at Brink
2	Erik Bijsterbosch	Area developer at the municipality of Delft, independent consultant

Table 4.5 - Interviewees to the University case

4.5. Cross case analysis

This section will discuss the four cases in order to answer the third SRQ: "How did value capturing in private law agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?" This section will follow roughly the same structure as the case study accounts, in order to compare the characteristics of the cases and will, through a synthesis and comparative analysis of qualitative variables, attempt to identify and qualitatively schematise the mechanics of value capturing throughout.

This chapter follows roughly the same structure as the case study accounts in the previous sections. In this, the first subsection focusses on the actors within the cases, and how their positions and interests have influenced the organisation and outcome. This first subsection does not directly answer a part of the third SRQ, and mainly sets out to paint an image of how, and within which contexts the private law agreements have come to be. In the second subsection the cases will be reflected against Heeres's (et al., 2016) cycle of value creation and value capture. This cycle had been used as a narrative starting point in the accounts to the case study, to start further unravelling the underlying process on (coming to) value capturing mechanics. The second subsection will therein thus not only retrospectively describe the value capturing agreements, but will also describe the process leading up to the moment of value creation, the perceived role of (un)certainty to collaboration, and it will become clearer how value capturing has occurred as an act of goal achievement or risk reduction. After this, the third subsection sets out to answer the second half of the SRQ governing this chapter, and focusses on how the private law pitfalls that were found in literature have been avoided in the cases studied.

	GPAG	GGz Centraal	PHTB	TU/D CZ
Public representative	Intermunicipal entity (GPAG)	Municipality of Ermelo	Intermunicipal entity (PHTB)	Municipality of Delft
Private party	Landowner A, later also B & C	GGZC	Mr. Kreling	Technical university Delft
Initiator	GPAG	GGZC	Mr. Kreling	TU Delft
Sale or own development	Sale	Both, but case focusses on sale	Own development	Own development
Developer	Thunnissen	Heijmans + t.b.d.	-	-
Raison D'être of development in context	Restructuring of business and traffic	Change in institutional landscape of primary process	Restructuring of Bommelerwaard + natural growth business Kreling	Interdependency in growth of city and university
Development plans	Housing	Housing	Greenhouse	Education, research and business
Plans contribute to	Public goal of restructuring + private profit	Facilitating shifting primary process	Continuing business operation + spatial improvement of Bommelerwaard	Primary processes: Education, research and valorisation

Table 4.6 - Development plans and representatives

4.5.1. Actors, positions and interests

Shown in table 4.6; throughout the four cases studied, various parties have been involved. Each with their own objectives, and with a specific relation to the case in question. In the GPAG and PHTB case, intermunicipal legal entities were burdened with the implementation of broader restructuring, whereas GGZC and the TU Delft negotiated directly with their respective municipalities. Both GGZC and TU Delft are semi public organisations, but where the university engaged in area development in order to facilitate their future primary processes, GGZC divested land and real estate in order to accrue money for their own redevelopment and to realign their focus on what they're good at – mental health care. Yet in both cases, not in the least because of the sizeable private landownership, there was a mutual effort of public and private to align their interests.

Both the landowners in the GPAG case, as well as Mr. Kreling had their (re)development take place within an intermunicipal restructuring, but where this presented an opportunity for the landowners in Aalsmeer to profitably redevelop, for Mr. Kreling this mostly meant that he had to negotiate with a well-conversed intermunicipal redevelopment organisation in order to get planning permission for the natural growth of his horticulture business.

It is interesting to note that contextually none of the cases seem to start with an intention of future profit. In all cases there is either a necessity or an underlying spatial ambition to the development. GPAG and the PHTB have been established by their municipalities in order to execute the restructuring of an area that was spatially under pressure or in one form or another dealing with rundown greenhouses. The university might make profit of commercial developments, but their explicit goal is to facilitate their primary processes through their development in order to meet the growing demand for their public services. A same argument can be made for the case of GGZC, who stands to make substantial profit from divesting ¾ of their estate, yet their goal to divest sprouted from a shifting understanding on the approach to mental health care: Divesting cuts operational expenditures and the accrued money is then invested in their own concentrated redevelopments. The profits the landowners make in Aalsmeer can be understood to be compensation for desisting their current businesses (More so for landowner A than B or C). Perhaps only Mr. Kreling's development in the Bommelewaard can be understood to bring about future profit. His expansion would likely also have taken place without the intermunicipal PHTB, but it can't be said with certainty that profit was the only goal, as his greenhouse expansion might be a necessity to remain ahead in a very competitive market.

It would thus seem that the private law agreements to the area development in the cases came to be through an underlying goal to the development, but throughout the cases, the various parties did not necessarily have the same vision of the future of the area in mind at the outset of the negotiations. In all cases resulting in a substantial period of negotiating being part of the process (table 4.7). Mr. Kreling had to negotiate for three years to get green light from a planning perspective, and his case is the quickest of the four. Of course, in Aalsmeer, it had been the economic crisis that extended the negotiations into

	GPAG	GGz Centraal	PHTB	TU/D CZ
Negotiating period	14 yrs.	5 / 6 yrs.	3 yrs.	Continuous collaboration
First conversation	2004	2015	2013	
Year of the deal	2018	2020 & 2021	2016	2021

Table 4.7 - Duration of the cases

the next conjuncture cycle, but it raises the question if more speedy negotiations in the first place might have prevented this unfortunate prolongation. In all cases the length of the negotiatory process might be, at least in part, due to the fact that the public parties held little to no land. Their negotiatory power came from the public law big stick of the alternative to the negotiation: The public law procedure. Not necessarily in the sense that would beget the term payment planning, as through the private law track towards the anterior agreement private parties in the cases could also exert influence on the way the public-law framework for development was shaped. Public parties in the cases (or their proxies) were often in favour of development, but also aimed to steer towards plans that were spatially sound and for which they could eventually bear the public law responsibility of adopting a new or changed land use plan. The lack of landownership arguably influenced the way public parties perceived the process, as their interests were purely qualitative. Ambitions as spatial quality, liveability, durability, sustainability or accessibility cost money, and are moreover defined by different departments of the municipal apparatus – in the negotiations to the GGZC case even explicitly so. Negotiation is the only way to find a consensus, or a programme that embodies aligned interests, but such negotiations took notable time and might become more complicated if there is a turnover in the personnel of either party, as one of the interviewees in the university case mentioned that synergy in the negotiation really occurs on an interpersonal level too. The establishment of a separate legal entity, as was the case with GPAG and the PHTB, might be beneficial, as in these cases it added to depoliticising the collaboration. In the interviews this seemed to have provided the respective proxies with a clearer mandate within which they could negotiate; in contrast to the GGZC case, where in the interviews it was mentioned that negotiations with the public party were hampered by a lack of clear public ambitions. Nevertheless, time still appeared to be a fragile resource, as the GPAG case showed that a changing economic context or changing political ambitions can quickly undo the careful negotiatory progress made.

4.5.2. Potential, creation, realization, capture and redistribution of value

Value creation (Table 4.8)

According to Heeres (et al., 2016) there are four specific steps to the cycle of value creation and value capture, of which 'value creation' is the first (see also section 3.7). Of the four ways value can be created (section 3.4), two can be attributed directly to a public entity: Either a change in the land use plan or an infrastructural investment acting as positive externality. In the GPAG case, notwithstanding the restructuring was kickstarted by the rerouting of the N201, it was the potential of a future change in land use plan that created value in the scope analysed. This also rings true for the other cases: the desired development plans were not possible within the then-prevailing land use plans (PHTB: provincial), and thus it was the administrative public act of changing

	GPAG	GGz Centraal	PHTB	TU/D CZ
Tangible moment of value creation	Change in land use plan (Didn't happen)	Change in land use plan	Change in provincial land use plan	Change in land use plan
Type of value created	Room for profitable development	Room for profitable development	Room for profitable business expansion	Room for organic growth and flexibility
Benefit through	Lump sum	Lump sum	Operational cash flow	Support of primary processes

Table 4.8 - Value creation in the cases studied

these regulations that would make possible the development and therein would then tangibly create value. The type of value created differs per case. In the case of GPAG and GGZC it is clear that a shift to residential zoning would allow for the creation of value through dwellings that could be sold off for a lump sum. In the case of Kreling's development in the Bommelerwaard the creation of value was more subtle, as it was dependent on the future revenue streams of the to-be operated business. In this case, negotiations towards the anterior agreement would become more clouded, as negotiating parties need to account for the risk of either disappointing or more fruitful years – with the public party certainly pointing out the potential for higher incomes, and the private party point out the risk for potential losses. Finally, in the case of the TU Delft, the value is created in a change in the land use plan, but not simply because the new land use plan would make possible more, or other types of development, but rather because of the flexibility it entails. This flexibility supports the university in facilitating their primary processes in an organic manner, but it means that the value is specific to the university as an institution, and less tangible for the public to define.

Value potential

In order to begin understanding the mechanics of value capturing within the cases, Heeres's (et al., 2016) cycle had been used as an initial point to structure the information with, in order to be able to start unravelling the process leading up to the agreements. According to Heeres's cycle, created value needs to be realized before it can be captured or redistributed; and in the retrospective view that can be adopted as cases are finalised, the final structure to the value capturing agreements can be understood through this model: Value is created through a change in land use plan, allowing development to take place, and contributions towards various goals to be levied. It is difficult however, to analyse the content or progress of the negation processes through this cycle, because through time, negotiations, and the perceived rationale therein deployed, don't follow the same clear structure as the cycle presents. Furthermore, the tangible moment of value creation in the cases, the moment on which the newly changed land use plan becomes irrevocable, had been preluded by a substantial period of negotiations, conversation or collaboration between the parties involved (Table 4.9).

Between these first moments of contact and tangible creation of value, negotiations had taken place about the way the to-be created value could be used. In all cases, both public and private parties had their ambitions to the infill of the development. In case of GGZC and the TU developments, the theme to these negotiations seemed to be less about 'how to distribute the created value between public and private' but more about 'which elements or functions are necessary to realize underlying goals or ambitions?'. In the case of GPAG this was also true, albeit more in the second phase (2015 – 2018) of the negotiations, when GPAG and the landowners started to work together give infill to the developments. Between Kreling and the PHTB a more positional negotiation took place, where the PHTB tried to integrate its ambitions in the development of Kreling.

	GPAG	GGz Centraal	PHTB	TU/D CZ
1st document or talk	2000	2015	2008	Indiscernible
1st contact between parties (to the case)	2006	2015	2013	Indiscernible, first AA in 2011, also CC in 2016. Yet contact predates this.
(Expected) year of LUP irrevocability	2018	2021 & +	2016	2022

TABLE 4.9 - PERIOD PRELUDING LUP IRREVOCABILITY

Figure 4.14 qualitatively schematises the process towards the moment of value creation as recognized throughout the cases, in an attempt to visualise the process and from thereon analyse beyond the understanding which Heeres's cycle provides. Tangible value is created when the land use plan becomes irrevocable, and the anterior agreement is the document in which the public and private parties lay down the agreed-to content and contributions to the development in question. The potential to this tangible moment of value creation however sprouts much earlier, around the first times the idea of redevelopment is discussed or laid out in a public vision document. Between these firsts moments of discussing the idea, and the moment parties come to close the anterior agreement, negotiations take place about the infill of the development. Negotiations haven't seemed to only take place based on a discussion on a division of potential value, but rather on the underlying goals that the respective parties have towards the development. In this process opposing interests met, because of varying ideas or because what might be beneficial to the goals of one party could have led to a reduction of goal achievement for the other. Yet, it was still a process through which both public and private could benefit, as the potential to meeting their more holistic development goals as well as making profit seemingly drove parties to continuously partake in the process. Furthermore, the sentiment expressed in the case interviews would seem to suggest that although everyone was satisfied with the end result, there was also the perception that the respective counterpart in the negotiation couldn't have asked for more, lest the development be unfeasible. As this perception was expressed by both public as well as by private representatives, it would suggest that the sum of the costs of the public and private goals would have to be roughly equal to the potential value to-be created.

Mutual approach to progressive risk reduction

After the moment of ideas to the case developments sprouted, in all cases there had been a (relatively) long process of studies, negotiations, participations events and intermediate agreements. Unless otherwise agreed to, both parties remained uncompensated during this period, indicating that substantial overhead was required to fuel the continuous efforts of both

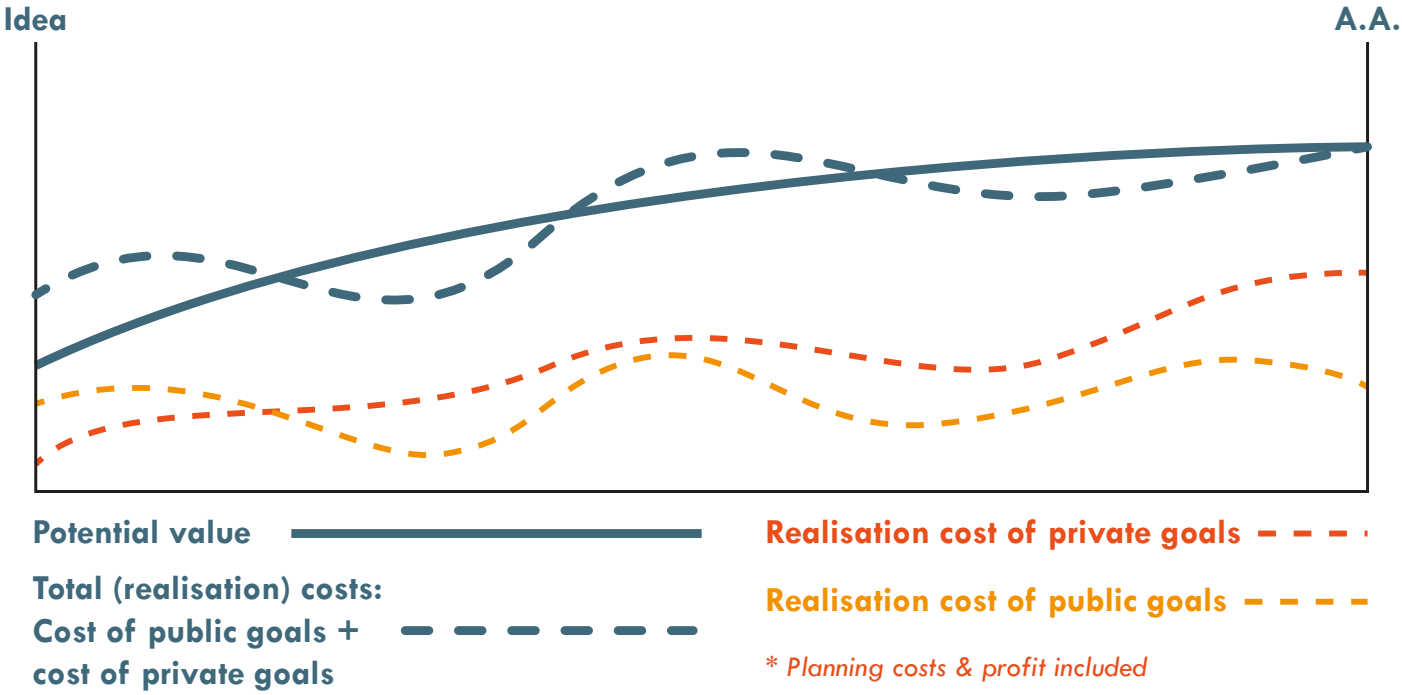


FIGURE 4.14 – QUALITATIVE SCHEMATISATION OF THE NEGOTIATORY PROCESS ON POTENTIAL VALUE DISTRIBUTION - ILLUSTRATION BY AUTHOR

	GPAG	GGz Centraal	PHTB	TU/D CZ
Intermediate agreements (public - private)	No	Yes		
Intermediate agreements (public – public proxy)		N.A.		
Participation events				
Actively sharing news (digitally)				

TABLE 4.10 - IN-CASE ACTIONS AT BEHEST OF UNCERTAINTY REDUCTION

parties. Yet, as neither party could oblige the other to do anything, neither party had an absolute certainty about the outcome of the negotiations. Moreover, even if public and private party would have come to an agreement, interested parties could still submit views on proposed changes to the land use plan, or lodge objections to a changed one. In both the case of GGZC, where the estates are substantial part of the character of the city, and in the case of Kreling, who would develop in sight of surrounding inhabitants, these risks of opposition from the general public were real. Support was gathered through participation events, and the general public was kept appraised of the developments through media outlets.

Within all cases there was also a similar approach to reduce the risk of negotiatory uncertainty, all be there some differences between the cases (table 4.10). The intermunicipal organisations GPAG and the PHTB have their own documented tracks with their respective municipalities, through e.g., an intention agreement or a collaboration agreement. The

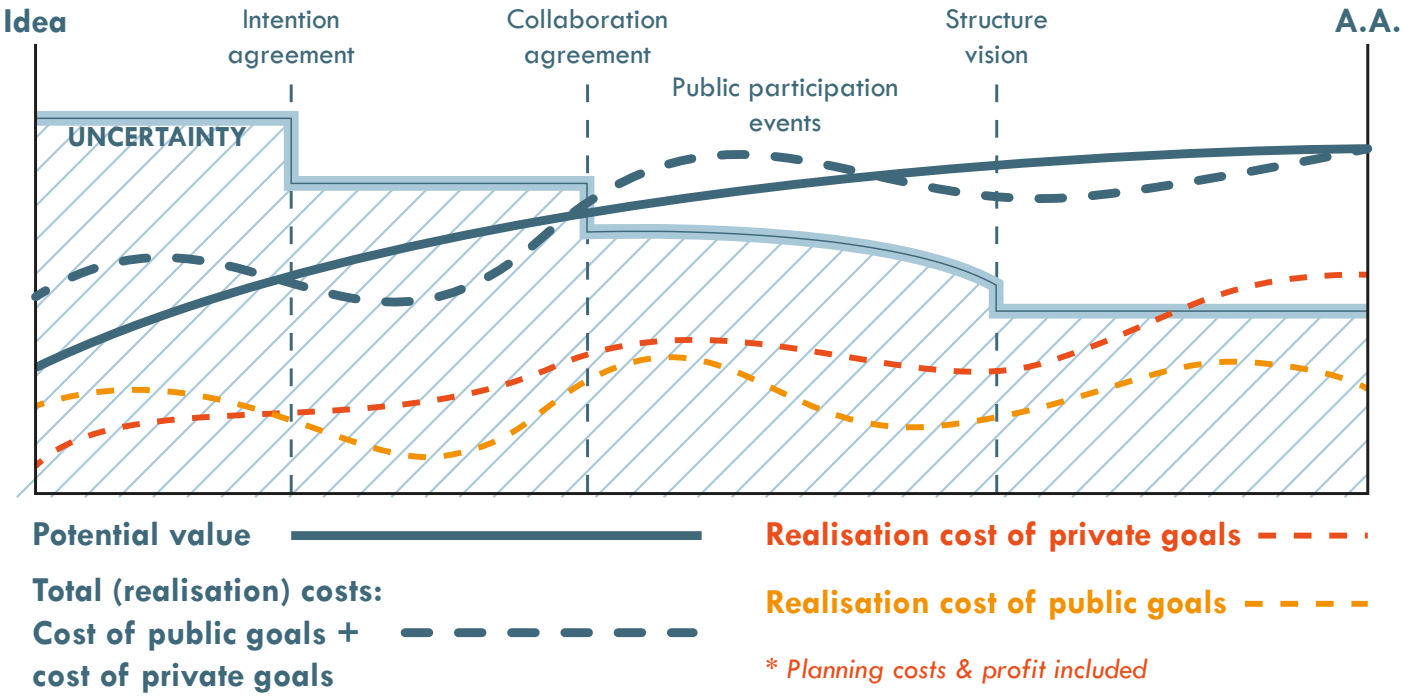


FIGURE 4.15 – QUALITATIVE SCHEMATISATION OF POSSIBLE MOMENTS REDUCING NEGOTIATORY RISK AND THE RISK OF OPPOSITION FROM THE GENERAL PUBLIC - ILLUSTRATION BY AUTHOR

relation between the municipalities and their proxy is not so much of importance here, as is the relative certainty that those proxies can express about the public law spatial framework in their given mandate. In the case of GGZC and the TU developments, this framework was less readily available and resulted in the adoption of intermediate agreements between the public and private parties to the cases, ranging between documents such as intention agreements, collaboration covenants, or even collaboratively drawn up structurevisions or masterplans. Figure 4.15 (non-exhaustively and qualitatively) schematises how such moments have been recognized to have reduced uncertainty throughout the negotiation process in the cases. The signing of intermediate agreements had a rather absolute effect, whereas support from the general public was gathered over time. With each document, the future of an area or a location became clearer, and the uncertainty in the process became less - yet not gone, as the GPAG case has shown.

Value capture and redistribution

In one way or another, in each single case the anterior agreement fulfils the SPA (Dutch: WRO) obligation of 'otherwise ensuring the recovery of costs'. However, throughout the cases there are differences as to what purpose contributions are exacted for, when compared to the categories that can be levied in the public-law land management plan (Dutch: exploitatieplan); The recovery of public planning costs (Dutch: Plankosten / ambtelijke begeleidingskosten) made is the only common denominator. Both in Aalsmeer and in Delft a contribution had been levied for the realisation of some public facility, albeit in Delft only partially, as most of the public space is realized by the university itself on their own land. In the case of GGZC and the PHTB there are technically no fees levied, as the public programme within the limits of the plan area are realised or thereto procured by the private party, but the respective municipalities did impose stringent requirements on the quality of the public space. Whether or not fees are included for planning compensation depends on the development. In Aalsmeer, for example it was not expected to be an issue, but GPAG nevertheless included a provision for it in its GREX. Similarly, for above area costs GPAG and the PHTB have included items in their GREX. The municipality of Delft have included fees based on the PPT (Proportionality, Profitability and causality – Dutch: Toerekenbaarheid) criteria.

Value in these cases had always been captured from the rationale of cost recovery, but in the process to the anterior agreement all items were negotiable (see also Figure 4.14). Interestingly enough, in none of the cases a claim is made on any values that might arise after the anterior agreement – with perhaps two exceptions: 1) Agreements on price indexations and 2) shifting of the responsibility of public space realisation or procurement. Multiple interviewees raised questions about the legitimacy of laying any other claim on future values, as the opposite argument wouldn't hold true either: A municipality does not compensate a developer should the potential value decrease, or realisation costs increase. In case of transferring the responsibility of realisation or procurement of public space, also the public risk deriving from potential costs increase is transferred. Naturally, also the opposite holds true; should costs decrease through market forces or plan optimization, the subsequent additional profit then accrues to the private party – at least for so far market selections haven't incentivized market parties to optimize this integrally with their bids, more on which in the next paragraph. Figure 4.16 (qualitatively) schematises the possible positive or negative development of both the potential value creation that might occur after the moment of fixation in the anterior agreement, as well as the upward or downward possible development of the realisation costs respective to the public and private development goals.

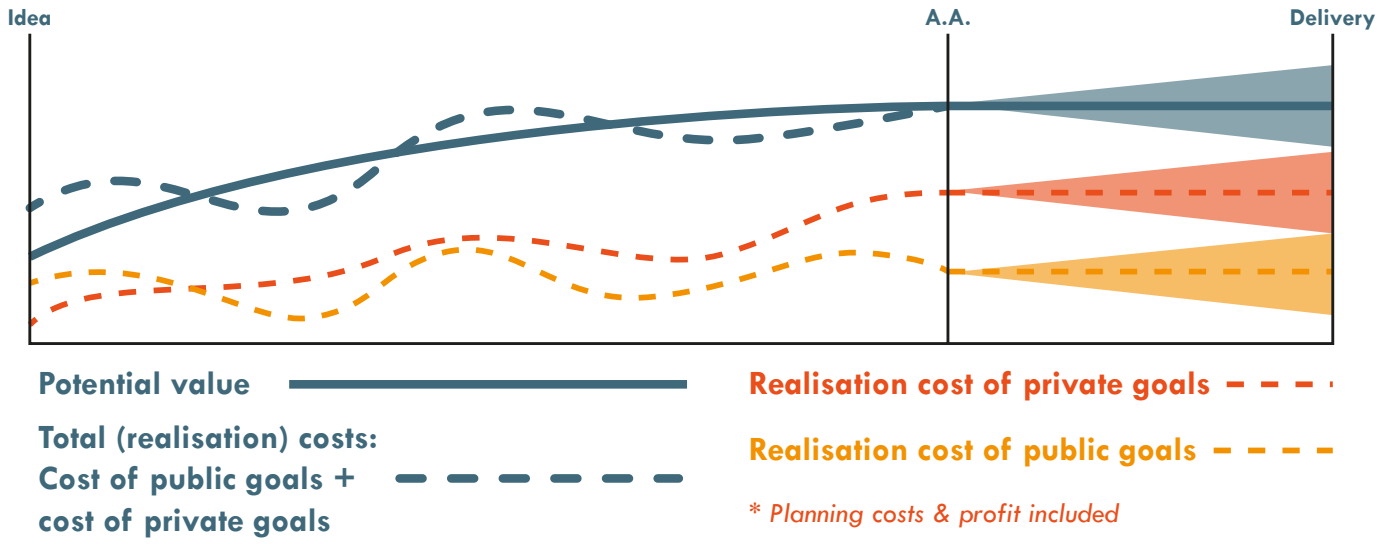


FIGURE 4.16 – QUALITATIVE SCHEMATISATION OF THE POSSIBLE RISE AND FALL IN POTENTIAL VALUE AND REALISATION COSTS BETWEEN THE ANTERIOR AGREEMENT AND THE MOMENT OF DELIVERY WITHIN THE DEVELOPMENTS - ILLUSTRATION BY AUTHOR

Risk, reward and market forces

In the GPAG and GGZC case, market selection has been an integral part of the processes. In Aalsmeer (GPAG), the anterior agreement would be signed with the winning party. Ermelo would finalize negotiations with the winning party in the case of the Hooge Riet, and in case of the Veldwijk estates, the anterior agreement had already been closed with GGZC as selling party, the articles of which are then a precondition to the sale of the estates. This tapping into the market mobilizes market forces, and implores market parties to optimize on programme and/or realisation costs and to therein maximize their bid to the selling party in order to 'win' the competition. Based on the types of uncertainty recognized in the cases, Figure 4.17(A) shows that after the signing of the anterior agreement, a modicum of uncertainty remains. Although the potential value shown is not equal to the economic value of the anterior agreement – realisation costs still have to be paid for -, by qualitatively schematising these mechanics as recognized within the cases, through Figure 4.17 it becomes clear that the position of an anterior agreement in relation to the moment of sale can influence the amount of risk that bidders have to incorporate a great deal. With both GGZC estates, a resolutory condition regarding land use plan adoption or irrevocability had been integrated, yet for the Hooge Riet, two years of negotiations between Heijmans (the winning bidder) still preluded the anterior agreement after settling on a bid with GGZC. For a developer it is not unearthly to take a great deal of risk – speculative land purchase is arguably based on the principle -, but it requires the potential for great reward. In other words, from these particular cases it would seem that by reducing the amount of risk a developer needs to take, it becomes possible to shift the potential for reward to the seller and to integrate it in the substance of the plan.

There is however a footnote to be made to this figure and to the logic presented above. Should the anterior agreement be signed with a selling party, and the market selection take place thereafter, like is the case with Veldwijk, or should the programme be largely agreed to but yet remain without anterior agreement, as with the Hooge Riet and PPA2, a number of things happen. One, risk is not gone, but merely shifted to the selling party so that contesters don't have to integrate

it in their bid. Two, by pulling the anterior agreement forward in time, to reduce public law uncertainty and allow for the market selection, the time between anterior agreement and delivery is prolongated, and therefore exposed to potential market risk longer; and three, any of the risk reducing tactics described also reduce the potential influence a market party might exert on the programme, possibly reducing the attractiveness of the plan. In other words, the effects described are very case-specific and such process would likely only be attractive to a seller that can bear the risk and is willing to do so. Moreover, the three types of risk might have their own weighting factor - determined by political and economic contextualities, and the agreed-to programme might not be as attractive to the market as was thought. Rigorous market and supplier research is thus necessary in order to ensure that the right balance is struck in the proposed programme and process.

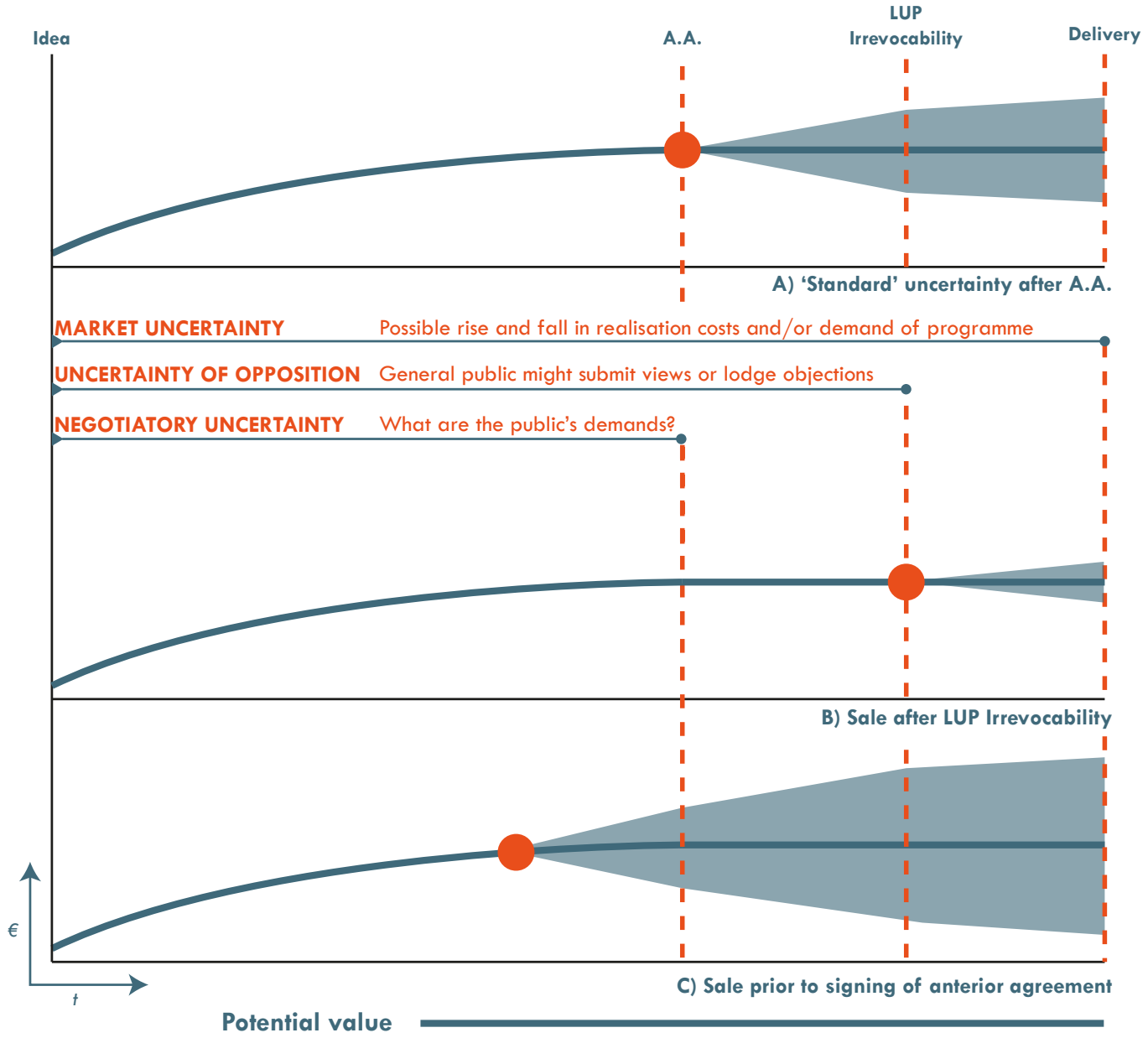


FIGURE 4.17 - REMAINING DEVELOPER UNCERTAINTY DEPENDING ON MOMENT OF PURCHASE (OR RESOLUTORY CONDITION) - ILLUSTRATION BY AUTHOR

4.5.3. The merits of theoretical private law pitfalls

In section 3.7 a number of private law pitfalls have been discerned. That of payment planning, possible lack of transparency, potential limitations of state aid or procurement regulations, and the risks of shifting operational responsibility of realisation of public facilities. In negotiations, there arguably is a thin line between negotiation pressure and payment planning. Interviewees directly representing public parties seemed to be more cautious in using the term in the interviews, but depending on the interpretation of the term, it could be argued that payment planning does happen – however, it might not necessarily be a bad thing. Namely, if one takes the situation to be payment planning, where the public ends up asking for more or higher contributions than they would be able to through a land management plan, rather quickly every anterior outcome would meet the criteria. Rather, the point of the negotiatory processes in the cases had been to discuss and integrate interests of both parties – a game of give and take, in which neither party was bound to the other. Coming to an agreement was in the best interest of both parties, and synergy or constructive collaboration had been a good instrument towards this end, but this didn't mean positional negotiation was avoided altogether. However, as the parties found the results agreeable, and defendable in terms of spatial quality, the dreaded negative use of the label seemed to be prevented because a) the private party still stands to make a profit, and would be unlikely to lodge objections and b) public demands were in favour of being able to take the administrative responsibility of high-quality spatial planning, and therein defendable from the perspective of the public-law responsibility.

The risk of non-transparency remains, or at least, there is little evidence to the contrary. Both public and private parties have been careful in sharing information with the public (as well as with the author of this study [1]) when it comes to specific agreements about the allocation of risk and rewards, as this information might influence the ongoing, or even future negotiations. Parties do seem however, more than willing to share information about the qualitative merits of a plan, especially if intermediate agreements have been made, or if such communications are for the purpose of raising support amongst the general public.

The cases studied provide little information about the potential risk of state aid, as in the cases studied this hadn't been a point of concern. Transferring public responsibility for the procurement of public space, or the realisation thereof however clearly is very well possible, and has its own particular benefits, as described earlier. The fact that the public party remained socio-economically responsible did not seem to be much of an issue, and it seems it is quite possible to manage this well through contracts.

1. Access to the information in the cases has been managed through confidentiality agreements, and the text on each case study account has been vetted on confidentiality by a representative of the case. Through thick descriptions, the reader has been taken along in the quest of unravelling value capturing mechanics, without revealing sensitive parts of the agreements, such as for example the height of the contributions agreed to.

4.6. Conclusion to the case studies

This chapter has set out to provide an account on four case studies conducted, and subsequently conduct a cross case analysis in order to provide an answer to the third SRQ: "How did value capturing in private law agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?" This question can implicitly be answered through the paragraphs of the previous sections, but for the purpose of clarity and unambiguity, the answer to this question will be explicitly reiterated in this, brief, concluding section. It should be reiterated, that these answers provide an explorative insight in the inner workings as found within the four cases studied, and that it is very well possible that should other anterior cases be studied, new, additional or perhaps even different insights are discovered.

Value capturing in the four cases studied have taken place through one or more of three strategies recognized. The first being **substantive negotiations** between parties about the infill of the development: As the representative of the public party negotiates towards an infill that answers the public development goal, the negotiation is implicitly about using part of the value that would potentially be created through the development towards the public development objectives. This has however not solely been an either-or proposition, as the cases have shown that (proverbially) a euro can be spent on something that serves both the public as well as the private development agenda. The second mechanics of value capturing discerned is that which occurs **through a transfer of risk**, and in particular the risk that goes together with the responsibility of the realisation of public facilities. By transferring the operational responsibility of this realisation, or the procurement thereto, the risk of a rise in realisation costs is also transferred, effectively incentivizing the private party to equalize (Dutch: verevenen) the proverbial sweet and sour in their plans, and potentially also providing them with an option to optimize on these plans. The third mechanic discerned is through a tapping into market forces, with private-party to private-party sales through a competitive market-selection, the effect of which was moreover amplified in the GGZC case through a redesign of the traditional anterior process: Namely, by closing the anterior agreement prior to the moment of sale. However, it would be an oversimplification to state that the mechanics of value capturing arose because of this different position of the anterior agreement in the development process. Rather, it had been the **market-oriented redesign of the anterior process** that has led to the increased value capturing potential by shifting the bandwidths of certainty, potentiality and profit.

These mechanics towards value capturing have been able to come to be, as there was a mutual interest between the parties towards the developments studied, and these developments could potentially be elaborated in such a way that it would contribute to achieving both public as well as private development goals. The processes towards coming to the agreements have however been time-intensive and gradual in nature, with no certainties other than those the parties agreed to. Although not directly part of the SRQ governing this chapter, and by no means suggested to be a causal, complete or comprehensive truth, through the cases three types of risk seem to have emerged, which relate to the mechanics of value capturing described above. That of the uncertainty of negotiation, that of possible objections from the general public to the changing of the land use plan, and that of a possible rise or fall in programme demand or realisation costs. The first of which had been used as a parameter to ingeniously reshape the more traditional anterior process. The first two had been risks that were in need of moments consolidating the mutual ambitions, allowing the parties to accrue enough certainty to continue on their (yet uncompensated) venture towards a potential redevelopment. Something which was managed with some variety throughout the cases, but it occurred through intermediate (intention or collaboration) agreements, as well as the provision of information on the contents of the development and the hosting of participatory events.

In regard to the final part of SRQ 3, the private law pitfall of payment planning seemed to have been avoided through the justification that the public law framework of a changed land use plan could only be born through qualitative spatial planning. The understanding of this public law framework would seem to have been given a private-law character in the negations, as parties negotiated to the point where both public as well as private parties indicated that their respective counterpart couldn't have asked for more. The private party would still stand to make a healthy profit, but there would seem to be no residual economic profit left after one would deduct the realisation costs of the development goals from the potential value to be created through the change in land use plan – or at least, so was the case at the moments of value fixation that had occurred at the moments the anterior agreements were closed. Towards the private law pitfall of non-transparency, it has been more difficult to discern active steps taken towards its avoidance. Information on the development was shared with the public, yet parties had been careful in sharing information that could influence the ongoing, or possibly future negotiations. The pitfall of potential state aid has not been identified in the cases, and regarding the regulations of procurement, it would seem that the obligation to tender can be passed on contractually. These contracts also seemed to govern the potential risk of non-compliance to principles of public quality or public value, by including stringent demands and contractual guarantees.

5. Discussion towards a strategic approach of facilitative value capturing

The previous chapter has provided insight into the mechanics of value capturing through private law agreements in four distinct cases in the Netherlands. This chapter abductively translates these insights from the previous chapter in order to distil insights that can contribute to a strategic approach to value capturing within facilitative land policy, and therewith this chapter will answer the fourth SRQ: "How can lessons drawn from the cases contribute to future value capturing strategies in Dutch projects of area development, given the theoretical and practical framework Dutch practices of value capturing is embedded in?". This abductive translation will take place through three sections. To position the recognized mechanics of value capturing within the theoretical framework, the first section will reflect back upon legal and political aspects in which such mechanics take place, and will propose a tentative, yet more concise and actionable definition of value capturing within facilitative land policy. The second section will thereafter reiterate the goals of urban development, discusses the more practical recognized benefits and drawbacks of the private law track in relation to these goals, in order to in the third and final section provide an answer to the fourth SRQ in conclusion to this chapter.

5.1. Value capturing without active land policy; reflecting against the theoretical framework

The study outlined in this thesis has used the cycle of value creation and value capturing as set out by Heeres (et al., 2016) in order to dissect the inner workings of the cases and try to discern the mechanics of value capturing therein. This cycle can be used to understand the relation between the value created through a change in land use plan (i.a.), the way this subsequently leads to the realization of value, and how this created value is (partly) redistributed in order to finance the non-profitable (public) elements in the overall area development. Heeres's model has been used as a starting point to do just this; to start discerning the elements that create value, and understand the mechanics underlying value redistribution. During the study of the cases, their documentation and through the interviews, inductively, it became increasingly apparent that there was more to the creation of value than an after-the fact analysis of the final quantitative or qualitative variables, as huge time spans have passed between the first moments in which ideas about potential redevelopment were discussed and the moment tangible value would be created. This component of time to the processes is also expressed by Heeres (et al, 2016, p. 198): "In the early stages [of the cases studied in their paper], parameters of interdependence, understanding of mutual interests and human efforts may establish the required preconditions for viable application of VC. In later stages, when values are captured and redistributed, an established shared business case and official agreements may help to maintain conditions for cooperation by explicating and institutionalizing the interdependency of the involved organisation". Yet, where the components of Heeres's cyclical model allow for an intricate understanding of the way value is captured in eventual developments, it proved difficult using it to explain the process leading up to these final mechanics. Not to contend that the model is wrong - the empirical data in this study does not lead to suggest such a claim -, but rather because the rationale expressed by the people involved in the processes did not seem to follow the same clear-cut cyclical logic; Negotiations did not take place on the rationale of value distribution or division of to-be created value, but rather on an (expressed) rationale that was driven by the question 'what (functions, elements,…) do we need to reach our goals?'.

In the previous chapter, three specific mechanics of value capturing have been discerned in the cases studied. In all cases, the substance of the anterior agreement had been reached through negotiation, and Heeres (et al., 2016), would categorize the mechanics as 'negotiated-VC'. A typology Heeres et al. contend to have a positive correlation with the successful application of value capturing, as such was the underlying question of their study, but one that doesn't allow for a further distinction between the mechanics of value capturing recognized in the anterior cases of this one. In order to better understand the mechanics of value capturing that were recognized to have taken place in the cases, it might be interesting to further reflect on them in relation to (the spirit of) the Dutch property law and the underlying rationales that could drive choices towards instruments of value capturing.

5.1.1. Positioning the recognized VC mechanics within the academic discourse

Direct value capturing at the level of area development

As with most countries in continental Europe, in the Netherlands property right is rather absolute. Development right is linked to ownership, and insofar not subject to the rights of others, the owner of land is the rightful recipient of all its future fruits. Any limitations on this ownership can be seen as an infringement on the property right – something which resounds in the way owners are eligible to planning compensation for new regulations that diminish the potential value of their land (insofar said owner could not reasonably have expected the newly proposed regulation) (Chapter 3). Although there seems to be no definitive legal objection towards laying a claim to future value developments through a private law agreement, such agreement did not take place within any of the cases, and could also be argued to be at odds with the spirit of the way property rights are understood in the Dutch system. Furthermore, the notion of value capturing future value increments through private law agreements had been frowned upon in the case interviews as 'unjust' or 'unfair'. Moreover, in the current neo-liberal landscape there is an arguable focus on governance through market-oriented instruments, in which redistribution at behest of welfare, something Alterman (2012) dubs direct value capturing, occurs through uniformly and transparently applied taxations. Private-law direct value capturing instruments at the level of area development would thus likely also be politically undesirable, and considering that the political context has become more, rather than less liberal, changes therein are arguably unlikely to come into force in the foreseeable future.

Beyond indirect value capturing

The counterpart to direct value capturing, Alterman (2012) denotes as indirect value capturing, something which is often broadly interpreted as cost recovery. Within facilitative land policy, cost recovery has a rather firm footing in the articles of section 6.4 of the SPA (Dutch: WRO), which elaborates on the use of the land management plan (Dutch: Exploitatieplan), and also provides the legal starting point for the anterior agreement. This link is explicitly mentioned because the SPA lays down that the anterior agreement can be used to 'otherwise ensure the recovery of costs'. Yet, from the cases it would seem that between direct and indirect value capturing, an intermediate form occurs. As has become clear in the previous chapter, the potential to value creation sprouts at a (good) idea to (re)development, and in the period leading up to the signing of the anterior agreement, public and private party can through substantive negotiation give infill to the development in a way that it will meet the development goals of both parties. But, although structurevisions or likewise document provide an extensive overview of public ambitions, these goals are arguably not always very precisely defined, moreover, throughout the negotiation it would seem that the public party can negotiate to better achieve their goal. And if the public can negotiate in order to achieve more of their goal, even if the realisation of that particular goal does not causally add tangible value to the development of the private owner, it cannot be a question of mere cost recovery. Yet

the underlying rationale did not seem to be to only distribute equally for the sake of doing so, rather it was to use the created value at behest of development objectives, with the underlying legitimisation that if the public party undertakes the regulatory act of rezoning, it should be able to bear the public-law responsibility of qualitative spatial planning.

Value fixation and future increments

In the cases, the infill towards meeting development goals had been open to negotiation, and to an extent even the goals themselves were debatable. However, towards the moment of signing the anterior agreement the negotiation space seemed to converge, and with its closing goals were fixated, and whatever value remains to be captured then had to occur through agreed-to development exactions under the rationale of indirect value capturing – legitimized through article 6.24 of the Dutch SPA. After this moment of fixation, through public-law the public party has no instruments toward capturing any additional value at the level of the development, other than what has been agreed to in the anterior agreement. To further illustrate, in the public-law track, the private party is actually rather well protected from a public over-imposition, as SPA article 6.20 does provide the possibility (obligation) to do a post-calculation at the completion of the public works within this track, but the municipality may only execute final payment if it has to pay back money to the private party - never may it recover additional costs. There seems to be no legal objection to making private law agreements circumventing this, yet it did not happen in the cases studied. Moreover, the sentiment expressed in the interviews would suggest that it might be unlikely that such stipulation would be agreed to in an anterior agreement. In the anterior cases studied it was however very well possible to transfer the operational responsibility of realisation (or procurement thereto) of public facilities to the private party, partially circumventing the spirit of the public-law limitations of article 6.20, as potential rise in costs would become the responsibility of the private party, therein effectively broadening the scope of value capturing slightly beyond mere cost recovery. The anterior agreements in the cases made no claim to the land or its objects after the moment of delivery, suggesting that the scope of the anterior agreement is limited to this moment, but it is very well possible that a fifth case, differing from the four studied might suggest otherwise. In any case, from this study it would seem that after delivery, the delivered object no has obligation left to the anterior agreement, and becomes again 'regular' property of an owner – protected by (the spirit of) the property law. Changes in its value, positively or not, befall its owner, and value capturing for the sake of welfare distribution ought to take place through direct value capturing instruments such as uniformly applied taxations, which Smolska and Amborski (2000) as well as Alterman (2012) denote as the more regular instrument for this.

Market oriented anterior process design

The reasoning outlined above explains two of the three types of value capturing mechanics that can be recognized within the cases (Figure 5.1). The first being through substantive negotiations and the second through the transfer of risks through shifting operational responsibility. The third mechanic recognized however requires a little more nuance. Within the GGZC and GPAG case it was recognized that through a mobilisation of market forces additional value has been attained. Moreover, within the GGZC case, the outcome was further maximised through reducing developer uncertainty. However, it would be an oversimplification to state that additional value can always be found through a market selection, or through closing the anterior agreement prior to the moment of sale. The three risk types recognized can arguably have their own relative weighting, dependent on all kinds of economic, political and contextual factors. Moreover, this reshaping of the 'traditional' process does not take away risk, it merely shifts it towards another party – whom thus has to be able and willing to carry this. This can be taken to suggest that there is a process component to coming to an anterior agreement, which can be designed in order to shape the way risks and certainty come into being. The third recognized mechanics of value capturing in anterior agreements resides in this ability to shape that process, and therewith shift bandwidths of certainty, potentiality and profit – rather than one particular design of doing so.

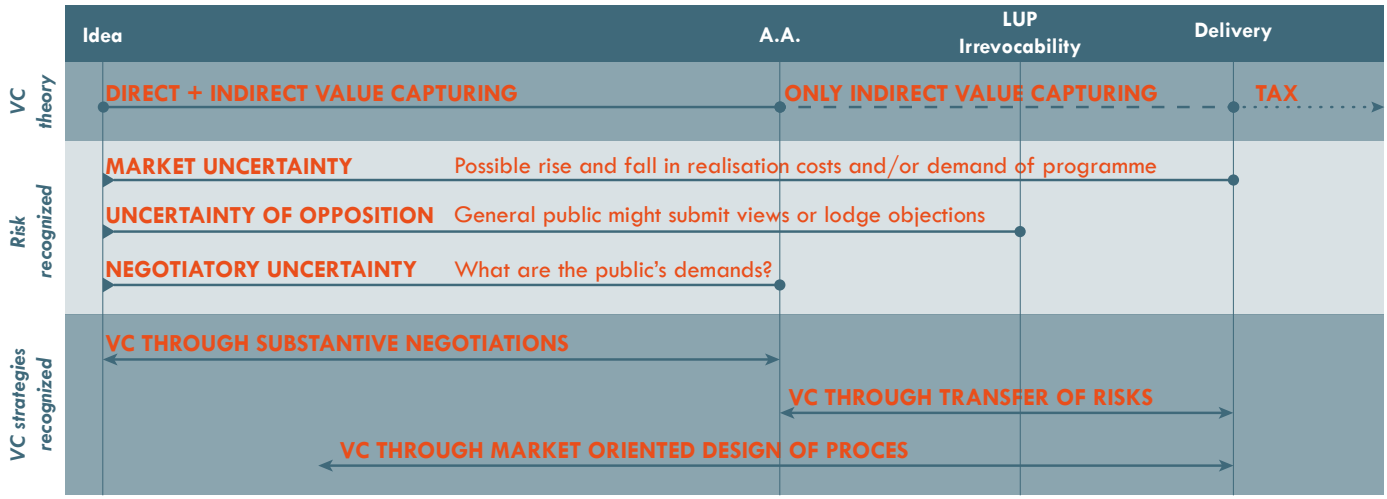


FIGURE 5.1 – THEORY AND PRACTICE; VALUE CAPTURING THROUGH ANTERIOR AGREEMENTS – ILLUSTRATION BY AUTHOR

5.1.2. PROPOSING A WORKING DEFINITION TO FACILITATIVE VALUE CAPTURING

All three of these mechanics have in common that they depart from the public goals to be achieved. Even the second (shifting operational responsibility), as such shift can't take place if no goals have been set. Naturally, the mechanics could be finalized through the exaction of a pecuniary contribution, but the negotiation space allows for much more, because it needn't be a zero-sum game; each euro spend can theoretically contribute to more than one goal, and moreover to more than merely the goal of a single party. In order to depart from this with an actionable understanding of value capturing in the context of facilitative land policy, it is here contended it begets an attempt at a more specific definition, because current definitions do not entirely seem to encapsulate its practice. Facilitative land policy is often chosen as mode of policy in those cases where a municipality cannot or does not want to adopt a risk-bearing attitude to developments within (parts of) its borders. However, as Kes (et al., 2019) already indicate, facilitative does not necessarily mean laissez-faire. Without landownership or risk-bearing role, public parties can – and arguably should – still take a proactive role to achieve its public (spatial) ambitions. Here it is contended that value capturing in the context of facilitative land policy can be understood to be an attempt to maximize the way area developments contribute to public goals. For these reasons, this thesis proposes to couple the policy mode within a new, yet tentative (considering the explorative scope of the study) more actionable definition – facilitative value capturing: "Maximising the way in which the area development contributes to public spatial policy objectives through (synergetic) negotiations, transfer of operational risks or anterior process design."

5.2. PRACTICE AND PURPOSE OF FACILITATIVE VALUE CAPTURING

In the previous section, an attempt has been made to position the, from the cases discerned mechanics of value capturing within the socio-political debate on the topic. This section will try to move beyond the political deliberations on value capturing and its legitimacy, and will discuss the potential and pitfalls of the anterior agreement in relation it its function and to the purpose of land policy. The goal herein is to then also position the three discerned mechanics within the more practical process towards the anterior agreement, to reflect what benefits might be attained through the process, and what drawbacks or risks might be taken into account.

5.2.1. A purpose to facilitative land policy

The management of land can be a lucrative business (Dubbeling, 2014; Van Oosten, Witte & Hartman, 2018), yet within the Dutch system, the management of land, or the profits thereof are never a goal in themselves. Rather, land policy and land management are a means by which public spatial and sectorial goals, or even particular municipal ambitions can be achieved (Van Oosten, Witte, & Hartmann, 2018). And it is these spatial and sectorial ambitions that are growing. Justifiably so, considering the challenges our urbanity faces, as set out in the "National Strategy on Spatial Planning and the environment" (Ministry of the Interior and Kingdom Relations, 2020). Yet since the great financial crisis of 2008, municipalities are more hesitant to deploying active, risk-bearing land policies, and facilitative land policy has gained a certain popularity (Buitelaar, 2010; Van Oosten et al., 2018; De Zeeuw, 2017; De Leve & Geuting, 2021). Neo-liberal ideas on free market economies might support market-oriented development instruments (Heurkens, 2012; Valtonen et al., 2017), yet land development is prone to external, potentially societally undesirable effects the markets would not integrally solve themselves (Ministry of Housing, spatial Planning and the Environment, 2001), nor would it be realistic to expect from the market to integrally solve unprofitable development ambitions, and therein shaping places, or the institutional framework thereto is thus explicitly a governance activity (Adams and Tiesdell, 2013). In other words, given the overarching national challenges of our time, even when municipalities will not or cannot take the more risk-bearing active initiative, shaping the environment requires public leadership. Kes (et al, 2019) correlate the public's production-role (to have or not have land) with its steering-role; Facilitative land policy does need to mean a laissez-faire attitude towards land development, and should the public party want to achieve integrated place making and contribute to solving the national challenges, it is here contended that a proactive attitude is required to influence the way market parties organize their strategies within the existing playing field.

5.2.2. Potential and pitfalls to value capturing through anterior agreements

A concurrence with theoretical potential – and beyond

The anterior agreement is the private law alternative to the public law land management plan (Dutch: Exploitatieplan). Public parties are obligated to recuperate any costs or investments they have to make in order to facilitate a particular development from the party that benefits from those investments. This is possible through a land management plan, which can be appended to a land use plan, together which these then contain the public development ideals through an imposition of development restrictions, as well as set out the fee exacting the developers' contribution. The process of drawing up these plans is rather laborious, and takes away the possibility for a private party to voice their interests in the elaboration of the plans. Should these documents be required anew for a private development initiative, municipalities are obligated to pursue the private law track towards the anterior agreement first. Through this the recovery of costs has to then be 'otherwise ensured' (art. 6.12(2a) SPA), but other than this the content is almost entirely form free (Ministry of the Interior and Kingdom Relations). The anterior agreement is used to elaborate the agreement between public and private about the type of development, as well as the contributions to be levied, effectively opening up the negotiation space on the infill of both the land use plan, as well as the land management plan. Notwithstanding that the public party still has the public law responsibility of adopting the land use plan after reaching an anterior agreement, this provides public and private with the opportunity to voice their interests and exert their influence on the development, so that it is given infill in a way that it gets to meet the ambitions of both parties involved. This can be of added value over the combination of an a priori set land management plan and land use plan, because in this latter combination the public party has to lay down its requirements without the possibility of aligning them

with market interest; possibly overshooting with their ambitions, under-ask the market, or even missing out on developments because of apparent misaligned interests. Moreover, specific added value in the private-law track to the anterior agreement perhaps lies within the possibility of public and private to reach agreements that wouldn't be possible otherwise (without active land policy). As also became clear through the cases, for example in the collaboration of the three landowners in Aalsmeer towards an integral plan, the incorporation of the access road on the land of Mr. Kreling, or the development flexibility in Delft, as these are elements that have explicitly only been possibly because of the anterior track, and wouldn't have been in the facilitative public-law track. Furthermore, the anterior agreement seems to be able to, possibly in combination with intermediate agreements, nicely capture the mutual development intent and reduce mutual uncertainty – something also suggested by Heeres (et al., 2016) –, and moreover allows the public party to influence the private programme (e.g., types of housing) and the quality of public space. Also, the anterior agreement seems to be effective in 'otherwise ensuring' cost recovery. However, as the height of the contributions can be part of the negotiation, the height of these exactions could normatively both be argued to be relatively arbitrary – or fair, and market-based

Furthermore, from the cases it would seem that there is a huge opportunity in closing the anterior agreement with a landowner who has the intention to sell, as opposed to closing it with a developer who bought the land speculatively. It requires quite a bit of market research in the earlier process, but, considering the 26% higher-then-expected bid in the GPAG case, has the potential to massively decrease development risk. When the public law framework is already elaborated in the anterior agreement, developers have to account for less risk in their bids, and can thus maximize on price and substance, effectively allowing both public and seller to up their asking price. However, the risk because of negotiatory uncertainty is not gone, merely shifted to the selling party, indicating that such market selections might only be beneficial in an upwards trending real estate market, where competitors are expected to outbid each other. Furthermore, when the opportunity of reaching agreement with a landowner with the intention to sell does not present itself, the public party is still left with its negotiatory power in the earlier stage, and the type of contribution levied in the stage of closing the anterior agreement. The GPAG and PHTB case have shown that a depoliticised project office with a specific and well thought out mandate can effectively and with purpose negotiate towards particular goals. Furthermore, the PHTB and the GGZC case have shown that transferring the responsibility of realisation of public facilities (or the procurement thereto) can reduce risk for the public party. Here too, the risk is not gone, but transferred – as is the potential reward, should the market party be able to optimize on the plans.

Relative drawbacks to the anterior process

In relation to the overarching urban challenges and the concept of value capturing, two relative drawbacks have been observed in the cases. The private law track is often chosen in situations where the public party holds no land, and therein thus needs to either adopt a very active approach to land policy, or a facilitative one, with the latter being the focus of this study. The lack of landownership brings with it a particular position to negotiations, as the legal consultant to the PHTB case suggested that the public negotiating power comes from public law responsibilities and the corresponding big stick. In all the cases, the negotiating process of aligning interests had been one of careful explorations and collaborations – but on a monthly, rather than daily basis, making it a long process. This length itself can be frustrating to parties involved, but also entails a sensitivity to conjunctural and electoral cycles, as shown in the GPAG case, as political interests might shift over time, or the economic context might simply change. Moreover, actual negotiations take place between people, suggesting that if synergy in the process exists on an interpersonal level, as mentioned by the public interviewee in the TU Delft case, the successful progression of such negotiations could be sensitive to turnover. This risk of lengthiness

is also explicitly experienced as such by multiple interviewees, who express satisfaction on the outcome of the process, but frustration with its duration. The second drawback recognized is that within the cases, the notion of making agreements about future value increments was frowned upon and seemed to be of an undesirable nature. The anterior agreement was consequently used to fixate values in time. Future values are relatively uncertain and therein have a clear component of risk. The notion to capture value in good times, but not compensate in bad times, has been frowned upon in interviews in regard to its legitimacy. Legally, there seems to be no technical objection to making private-law agreements about capturing future value increments, but perhaps the spirit of art. 5.1(3) of the Dutch civil code – which states that the owner of a thing has the right to all its future fruits –, resounds in a sense of resistance to such a unilateral public capturing of value.

Two possible risks in a neo-liberal context

The overarching question underlying this thesis relates to the role and potential of private law agreements in a neo-liberal context in the face of urgent national urban challenges. In this particular regard, there are two risks that were recognized, and although there is no direct evidence for them in a broader regard, it is firmly believed that they beget mentioning. The first risk is a ponderance on the neo-liberal attitude towards property, stakeholder interests, and market forces, as these clearly have an impact on the duration of the process, already in the negotiations alone (!). If transformation, redevelopment, or transitions are required because of urgent national urban challenges, years of negotiation do not contribute to solving this. It is, however, intrinsically entwined with the process towards an anterior agreement, suggesting that proactive, risk-taking government action might be more effective in dealing with these challenges. The second risk derives from the perceived preference that was given in the cases studied to the private-law track above the public law variant, despite the lengthiness of the negotiations, and from the contention that there is a potential (economic) value to anterior agreements for public parties. The process towards an anterior agreement arguably gives a municipality a lot more means to effectively influence private developments, and the developer fees therein – as opposed to through land use, or land management plans. In theory this could be argued to result in a perverse incentive: Not zoning a particular area as residential would arguably give a municipality way more leverage in negotiations than proactively labelling an area as such. Arguably, public parties ought to pursue the public law track if the private-law track is unexpected to bear fruit, but in none of the cases had there seemed to be a moment in which this was considered. Which might be at odds with the raison d'être of facilitative land policy, which ought to be facilitative, and guiding developments through public-law frameworks. The private law-track thereto can be an elegant instrument in creating a built environment through the interests of more parties, but if it leads to holding out potential development at behest of future negotiation power, it makes the planning process (even) less transparent and not at the behest of the common interest.

5.3. Concluding the discussion towards a strategic approach

This chapter aimed to find an answer to the fourth SRQ: "How can lessons drawn from the cases contribute to future value capturing strategies in Dutch projects of area development, given the theoretical and practical framework Dutch practices of value capturing is embedded in?". However, although through the exploratory nature of the research interesting insights have been found, it has not led to causally provable and concrete steps that can be taken. Therefore, the short answer to the SRQ is 'by providing an insight into the possibilities, which may broaden the horizon of the individual who is pursuing such a strategy'. Not a very satisfactory answer, but from an empirical standpoint, one that is in line with the expectations. In an attempt to distil what initial insights into the possibilities might be gained, a discussion is set out in this chapter to position the three found mechanisms of value capturing in the academic debate, and to weigh the practical advantages and disadvantages as recognized in the case studies against the objectives of facilitative land policy. The notion of a strategic approach, suggested in the thesis and chapter title, has been given interpretation in a more actionable definition towards value capturing within facilitative land policy: 'facilitative value capturing' – "Maximising the way in which the area development contributes to public spatial policy objectives through (synergetic) negotiations, transfer of operational risks or anterior process design."

This tentatively proposed definition is the product of a reflection against the theoretical and practical framework. A number of findings bear mentioning: Heeres's (et al., 2016) cycle of value creation and value capturing provided many great insights, predominantly as it provides a framework through which the relation between the cost-bearing and cost-letting elements in a broader area development can be understood. However, it proved limited in formulating an understanding of the inner workings on how value creation or value capture came to be in the anterior process, as the parties involved did not explicitly use the same clear-cut cyclical rationale in the to-and-fro movements that formed their collaborations. Alterman's (2012) notions of direct and indirect value capturing aided in formulating a further understanding: The articles elaborated in the anterior agreement can be understood as indirect value capturing, as the contributions (whether financially or in kind) are agreed to through a rationale of cost recovery. However, in the process leading up to the agreement, a more direct form of value capturing seemed to occur, as public parties were able to negotiate for an achievement of more of their goals, inherently moving beyond the rationale of cost recovery alone. The now underlying rationale was not however a direct capture of value only for the sake of welfare redistribution, but rather a mobilisation of part of the potentially created value at behest of public spatial goal attainment, as is the goal of land policy and management. The term 'facilitative value capturing' is therein (tentatively) proposed at the interface of the mode of land policy, and the public act of seeking to mobilize potentially created value towards the underlying spatial goals expressed in that same policy. Agreements about capturing future value increments did not occur in the cases studied. Through the alternative public-law track, such agreements are not possible, and although there seems to be no legal objections to making private law agreements differentiating from this, it would likely meet resistance in practice, as there had been strong sentiment against the idea in the interviews.

From the cases studied, a number of benefits from the private-law track towards the anterior agreement emerged – in relation to the notion of facilitative value capturing, compared with a land management plan (Dutch: Exploitatieplan) together with a land use plan. In line with the literature on the matter (section 3.7), is that it gives parties the opportunity to collaborate about the potential infill of an area, and to therein do justice to both their interests. Moreover, it seems that it would offer the possibility of integrating interests in a way that is simply not possible posteriorly. Mutual interdependency towards an achievement of goals

incentivizes parties to work together, and through intermediate agreements it had been possible to gradually reduce development uncertainty. An insight that hadn't been readily recognized in literature, but has been identified in 2 out of the 4 cases, is that through collaborative efforts between public and private there is a potential towards profit (and facilitative value capturing) maximisation that can take place if the anterior process is cleverly designed. A similar effect, but on a smaller scale, was recognized in the agreements made about the shift of operational responsibility of the realization of public facilities (or procurement thereto), as with the shift of responsibility, the potential increase in realisation costs was effectively captured ex ante.

Adams and Tiesdell (2013, p. 286) posit: "places come about as political power engages with the dynamics of the real estate development". An argument that resounds in the actionable definition of facilitative value capturing proposed in this chapter. The deploy of the three value capturing mechanisms recognized in the previous chapter, have been very case-specific, making it difficult to distil concrete transferable lessons, but the fact that they could have been deployed, suggests that there have been contextual variables to those cases that made them possible. In all this, the insight emerges that public parties are able to go beyond the practice of mere cost recovery, and can use the private law track of facilitative land policy to integrate public goals in private development, in a way that goes beyond the posterior possibilities. More specifically, in regard to answering the SRQ governing this chapter: Lessons from the case studies conducted can contribute to future value capturing strategies through a broadening of one's horizon, the proposal that value capturing in facilitative land policy might be understood not as a mere financial exercise, but as an active exercise of public goal-achievement, and the insight that for future case specific-applications, an intricate understanding is required of the market arena the development takes place in, and the interests of the players therein.

6. Conclusions, recommendations and limitations to the study

This thesis has departed from the problem statement that it is difficult for Dutch municipalities to integrate non-profitable elements in area development, without more active forms of land policy, and posited that because such forms of land policy are less readily or frequently used, it is important to explore the possibility and potential of private law agreements in regard to value capturing. The first section of this chapter concludes the study, and through the answers to the four sub questions provides an answer to the research question governing this thesis: "How can public parties increase the potential of their value capturing strategies within facilitative land policy using private law agreements in projects of area redevelopment?". The second section moves beyond the empirical data alone and provides some suggestions of a more normative nature. The third and final section acknowledges and discusses the limitations to this research, and provides recommendations for future study.

6.1. Conclusions

The neo-liberal relevance of private law agreements in urban area development

The first sub research question reads: "Why is value capturing through a private law agreement relevant, according to literature and practice?", and has been studied through a narrative literature review and explorative interviews with senior consultants from practice. The answer is found at the intersection of two partial answers: The deploy of private law agreements in urban area development is relevant because of the gradual political shift towards a more liberal landscape. A school of thought that tends to pursue free market economies, as this – according to liberalism – will result in the most efficient distribution of welfare. Urban development as a practice has to move along as the form of governance shifts from a top-down coordinative model to one of open governance, which is more open to multiple party interests. Without active land policy, public and private are seen as symbiotically interdependent, and they need to collaborate in order to come to fruitful development. The second partial answer relates to the relevance of value capturing, which it is, because it would be unrealistic to rely on the free market alone to realize integrated places, and consistently integrate non-economic efficient, yet necessary elements in area development. Land policy is the means through which spatial ambitions are managed in the notion that land is scarce, but prone to external, potentially societally undesirable effects that the market would not integrally solve themselves. Therein also lies the interface: Value capturing is an inherent part of active forms of land policy, and such forms of land policy are less readily or frequently used as they used to be. It thus becomes important to explore the applicability and efficacy of value capturing through more market-oriented solutions; such as through private law agreements.

Theoretical potential and pitfalls of private law agreements

The second SRQ to this study reads: "How can value capturing through a private law agreement be achieved and also contribute to the development itself?", and has been answered in concert with the question above. The practical answer resides within section 6.4 of the SPA (Dutch: WRO). Should there be a need for any public costs or investments in order to facilitate a particular private development, the public is obligated to recuperate the costs made from those private developers benefiting from the investment. The public-law track provides for the

possibility of doing so through a land management plan (Dutch: Exploitatieplan), but municipalities are expected to pursue the private-law track towards an anterior agreement first. This anterior agreement has to otherwise ensure the recovery of costs, but can contain more then only the elements of cost recovery that would have otherwise been elaborated in the land management plan, such as types of development, (public willingness to a) change of the land-use plan, phasing, and process-related contingencies – effectively opening up the conversation to whatever might be relevant to the parties at that moment. Through such agreements it becomes possible to go beyond a mere private law infill of the public law obligation to recovering costs. The mutual interdependency between public and private parties makes it possible to create additional value in area development through an understanding of each other's interests and a collaborative, open attitude towards negotiations. There are some pitfalls to such agreements; Public parties are prohibited of exerting undue influence through payment planning, and the line between negotiatory pressure and such influence can be perceived as rather thin. At the same time, such negotiations are often conducted in mutual confidentiality, whereas a change of the land-use plan has multiple possibilities for a larger interested public to voice their views. Should agreements between public and a single private party be made about changing the land-use plan, it could become untransparent to the larger public as to what alternatives have been explored. Furthermore, in the case of in-kind contributions, it is imperative that relative public values are adhered to by the private party and that the in-kind contribution does not fall short of the economic value of the otherwise necessary compensation.

Observed market-oriented mechanics of value capturing through the anterior process

The third SRQ to the study governed the case studies conducted: "How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?". Four cases have been studied, for which the Heeres's (et al., 2016) cycle of value creation and value capture was used as a starting point from which to begin unravelling the information within the cases. Moving beyond a mere retrospective analysis of the final agreement, it inductively became apparent that although tangible value would be created at the moment of land use plan irrevocability, the potentiality to this value creation sprouted a lot earlier. Through the four cases, three mechanics of value capturing have been recognized, the first of which implicitly aimed at this period of potential to value creation and has been understood to be 'through substantive negotiations'. Through the literature study it was understood that collaborative efforts are of essential importance in the anterior process, but through the cases it seemed that the negotiations themselves determined for a great deal to what extent part of the potentially created value would be used towards public (spatial) objectives. The second and third mechanics recognized, respectively 'through transfer of risks' and 'through a market-oriented design of the anterior process', made use of the three risks recognized throughout the cases. The second mechanics specifically gears towards reducing the market uncertainty a public party faces, through shifting the operational responsibility of realizing particular public facilities (or the procurement thereto) to the private party; should realization costs rise between moment of the anterior agreement and the delivery of the facility, this rise in costs are at the expense of the private risk holder. The reverse is true as well, as it allows the market party to potentially optimize the plans, in which case any savings befall the private party too. The third mechanic (predominantly) made clever use of the two other risks recognized; that of negotiatory uncertainty (what will be the outcome of the negotiations) and the of possible opposition from the general public (possible lodgement of views or objections to the change of a land use plan). Through the cases it seemed that a detailed development plan, with a signed anterior agreement, and certainty to the irrevocability of the land use plan reduced the risks an external developer would need to account for. By putting such plan integrally (land and

anterior agreement) to the market in a competitive tender-like setting, market parties were incentivized to price in such risks as low as possible and outbid each other in their offers. The result of which could be anticipated, and therein used to the benefit of both the selling party as well as the substance of the integral development. Although an elegant outcome, it would be an oversimplification to state that this is because of organizing the anterior agreement prior to a competitive market selection, but it can be taken to understood that there is a procedural element to the anterior process which can be cleverly designed in order to influence both value creation and value capture through shifting the bandwidths of certainty, potentiality and profit, based on an intricate understanding of relevant contextual factors.

In the literature study preceding the case studies, four potential private-law pitfalls were recognized. In the cases, the private law pitfall of payment planning seemed to have been avoided through the justification that the public law framework of a changed land use plan could only be born through qualitative spatial planning. The understanding of this public law framework would seem to have been given a private-law character in the negations, as parties negotiated to the point where both public as well as private parties indicated that their respective counterpart couldn't have asked for more. The private party would still stand to make a healthy profit, but there would seem to be no residual economic profit left after one would deduct the realisation costs of the development goals from the potential value to be created through the change in land use plan – or at least, so was the case at the moments of value fixation that had occurred at the moments the anterior agreements were closed. Towards the private law pitfall of non-transparency, it has been more difficult to discern active steps taken towards its avoidance. Information on the development was shared with the public, yet parties had been careful in sharing information that could influence the ongoing, or possibly future negotiations. The pitfall of potential state aid has not been identified in the cases, and regarding the regulations of procurement, it would seem that the obligation to tender can be passed on contractually. These contracts also seemed to govern the potential risk of non-compliance to principles of public quality or public value, by including stringent demands and contractual guarantees.

Insightful lessons

The fourth SRQ aimed to abductively draw lessons from the cases studied: "How can lessons drawn from such cases contribute to future value capturing strategies in Dutch projects of area development, given the theoretical and practical framework Dutch practices of value capturing is embedded in?". The explorative nature of this study made it difficult to conclude on actionable steps, as such steps cannot be causally proven on the basis of the empirical evidence presented. The brief answer to the SRQ therefore reads 'by providing an insight into the possibilities, which may broaden the horizon of the individual who is pursuing such a strategy'. Insights which have abductively been found through reflecting the cases against the theoretical and practical framework formulated through answering the first two SRQ's. Some more normative suggestions will be provided in the next section of this chapter, but in the conclusion to this SRQ it is relevant to mention some of these insights.

Heeres's (et al., 2016) cycle of value creation and value capturing provided many great insights, predominantly as it provides a framework through which the relation between the cost-bearing and cost-letting elements in a broader area development can be understood. However, it proved limited in formulating an understanding of the inner workings on how value creation or value capture came to be in the anterior process, as the parties involved did not explicitly use the same clear-cut cyclical rationale in the to-and-fro movements that formed their collaborations. Alterman's (2012) notions of direct and indirect value capturing aided in formulating a further understanding: The articles elaborated in the anterior agreement can be understood as indirect value capturing, as the contributions (whether financially or in kind) are agreed to through a

rationale of cost recovery. However, in the process leading up to the agreement, a more direct form of value capturing seemed to occur, as public parties were able to negotiate for an achievement of more of their goals, inherently moving beyond the rationale of cost recovery alone. The now underlying rationale was not however a direct capture of value only for the sake of welfare redistribution, but rather a mobilisation of part of the potentially created value at behest of public spatial goal attainment, as is the goal of land policy and management. Without landownership or a risk-bearing role, public parties can still take a proactive role to achieve its public (spatial) ambitions. Here it is contended that value capturing in the context of facilitative land policy can be understood to be an attempt to maximize the way area developments contribute to public goals. For these reasons, this thesis proposes to couple the policy mode within a new, yet tentative (considering the explorative scope of the study) more actionable definition – facilitative value capturing: "Maximising the way in which the area development contributes to public spatial policy objectives through (synergetic) negotiations, transfer of operational risks or anterior process design."

From the cases studied, a number of benefits from the private-law track towards the anterior agreement emerged – in relation to the notion of facilitative value capturing, compared with a land management plan (Dutch: Exploitatieplan) together with a land use plan. In line with the literature on the matter, is that it gives parties the opportunity to collaborate about the potential infill of an area, and to therein do justice to both their interests. Moreover, it seems that it would offer the possibility of integrating interests in a way that is simply not possible posteriorly. Mutual interdependency towards an achievement of goals incentivizes parties to work together, and through intermediate agreements it had been possible to gradually reduce development uncertainty. An insight that hadn't been readily recognized in literature, but has been identified in 2 out of the 4 cases, is that through collaborative efforts between public and private there is a potential towards profit (and facilitative value capturing) maximisation that can take place if the anterior process is cleverly designed. A similar effect, but on a smaller scale, was recognized in the agreements made about the shift of operational responsibility of the realization of public facilities (or procurement thereto), as with the shift of responsibility, the potential increase in realisation costs was effectively captured ex ante.

Finally, it ought to be mentioned that besides the private-law pitfalls identified from theory, some potential drawbacks and risks have been recognized in the cases. Their weighted importance is arguably in the eye of the beholder, but here goes: The process towards all the anterior agreements in the cases had been lengthy. This makes the process sensitive to external changes through conjunctural or electoral cycles, and even to internal turnover in personnel, should for example synergy in the negations be on an interpersonal level. Moreover, should there be an ambition to contribute to the overarching urban challenges (energy-, climate-, sustainability goals, etc.), the lengthiness of the process might prove a risk to public efficacy. Finally, there might be a potential risk residing in the potential (economic) value of the public's ability to come to an anterior agreement. The process towards an anterior agreement arguably gives a municipality a lot more means to effective influence private developments, and the developer fees therein – as opposed to through land use, or land management plans. In theory this could be argued to result in a perverse incentive: Not zoning a particular area as residential would arguably give a municipality way more leverage in negotiations than proactively labelling an area as such. Whereas the goal of facilitative land use policy ought to be facilitative, and guiding developments through public-law frameworks. The private law-track thereto can be an elegant instrument in creating a built environment through the interests of more parties, but if it leads to holding out potential development at behest of future negotiation power, it makes the planning process (even) less transparent and might expose public parties to the risk of being accusing of not acting at the behest of the common interest.

The conclusion to this study

The overarching research question underlying this study reads: "How can public parties increase the potential of their value capturing strategies within facilitative land policy using private law agreements in projects of area redevelopment?". And, in conclusion, this thesis contends that this could be achieved by using the more actionable definition of facilitative value capturing as a starting point, because facilitative needn't equal laissez fair. This suggests that public parties need an intricate understanding of case-specific internal, external and contextual factors in order to deploy market-oriented mechanics of value capturing in the anterior process. Therein they could potentially maximise the way an area development project contributes to the public spatial policy objectives, through (synergetic) negotiations, transfer of (operational) risks or through a market-oriented, case-specific redesign of the anterior process.

6.2. Normative suggestions towards a strategic approach to facilitative value capturing

The conclusion to the study could be perceived as somewhat unsatisfactory to the reader looking for more actionable steps towards facilitative value capturing. But neither is it entirely surprising, as arriving at a more empirical theory from a practice that has revealed itself to be pluriform, dynamic and complex, is arguably a difficult feat in itself, and formulating generally applicable steps from an explorative case study with four cases might be somewhat of an overreach. The first half of the fourth SRQ – "How can lessons drawn from the cases contribute to future value capturing strategies in Dutch projects of area development…?" – has been answered only abstractly, as from empirical evidence alone it would be difficult to do more: The manner the value capturing mechanics were deployed has been very case-specific. That being said, the mere fact that such measures were deployed does provide the insight that there were variables which have led to those case-specific applications. As the data gathered in no way provides enough evidence to make claims about the transferability of the case-specific applications, from an empirical point the answer had to read 'through an insight in the possibilities'. A follow up question would seem to be in order here: what particular information could be helpful in knowing whether such mechanics can be deployed, and what information would aid in their success? Or, in other words, integrating the insights previously mentioned in this chapter: what is necessary in order to potentially implement the discerned mechanics of value capturing in other cases of area development, aiming for successful facilitative value capturing, in a way that the benefits described in the conclusion are retained, and the subsequently described risks are avoided or mitigated? The following paragraphs will depart from empirical evidence alone, and will try to abductively reason towards an answer, with the recognized VC mechanics as starting point. It ought to be noted that the although the discussion is rooted in the case studies conducted, the selection of discussion points is inherently prone to researcher's bias. All suggestions made are therefore of normative character, and are very much open to debate.

Proactive attitude to substantive negotiations

This study did not seek to provide insights into successful negotiating strategies (Nor would it likely contribute, as (e.g.,) the book by Fisher and Ury (2012) is already very insightful), but it does claim to have recognized 'substantive negotiations' as a mechanics for facilitative value capturing. At the risk of being accused of incompletely quoting from the aforementioned authors, their work can perhaps be interpreted as a call to preparation: Focussing on the interests behind possible negotiatory positions, separate the people from the problem, use objective criteria, and be aware of your (and their) BATNA (Best Alternative To Negotiated Agreement), to then work together towards mutual gain. According to the Dutch 'Reiswijzer Gebiedsontwikkeling 2019' (p. 33) when drawing up a development strategy, the first question the public ought to answer is 'what is the goal or ambition in regard to the area development? (Programmatic, functional, spatial, financial)', yet the same document indicates that the market should be consulted should these goals be unknown (Ministry of Interior and Kingdom relations, 2019). Slightly peculiar, as this market would see the lucrative business opportunity before any potential contribution to social or holistic ambitions (Adams and Tiesdell, 2013, p. 102). Arguably, the National Strategy on Spatial Planning and the Environment (NOVI) outdates the Area Development Guide by a year (Ministry of Interior and Kingdom relations, 2020), but now that it's published it should seem that given the ambitions laid out therein, no municipality ought to have trouble formulating their ambitions to area development. The normative suggestion therein would read: **Proactively outline the public development ambitions in a development framework prior to market consultation, and prepare for such consultations, because market parties would surely use them to further their own agenda.** – of course, the proverbial win-win can't be obtained by ignoring

market interests, but it would do well the public agenda to a priori be well aware of the bandwidth of their own interest to a development.

Market-oriented environmental awareness

The second (Transfer of risk and responsibility) and third (Market-oriented design of anterior process) value capturing mechanics discerned have an inherent relation with contextual factors within the market. Chapter 4 already discussed the risks recognized to be relevant (Figure 4.17). To reiterate, up until the final delivery of the development, and the key changes hands so to say, there is a market uncertainty, as the need for the intended programme can fluctuate, and realisation costs might rise or fall. Up until the moment the changed land use plan becomes irrevocable, there is also the potential risk of opposition from the general public which might influence the political feasibility or the length of the development process. Finally, up until the moment the public and private party sign the anterior agreement, there is also a negotiatory uncertainty, as neither party has an obligation to the other, and either party could – in theory – change their position towards the other in the negotiation. Such risks are (non-exhaustively) formed by market demands, societal or economic trends, development capacity of private parties, governance capacity of public parties, or perhaps even by internal corporate deliberations or turnover in personnel. The point here is not to exhaustively list all things that might influence the application of facilitative value capturing. Rather, the point is to suggest that the context could very well differ on a case-by-case basis, and it might benefit those public parties that have potential developments within their borders to have a certain environmental awareness of the market trends that might be relevant. Normatively, the suggestion would be: **Be knowledgeable about the (market) trends, demands and risks that might be relevant to spatial development, and have an action plan ready to gather the necessary detailed data as required**, but as this knowledge is most relevant to choices made after negotiations have commenced, it might be superfluous to strive to have this information at the ready at all times.

Identify the desire and capacity to steer and take risks

The paragraph above emphasizes risk, but it ought not be forgotten that risk works both positively as well as negatively. Winch (2010, p. 365) eloquently summarizes: "In formal probability theory, 'risk' refers to the whole range of the distribution whether the outcome is better or worse than the expected value". And as mentioned in previous sections, a redesign of the process in such a way that that a market party has to account for less risk in their bid, does not mean the risk is gone, it is merely shifted to the selling party. And perhaps best illustrated with Figure 4.17, should the negative development risk be large (plume-halves below the lines in the figure), there is also the potential for an upward development in potential value. In other words, the party that takes a lot of risk, potentially could also exert influence in the aim to positively influence the potential value, or in a more managerial term: With more uncertainty, there remains more room for steerage. When a municipality aims for facilitative value capturing, it has adopted a facilitative mode of land policy, not unlikely for the reason the municipality itself cannot or will not actively take risk. The GPAG and GGZC cases have shown that the municipality can still benefit from the approach through a market selection and possibly gain steering capacity, but only because it had the advantage of collaborating with private parties with the intention to sell, whilst the market circumstances also happened to be advantageous. In light of the proactive attitude contended for in this section, the normative suggestion would read: **Should it, through environmental awareness, seem that market circumstances make it advantageous to do so, identify potential market capacity for steerage and risk, preferably prior to private-to-private land transactions.** With this knowledge, the possibility of redesigning the anterior process, and what that case-specifically might mean, can be collaboratively explored – within the outlines of the (proactively defined) development framework.

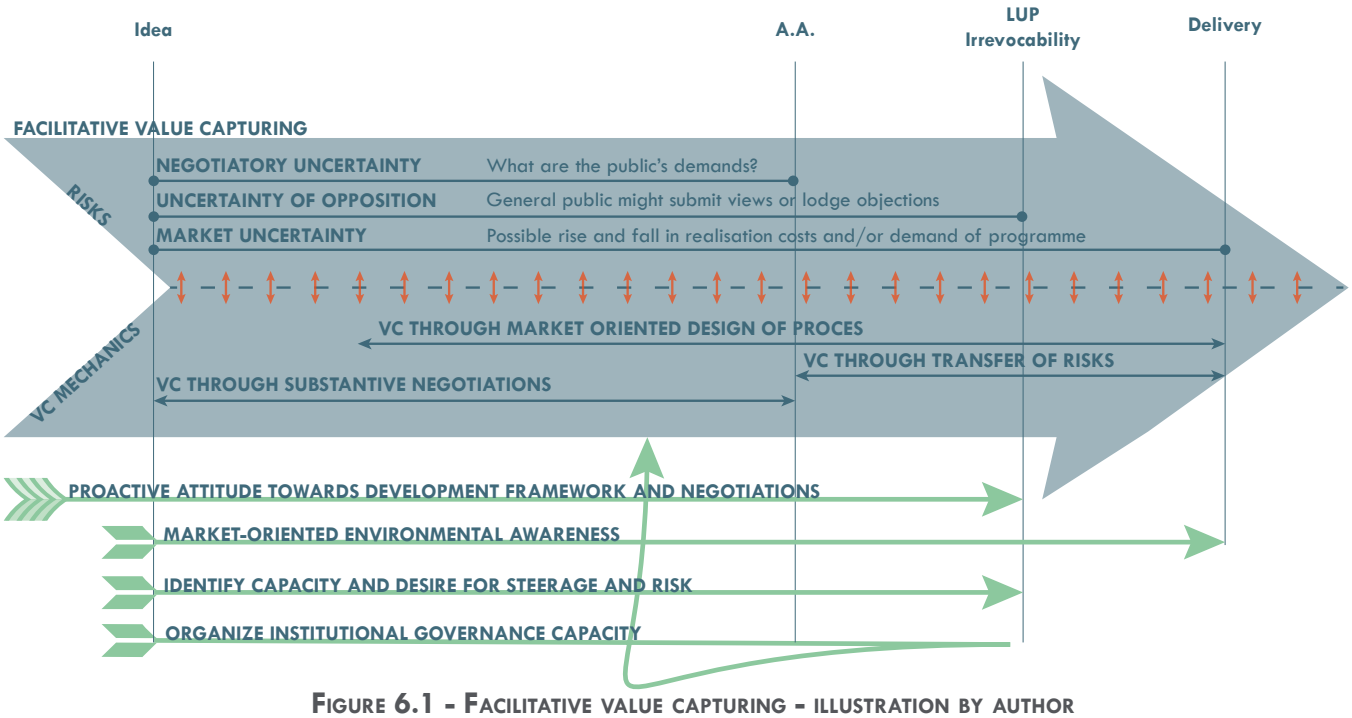


FIGURE 6.1 - FACILITATIVE VALUE CAPTURING - ILLUSTRATION BY AUTHOR

Organize the institutional governance capacity

The suggestions above are not meant to be read as criticism on spatial development in its current form; in the sense that the text shouldn't be conveying that there might be lack of proactive public attitude, an unawareness to market factors or a blind sightedness to entrepreneurial desires. Rather, the point is to emphasize that those elements are perceived as important in order for a public body to achieve facilitative value capturing (maximizing on their (spatial) goals within facilitative land policy, through the market-oriented VC mechanics recognized by this study). Whilst discussing these points with the internship supervisor, the comment was raised that asking all-of-the above from public bodies, might be an over-imposition to smaller municipalities or municipalities that do not expect development within their borders anytime soon (Personal communication, R. Siersma, April 2022). Considering the contended-for importance of public bodies when it comes to creating and shaping places in regard to urban challenges, it is however contended that there should always be a certain spatial awareness within public institutions. Naturally, if no development is expected, and the occasional breadcrumb development sprouts, it would hardly warrant a full-scale public development agency to guide the process. It is however here posited that such insights should be the product of proactiveness, not reactivity. Should a municipality – as a result of proactiveness – find themselves otherwise unequipped in regard to their governance capacity, effort should be made to organise this, for example through intermunicipal collaboration, administrative escalation to higher authorities, or the employ of external (market) capacity. The normative character of the text above should be clear, but to reiterate, the normative suggestion herein reads: Maintain a proactive attitude towards the spatial possibilities within your municipal boundaries, and **organise the administrative governance capacity as necessary according to proactive insight.**

A final note

Facilitative value capturing can be seen as an approach towards steerage in spatial development through open governance, and the instruments this study has perceived therein use the bandwidth for uncertainty that particular risks provide. The suggestions above arise at the interface of this perceived interrelatedness of risk and value capturing mechanics, and the contention that given the urban ambitions of our time, public parties ought to have a leading role in spatial development. Figure 6.1 shows this. Naturally, the 'public party' is not a monolithic thing, but is comprised of a range of departments, and is essentially subservient to the line set by the elected officials who set the mandate, who themselves are part of the same 'public party'. A proactive

attitude towards mapping the public's own ambitions provides the opportunity for alignment within the civil apparatus. It is therein not suggested that the public party should set this line in isolation from the market, but that the line should be derived from general public interests – as opposed to being influenced by commercial ones. A market-oriented environmental awareness may be the proverbial map, but the public interest should always be the compass. And facilitative land policy might be the policy mode of choice when public parties cannot or will not take a more risk-bearing position, but this does not exempt them from their spatial responsibility. Facilitative needn't, or perhaps more aptly, shouldn't equal laissez faire.

6.3. Limitations to the study and recommendations to future research

This study has been explicitly explorative, and due to time-limitations to the research process somewhat limited in its scope – and therefore also in its findings. Care has been taken to make no claim towards generalization or universal applicability, but to explicitly provide insights into possibilities, which might expand the body of knowledge on the subject. The descriptive findings of this explorative research are not wrong in their own regard, but in a broader perspective, they might be considered incomplete. As Glaser and Strauss eloquently state (1967 as reprinted in 2006, p.4): "Theory based on data can usually not be completely refuted by more data or replaced by another theory. Since it is too intimately linked to data, it is destined to last despite its inevitable modification and reformulation".

This research has looked at only four cases. In the research design it was expressed that cases were sought that had a certain 'uniqueness' to them, in order to unravel possible mechanics of value capturing within the anterior process. But because each case is rather unique in its own regard, no statistic insight has been gained into the causal relations behind the mechanics recognized. And because there are only four cases, which were all different in their own respect, no claim can be made as to a saturation of theory (Bryman, 2016, p. 412). Both points expected within the scope of this study, as the goal was inductive exploration rather than deductive validation, and therein they ought not to contest the validity of the study's contribution, but can be taken as starting point for future studies. Either by repeating the same methodology on other cases, in an attempt to reach theorical saturation (when new insights are no longer gathered), or by using this study as a starting point for a more deductive study with an aim of explanatory insights into statistical causality.

Perhaps of specific interest for future studies would be the risk types recognized in this study (negotiation, public opposition & market trends). The mechanics of value capturing recognized have seemed to be strongly coupled with these risks, for which reason it would be of particular interest to explore how these risks come to be, and what weighted influence they have on the potential of facilitative value capturing.

Finally, Heeres's (et al., 2016) cycle was used as a starting point to unravel the mechanics of value capturing in the anterior cases. The statement has been made that it became inductively apparent that it was difficult to gain an understanding in the underlying process of mechanics of value capturing through merely the lens of this cycle. Through the findings in this study, there is no reason to contest the cyclical model as proposed by Heeres (et al., 2016), but it would seem to suggest that there is an incompleteness to it. There have however been differences in the underlying question driving this study, in comparison to theirs, as well as the type of cases inquired into; the value created in their cases sprouted from infrastructural works, and whilst the N201 in Aalsmeer has played a role, large infrastructural investments acting as positive externalities to land value have not been at hand in this study. From the standpoint of academic curiosity, it might be interesting to delve further into the implied incompleteness of Heeres's (et al., 2016) cycle of value creation and value capture, to be able to more explicitly complement or contest the findings of their study.

7. Reflection

This chapter will reflect on process and product, in four sections. The first section will reflect on the thesis topic, its relation with the MSc track 'management in the built environment', and the relation between the end result, the chosen methodology and the societal and academic relevance there in-between. The second section will reflect on the data disclosure, and how challenges of confidentiality have been overcome. The third section will dive in to the moral and ethical consideration of facilitative value capturing, and the fourth, and final section will reflect on the personal study goals and the graduation process.

7.1. Thesis topic and its contribution to...

The study set out in this thesis has been conducted under the chair of 'urban development management' within the MSc track management in the built environment. According to the webpage of the chair (April 2022), "UDM concerns the art of managing the decisions of the many stakeholders involved in the development of urban areas towards a high quality outcome - urban places to be enjoyed by all". This thesis has contended that such urban places need public land management, because there are functions that ought not to be left to the market, and has sought for mechanics – or perhaps one could dub them managerial instruments – through which the public can manage towards this high quality within the most facilitative form of open governance there is in the Dutch system of urban development. Although the study proverbially found as much questions as it did answers, the results are a small, but direct contribution to the goal of the study chair.

Therein lies also the societal relevance, because whereas the political landscape of urban development might shift towards a system that necessitates market-oriented instruments within open forms of governance, the public socio-economic and political responsibility do not shift along with it – or at least not in the same way or pace. Insight into the intrinsic how public agents can go about realizing public objectives within open forms of governance is thus essential.

Academically, there is a contribution to the current discourse on the subject matter of value capturing. Drawing from the political insights and insights on urban planning of many authors, and through inductive research explicitly building on the study by Heeres (et al., 2016), the various insights formulated in the conclusion of this study, all be they tentative, can be seen as continuation of this academic debate. The explorative, inductive methodology adopted within this study has allowed for broad exploration of the topic, tentatively connecting some (possibly new) dots. With the corollary drawback that the study provides no statistical evidence into the possible causality of things, nor does the quantity of cases provide enough theoretical saturation to firmly go beyond any tentative conclusions. Such was also not the goal of the study, which explicitly set out 'to shine light on value capturing in private law agreements'. And as was also contended in section 6.3, the descriptive findings of this explorative research are therein not wrong in their own regard, but in a broader perspective, they might be considered incomplete.

7.2. A near-daunting data disclosure

The nicely alliterating title to this section is perhaps a bit inflated, but there have been two tangible challenges in moving from research design towards

data disclosure. The first being the difficulty to finding the right cases, meeting the selection criteria, where people would also be able and willing to openly discuss the case. The explorative interviews with senior consultants from the internship company in the preparatory phase to the graduation has been of tremendous aid in aligning the research scope and objective with possible cases. Nevertheless, finding the right cases took a good amount of time, but a certain level of persistence, flexibility (kill your darlings, and alter the case selection criteria…) and personal resilience aided in the process. The second challenge to data disclosure was the level of confidentiality to the cases. The attentive reader will have noted the lack of financial data throughout the report, which has not been for a lack of insight in the information. Broadly speaking, there were two possibilities: Either anonymise all the cases to the extent that they cannot be traced back to the parties involved or leave out all sensitive information in the public part of the thesis. Rigorous anonymisation would have been very difficult, because a lot of the information to the cases comes from public record, and any (very) enthusiast reader would likely be able to retrace the data to the case in question. Through the deploy of thick descriptions, and internal redactions (from the contact person of the case in question) to the confidentiality of the cases, it has been possible to describe nearly everything, and then therefrom inductively continue on the inquisitive quest towards an answer of the SRQ's.

7.3. External validation; the expert meeting

In order to validate the results of the study beyond that which is possible through the empirical study above, an expert meeting has been held within the internship company. This means that the results, considerations and conclusions have been presented within the advisory group, and a debate was incited through asserting three statements throughout the presentation:

1. "As a public party, the negotiations are ideally suited to make the development contribute to public goals. Without land ownership, my negotiating position is strengthened mainly by my knowledge of the market."
2. "The project-specific design of the anterior process can contribute to the degree to which public objectives are achieved, but this is closely linked to the market conditions at the time and the capacity and desire of market players for steerage and risks."
3. "Using the definition of facilitative value capturing as a starting point for spatial developments in facilitative land policy is in line with today's practice, in fact I was already doing that."

The general consensus of the expert panel was that of agreement. In the sense that the first response to the third statement was "I was about to ask what the difference was between what we already do and what the new definition of facilitative value capturing entails". In general, the consultants recognized the mechanics of value capturing, and agreed with the definition in the sense that it encapsulated their practices, but therein also lied a point of feedback: It makes sense that the definition of facilitative value capturing would speak to the practice of consultants to area development, as all cases of area development have been provided consult by external advisors. In the debate, the question arose whether or not the study would have yielded the same results should a case be studied which had been carried out solely with municipal in-house capacity. Naturally, the exploratory character of this research makes it so that new insights might arise through the study of other cases, but the consensus in the room was that 'facilitative value capturing' was indeed a valid starting point and that whichever public party aiming to undertake this, indeed needs an intricate understanding of internal, external and contextual factors to the case in point. In this, the feedback connects to the final suggestion of chapter six, in that public bodies should organise their governance capacity, based on their proactive insights. Should this lead the party in question to

believe external capacity or expertise is required to position the negotiation within the market factors of the moment, such capacity is available through, for example, consultancy firms.

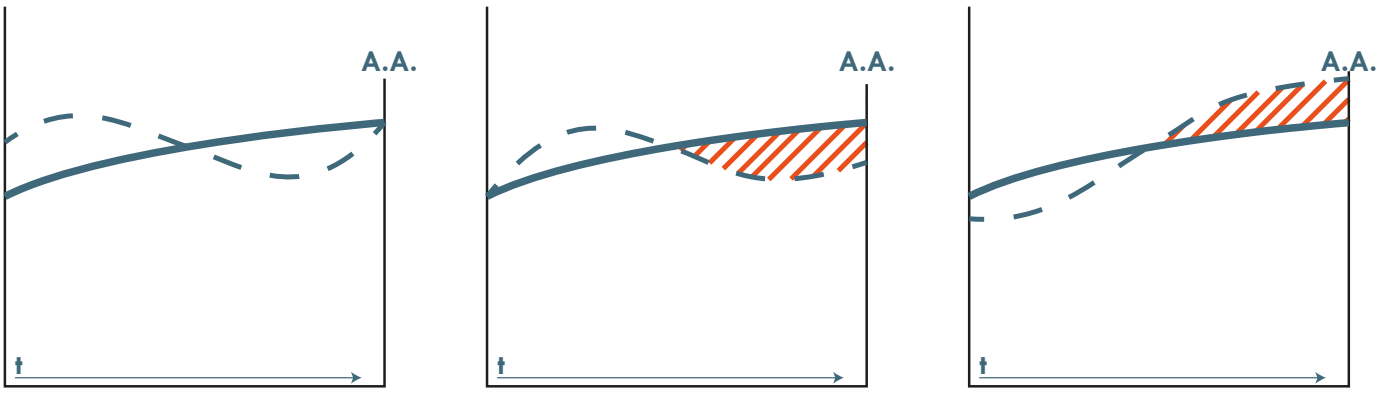
A second point of feedback first arose in response to the first assertion. While there was general agreement on that market-knowledge on the side of the public party would positively affect their negotiatory position, 'public mandate' was argued to be at least equally important – if not even more so. The final chapters of this thesis have perhaps ascribed 'the public party' as a somewhat monolithic character, not sufficiently differentiating between the executive branch and the administrative, mandate-forming branch that exist simultaneously within this 'public party'. If the process of negotiation is of importance to the achievement of public ambitions within spatial development, the negotiatory power of public executives is strongly influenced by the weight of the given mandate. This can also be seen in two of the cases studied, as the PHTB in the Bommelerwaard and GPAG in Aalsmeer had this explicit mandate as an operational starting point.

All in all, the expert meeting validated the results. The panel recognized the three mechanics of value capturing presented, and in general agreed with the conclusion, with the contribution that alignment of mandate-forming and executory branches of the official apparatus is a strong factor to successful negotiations. The conclusion of the discussion was perhaps that area development as well as value capturing (regardless of its definition) are complex subjects, and warrants thorough project-specific study. To which this thesis aims to contribute, through the actionable definition of facilitative value capturing. The attainment of public spatial ambitions is a task that requires a proactive attitude – which is here propagated by understanding value capturing in light of 'action' rather than 'instrument'.

7.4. Ethical and moral considerations to the practice of facilitative value capturing

Value capturing as a theoretical concept has a very strong public-oriented connotation, from the ideology that some benefit caused by public infrastructure paid through public funds, should befall the public, or that the value of land as a scarce good, should befall the public because its additional value should not accrue in the hands of a single individual. But, to what extent are these understandings of value capturing just? In spatial development there are goals of pecuniary as well as spatial nature; can it be argued that VC is achieved if the spatial goals, and sectorial ambitions are achieved through a mobilisation of the created value in area development, and that no unreasonable economic profit has been made by any one individual (which could be construed as societally undesirable)?

Through the case study accounts, and the subsequent cross case analysis, it has become clear that the public and private parties to the cases would seem to have negotiated to the point that there was no residual economic profit left. Taking into account that neither party has an obligation to the other, and the public law track towards a land management plan remains an option, reflecting on the notion of direct and indirect value capturing, it would seem that there might be an implicit political, or perhaps even moral component to the negotiations, especially for the representative of the public party: Public ambitions are laid out in a structurevision (as is obligatory per the SPA), yet are not operationally geared towards specific developments, let alone those arising from private initiative. The civic servant in question, negotiating towards its mandated goals, knows it cannot stack ambitions to high, lest the development become unfeasible – notwithstanding national grants like the WBI. Yet, at the same time, should the public representative proverbially undershoot in the negotiations, there might be an untapped remainder of economic profit to the case that would accrue to the private party. Public arguments to directly capturing this remainder for the sake of doing so would arguably be frowned



"Fair Game"

Net zero Businesscase

"Unjust"

Economic value of development disproportionally exceeds realisation costs

"Unfeasible"

External (public) funding needed to make possible the development

FIGURE 7.1 - THE IMPLICIT MORAL COMPONENT TO VALUE DISTRIBUTION IN AA NEGOTIATIONS - ILLUSTRATION BY AUTHOR

upon, but at the same time a newspaper headline expressing excessive private profits whilst the public party in question fails to solve its socio-spatial issues would not be unlikely to raise a (political) question or two. A political, or perhaps moral component that might explain the motive of the public party to seek to get the most out of the negotiations (Figure 7.1). Negotiations, in which there is an inherent conflict of interest, as the public party would seek to use more of the value created by the regulatory decision towards public goals, and the private party would seek to contribute the least amount possible at behest of company profits. In the negotiations, this had resulted in a to-and-fro movement of arguments, which ended in a net-zero business case – where the developer still makes his operational profit margin, but where the entirety of the potential value is used to pay for public and private spatial goals.

Whether such an approach is morally justifiable, goes beyond the theory of value capturing alone, and within the current legal system speaks to both deontological as well as utilitarian deliberations. Because, from the latter point of view, any form of value capturing could be justifiable as long as it would contribute to an absolute increase in perceived happiness, which the 'greater good' arguably ought to be. Deontologically, it would only be justifiable if the person exercising the capturing would believe the act is intrinsically good, which could put the civil servant in question in moral conflict, because the servant as person might feel differently about this than the servant would from its function. As a person, one could believe to do the right thing by abiding by the legal system, but arguably only if one has faith in its functioning. Moral and political standpoints would quickly become intertwined in a continuation of this mental exercise, moreover so as the legally justifiable limits are electorally defined, not morally per individual. It could be argued that any limits in regard to value capturing is ethically justifiable if the political responsibility can publicly be born. Which could be used to explain why the public parties (in the cases) did the negotiating under the guise of qualitative spatial planning. In this way, they always had a public-law, politically justifiable, explanation for the final choices made; doing the right thing as a person and as a civic servant, abiding by the system, working towards an electorally defined 'greater spatial good'. But the called for faith in the functioning of the system is arguably not one of blind

docility, and as the legal system is shaped by the electoral system, it could be contended this faith, in the longer term, goes hand in hand with transparency. However, it is difficult for the general public to gain insight into anterior agreements made, because as private law agreements these are in principle not part of the public record. Furthermore, it could become even more difficult, when public documents setting out public objectives (such as a structurevision) are produced in consultation with private parties, as then it becomes almost impossible for the general public to distinguish which objectives have been agreed to in order to contribute to the common good and not because of commercial lobbying. - In any case, the discussion above warrants a paper or a study in itself, and will not be resolved in the reflection on the present study. The paragraph above can perhaps be read as a call for more transparency and for public leadership that takes responsibility for results, rather than focussing on its systemic responsibility. Perhaps repeating one of the suggestions from the study is in order here, because through proactive policy making, and transparent communication thereof, it could possibly become clearer where the separation of public and private development goals actually lie.

7.5. Graduation process

In projects of public importance, the proverbial dot on the horizon should be beyond the corners of the iron triangle. To look beyond time, quality and funding, and rather look at the impact that could be brought through urban area (re)development. The graduation process has therein combined the academic curiosity into mechanisms of value capturing strategies in urban development with a personal intrinsic motivator, namely to contribute to a 'better' built environment. The world of land politics, GREX, Value capturing, was introduced but a year ago. The learning curve experienced between then and now has been steep, but valuable. Value capturing is a complex topic, slightly surprising not very financial, and deeply rooted in stakeholder interests and political deliberations. The final contention to be made is perhaps that the topic is experienced to be at the heart of the intrinsic 'how' to sustainably change, or contribute to a sustainable change in the fabric of urbanity.

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REFERENCES OF FIGURES AND IMAGES (in order of appearance)

#	Name of figure	Reference
1.1	Conceptual framework to the research	Illustration by Author
2.1	Main deliverables, methods of disclosure and analysis	Illustration by Author
2.2	Multiple Case study procedure	(Yin, 2018, p. 58)
2.3	Disclosure methods to the case studies	Illustration by Author
2.4	Nine focus points in Heeres's model	Adapated from Heeres (Et al., 2016)
2.5	Graduation plan and interrelatedness of process components	Illustration by Author
3.1	Land value determination	Based on Nozeman (2010) and De Zeeuw (2018)
3.2	Sliding scale of land policy modes	Adapted from Ministry of the Interior and Kingdom Relations (2019, p. 36)
3.3	PPP forms and distribution of responsibilities	Adapted from (Kenniscentrum PPS, 2005; Heurkens, 2012; Deloitte, 2017)
3.4	The reciprocal relation between processes of value capturing and cooperation	(Heeres et al., 2016, p 198)
~	Green Park Aalsmeer	Unkown (s.d.) Retrieved june 2022 from https://media-exp1.licdn.com/dms/image/C4D1BAQGo1aHUuq-hIg/company-background_10000/0/1591874054207?e=2147483647&v=beta&t=VDVmmC10aNFgGysQQPKgZeuFj2cQD1_ZR23BCSVAC9Q
4.1	The redirected N201 and the location of Green Park Aalsmeer	Adapted from (Structurevision 'Green Park Aalsmeer', 2016)
4.2	The different Partial Plan Areas in GPA. PPA2 marked orange	Adapted from (Structurevision 'Green Park Aalsmeer', 2016)
4.3	Desired local mosaic as expressed in the 2016 structure vision	Adapted from (Structurevision 'Green Park Aalsmeer', 2016)
4.4	The intended residential developments	Adapted from original by GPAG
~	Veldwijk Villa	Photo by author (2022)
4.5	The Estate of GGZ in Ermelo. Indicated in blue: Developments Veldwijk, in orange: Developments Hooge Riet	Adapted from (Structurevision 'Landgoed Veldwijk & Hooge Riet', 2017
4.6	The Intended development areas (illustration from masterplan 2019)	Adapted from ('Masterplan Veldwijk', 2019)
4.7	Implementation process of total redevelopment	Illustration by Author
4.8	Transfer of public space to the municipality	Illustration by Author

#	Name of figure	Reference
~	Hooge Riet	Photo by author (2022)
~	Kreling's Greenhouse	Photo by author (2022)
4.9	Map of restructuring plans Bommelerwaard	Structurevision 'Buitengebied Zaltbommel' (2012)
4.10	Plots in ownership indicated on basemap PIP	Provinciaals inpassingsplan Bommelerwaard (2015), Bijlage 4
~	Campus Zuid	TU Delft (2016), retrieved June 2022 from: https://campusdevelopment.tudelft.nl/project/terreininrichting-scienceparkzuid/
4.11	The Campus of the TU Delft within its regional context	Adapted from (Area vision: TU Delft, developmentperspective, 2019)
4.12	Organisational diagram TU/D	Adapted april 2022 from: https://www.tudelft.nl/over-tu-delft/organisatie
4.13	The zoning as per the urban plan. Blue: Education & Research. Green: Sport. Orange: Business. Yellow: Highway facing plots	Posad Maxwan (2020) Stedenbouwkunduig plan 'Campus Zuid'
4.14	Qualitative schematisation of the negotiatory process on potential value distribution	Illustration by Author
4.15	Qualitative schematisation of possible moments reducing negotiatory risk and the risk of opposition from the general public	Illustration by Author
4.16	Qualitative schematisation of the possible rise and fall in potential value and realisation costs between the anterior agreement and the moment of delivery within the developments	Illustration by Author
4.17	Remaining developer uncertainty depending on moment of purchase (or resolutory condition)	Illustration by Author
5.1	Theory and practice; Value capturing through anterior agreements	Illustration by Author
6.1	Facilitative value capturing	Illustration by Author
7.1	The implicit moral component to value distribution in AA negotiations	Illustration by Author

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Annex 1 – An overview of the interviews

There are two types of interviews related to this study. The first one is an explorative set of semi-structured interviews, that has as its goal a further exploration of the topic to be studied. The second one regards the cases to be studied, and has as its goal a disclosure of the 'soft information' pertaining to the cases. This annex provides an overview of the interviewees. The interviewees have been informed of the research topic prior to the interview. The explorative interviews have been summarized, and can be found in appendix 2. The cases study interviews have been transcribed at behest of member checking, and have been shared with the interviewees. Member checks have been conducted for both interview types, to increase the credibility of the information gained from the interviews (Shenton, 2004).

The exploratory interviews

Four participants have been interviewed. They have agreed to being cited by name. All four interviewees are partners at the consultancy firm TwynstraGudde, work as senior consultant in the field of urban area development, and have track records spanning multiple decades.

In text reference	Name	Function
Interviewee 1	Gregor Heemskerk	Partner, senior advisor urban area development
Interviewee 2	Martin Stout	Partner, senior advisor urban area development
Interviewee 3	Henk Hoogmoed	Partner, senior advisor urban area development
Interviewee 4	Marco Van Lente	Partner, senior advisor urban area development

Annex 1a and 1b show the interview guide and the letter of informed consent with which the interviews have been conducted, and informed permission has been obtained. It should be mentioned, that since the conducting of the interviews, the research questions and the overall aim of the research has shifted compared to what's described in the contents of annex 1a and 1b. For the sake of transparency, these appendices have not been altered from the state they were in when shared with the interviewees.

Case study interviews

The table below shows all the interviewees to the case studies. Explicit consent has been given to cite the interviewees by name for whom so is done. The contents of annex 1c contains the interview questions that have guided the interviews. Annex 1d contains the letter of informed consent regarding these interviews. Below is the list of the interviewees pertaining to the cases.

#	CASE	Name	Function
1	GPAG	Henk Hoogmoed	Financial manager to GPAG, Partner of TG
2	GPAG	Dick van der Harst	Director of GPAG
3	GPAG	Roel van Drongelen	Director of Thunnissen
4	GGZC	Erwin Uil	Advisor to GGZC, Partner of TG
5	GGZC	Roy Nieuwenhuis	Advisor to GGZC, consultant of TG
6	GGZC	Hans Hoepel	Director to GGZC Real Estate
7	GGZC	Macel Sinte Maartensdijk	Developer at Heijmans
8	GGZC	Jorn Thoomes	JLL consultant on market selection and sale of HR
9	GGZC	C2_I5	Project leader area development - municipality
10	PHTB	Jolanda van den Oetelaar	Paralegal to the PHTB
11	PHTB	Erwin Wellner	Account manager to the PHTB
12	PHTB	Jan Kreling	Horticulturist, private developer
13	TU/D CZ	Tristan Kunen	Area development manager to TU Delft's CRE, senior advisor at Brink
14	TU/D CZ	Erik Bijsterbosch	Area development manager to the municipality of Delft, independent consultant

Annex 1a – Semi-structured explorative interviews; the interview guide

NOTE: This interview guide to the explorative interviews was written prior to changes in the research structure. The introductory text no longer accurate with regard to the SRQ's of the study above, but has been kept 'as shared' for the sake of transparency.

In order to answer SRQ 2 – "What challenges do market practitioners express to run into when aiming to implement instruments of betterment capture in urban area (re)development?" – four semi-structured interviews are conducted with partners/consultants of the consultancy firm TwynstraGudde. The interviewees all work as consultants in the field or urban area redevelopment. As preparation for these interviews the following interview guide is set up, according to Bryman (2016, pp. 465 – 484).

General research area: Direct value capturing by municipalities through private-law agreements in urban area (re)development.

Specific research question: What challenges do market practitioners express to run into when aiming to implement instruments of betterment capture in urban area (re)development?

Interview topics:

- Value capturing in urban area (re)development
- Private – law agreements between public and private parties
- Negotiation room / decision space of municipalities in UAD regarding private-law agreements on notions of direct value capturing
- External influences affecting one of the above, (e.g., stakeholder interests)

Before the interview, the interviewee will be apprised of the topic of the research, and the main definitions used (Direct and indirect value capturing, betterment), in order to counter semantic confusion.

Interview Questions:

1. Could you tell something about yourself, your current working position, your work experience and your current professional goals and objectives?

2. In which way, and to what extent do you encounter the topic of value capturing (both direct and indirect) in your work?
   Areas of interest, among others:
   a. How often do you encounter the topic or discussions about the topic?
   b. What role do such discussions play in your field of expertise?
   c. To what extent does the topic of value capturing influence the decision-making process of any of the parties that you encounter?

3. When it comes to value capturing by municipalities in urban area (re)development projects, are there particular aspects or factors that you would describe as either easier or more challenging?
   Areas of interest, among others:
   a. When is a private party more or less inclined to agree to stipulations regarding value capturing, beyond that which is legally expected?
   b. Do certain forms of collaboration make value capturing easier or more challenging?
   c. In what way does the number of developing parties, or other stakeholders in urban area (re) development influence the manner and extent in which a municipality can successfully deploy instruments or methods at behest of value capturing?
   d. In what way does the size of the plan area influence the manner and extent in which a municipality can successfully deploy instruments or methods at behest of value capturing?

e. In what way does the programming, either in the land use-plan or in vision-documents influence the manner and extent in which a municipality can successfully deploy instruments or methods at behest of value capturing?

f. Are there any other aspects that you think influence the manner and extent in which a municipality can successfully deploy instruments or methods at behest of value capturing?

4. Are there any specific cases of urban area development, now or in the past, that you think betterment capturing has been achieved through private law agreements in a public private partnership?

ANNEX 1B – INFORMED CONSENT FORM FOR THE EXPLORATIVE INTERVIEWS

NOTE: This informed consent letter to the explorative interviews was written prior to changes in the research structure. The introductory text is no longer accurate with regard to the SRQ's of the study above, but has been kept 'as shared' for the sake of transparency.

Dear sir / madam,

Spatial and sectorial ambitions are growing, and – considering the challenges of our time – justifiably so. The cost of urban area (re)development has not decreased, public expenditures at behest of infrastructure or other public works remain a necessity, but municipalities no longer accrue money through active land policy. Public investments, most notably the larger ones like the realisation of the Maastricht tunnel, tangibly lead to an increase of land value, yet the public bodies have little to no instruments to share in this value increase. Questions regarding the possibility of sharing in this value is one of academic debate, but are also raised in Dutch parliament.

Today, conversations about urbanisation in the Netherlands are led by arguments on affordability and market-price conformity, where discussions on the desired level of quality are determined by land-value and realisation costs. Yet, the costs of urbanisation have not diminished, and the spatial and sectorial ambitions have only grown, partially under the influence of (inter)national agreements on (e.g.) climate and energy. Where it might be difficult through public law for a public body to share in the value increase of real property as a result of public decisions or investments, history shows that through private law, agreements can be made between public and private parties. Municipalities however are no longer able or willing to deploy the past levels of capital-intensive active land policy, and are thus no longer evidently able to share in the value increase of land positions that result from public investments. Today's problem is thus this: It is difficult for municipalities to share in the value increase of land, in areas of urban redevelopment, that occur because of public investments or public regulatory decisions, without capital-intensive measures, such as public land acquisition, or intensive forms of public private partnerships such as (traditional) joint-ventures.

As a graduation thesis, student Rick van Tatenhove is setting out to do a number of case studies, in order to draw lessons from past experiences on betterment capture. The main research question driving the research reads: How can past experiences on betterment capturing through private law-agreements in public private partnerships in urban area (re)development be applied in such projects today, given the current urban institutional context?

In order to move beyond merely approaching the question from a theoretical perspective, you are invited to participate in the study through partaking in a semi-structured interview. In which the specific question underlying this interview reads: What challenges do market practitioners express to run into when aiming to implement instruments of betterment capture in urban area (re)development?

Your answers provide an additional insight into the relevant challenges on the topic of value capturing in urban area development.

This study is carried out by Rick van Tatenhove, a graduate student at the Faculty of Architecture at the Delft University of Technology, as part of the graduation of the Master track Management in the Built Environment. Preferably, the interview will be recorded,

Participation in this interview is entirely voluntary, and you can withdraw your participation at any point in time. You are free to skip any question you do not want to answer.

If you participate, please sign this document at the bottom, and indicate the boxes that apply to you. You will receive a signed copy of this form. Your personal information will be treated carefully. Should you have any questions about the study, you can contact Rick van Tatenhove at R.vantatenhove@student.tudelft.nl.

☐ I wish to participate, and I consent to being cited by
- ☐ name
- ☐ pseudonym

☐ I declare that I have been clearly informed about the nature, method, purpose and burden of the research.

☐ My questions have been answered satisfactorily.

☐I understand that the audio and / or visual material (or the editing thereof) and other collected data will be used exclusively for analysis and scientific presentation and publication

☐ I would like to receive a copy of the final research summary, for which my contact information may be kept until that moment in time.

Name Interviewee:

Date:
Signature

Interviewer: Rick van Tatenhove

Date:
Signature

Annex 1c – Semi-structured case interviews; the interview guide

Om de derde deelvraag in het onderzoek "*How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?*" te beantwoorden, worden vier casestudies uitgevoerd. De casussen worden onderzocht, en deels gereconstrueerd aan de hand van bureau en archiefonderzoek, en daarnaast ook aan de hand van semigestructureerde interviews met professionals die aan het project of de projecten van de betreffende case hebben gewerkt. Deze interview-guide zet de algemene vraagstructuur van de interviews uiteen. De vragen zijn vooral bedoeld als leidraad in het gesprek, en het is mogelijk dat de antwoorden of de antwoordrichtingen in de interviews het gesprek van een bredere invulling voorzien.

Algemeen onderzoeksgebied: Value Capturing door gemeenten bij gebieds(her)ontwikkeling in privaatrechtelijke overeenkomsten in de context van niet-actieve grondpolitiek.

Specifieke onderzoeksvraag: How did value capturing in such agreements take place, or came to be in the past? In what way was value captured, were ambitions achieved and were private-law pitfalls avoided?

Interview- & 'sonderings' thema's:
- De ontwikkeling, de partijen, hun eigendommen en hun relaties
- De doelen van de ontwikkeling
- Het proces van onderhandelen over ontwikkelingsrecht, bouwvergunning en value capture
- De voor- en nadelen van de (vorm van) samenwerking
- De mogelijke onbalans tussen overheidsregulering en onderhandelingsruimte
- De gemaakte afspraak(en) over ontwikkelingsproces en inhoud
- Reflectie op het project en het proces

Voorafgaand aan het interview zal de geïnterviewde op de hoogte worden gebracht van het onderwerp van het onderzoek, en de belangrijkste gebruikte definities om semantische verwarring tegen te gaan. Met name het begrip 'value capturing' zal in de uitleg aandacht krijgen, om de relatie tussen de antwoorden op de interviewvragen en het in de scriptie uitgevoerde onderzoek te versterken.

Interviewvragen:

1. Kunt u iets vertellen over uzelf, het project en uw rol daarin?
   Aandachtsgebieden o.a.:
   a. Wat wordt er ontwikkeld?
   b. Wat was de situatie voorafgaand aan de ontwikkeling? (Programmatisch en met betrekking tot eigendom)
   c. Welke partijen hebben een sleutelrol gespeeld in het ontwikkelingsproces, met betrekking tot bouwvergunning en waardecaptatie?

2. Kunt u nader ingaan op de doelstellingen van de ontwikkeling? Financieel, programmatisch of anderszins?

3. Kunt u iets vertellen over het proces van publiek-private onderhandeling?
   Aandachtsgebieden, onder andere:
   a. Hoe zag het proces van onderhandelen eruit? (Waar, wanneer, met wie?)
   b. Waarover werd onderhandeld?
   c. Moest de regelgeving worden gewijzigd om de ontwikkeling mogelijk te maken?
   d. Welke publieke werken/voorzieningen werden besproken en welke werden uiteindelijk opgenomen in het projectprogramma?
   e. Hoe is het ontwikkelingsplan gegroeid tijdens de onderhandelingen?

4. Hoe ziet het realisatieproces er na verloop van tijd uit?
   Aandachtsgebieden, onder andere:
   a. Wanneer zullen (delen van) de ontwikkeling worden gerealiseerd?
   b. Wie is verantwoordelijk voor de realisatie van de verschillende onderdelen van de ontwikkeling?

5. Hoe dragen de partijen aan elkaar bij?
   Aandachtsgebieden zijn onder andere:
   a. Zijn er bijdragen (financieel of in natura) van de ontwikkelende partij aan de publieke partij? Was de bouwvergunning afhankelijk van (een deel van) deze bijdrage?
   b. Draagt de publieke partij op enigerlei wijze bij aan de ontwikkeling, door middel van investeringen in infrastructuur, vrijstellingen van regelgeving, subsidies of anderszins?
   c. Welke relaties zijn er tussen de private bijdragen en die van de publieke partij?

6. Zijn er specifieke regelingen of afspraken gemaakt om value capture in dit project te realiseren?
   Aandachtsgebieden, onder andere:
   a. Wat is het toegepaste VC-mechanisme? Hoe wordt dit concreet gemaakt (Financieel, in natura, of via proces)?
   b. Zijn er publiekrechtelijke instrumenten ingezet ter ondersteuning van de privaatrechtelijke overeenkomst? (Zoals onteigening, voorkeursrechten, enz.)
   c. Hoe worden privaatrechtelijke valkuilen vermeden, zoals betalingsplanologie, staatssteun of het risico dat beginselen inzake transparantie of aanbesteding worden overschreden?

7. Zou u, in het licht van de overeenkomsten tussen de publieke en de private partijen, het project als een succes beschouwen?
   Aandachtsgebieden, onder andere:
   a. Op welke wijze heeft de inhoud van de overeenkomst de ontwikkeling bevorderd of belemmerd?
   b. Wat is er misgegaan in het (onderhandelings)proces van het ontwikkelingsproces, met betrekking tot VC, en hoe zou u dit anders doen, of wat zou er nodig zijn om dit een volgende keer goed te laten verlopen?
   c. Hoe zouden volgens u de privaatrechtelijke kenmerken van de onderhandelingen en de overeenkomst het project en de bijbehorende processen hebben beïnvloed, ook met het oog op alternatieve vormen van grondbeleid?
   d. In hoeverre zou u het project, en de gemaakte afspraken, als een succes beschouwen?

Annex 1d – informed consent form for the case study interviews

Geachte heer/mevrouw,

U bent uitgenodigd om deel te nemen aan een semi – gestructureerd interview voor het afstudeeronderzoek van Rick van Tatenhove. Deze brief van geïnformeerde toestemming zet uiteen wat de aanleiding is tot het onderzoek, wat het doel is van het interview en op welke wijze de interviews bijdragen aan de resultaten ervan. Om uw antwoorden mee te kunnen nemen in het onderzoek is uw toestemming nodig. Deze brief vraagt daarom om uw toestemming, en legt uit wat deze inhoud.

Aanleiding
De stedelijke uitdagingen van vandaag zijn legio; er moeten de komende tien jaar een miljoen huizen worden bijgebouw en stedelijke ontwikkeling moet bijdragen aan klimaatadaptatie en de energietransitie. Daarnaast moet het tevens zorgen voor duurzaam economisch groeipotentieel, en dat alles het liefst op een circulaire en sociaaleconomische wijze.

De actieve vormen van grondbeleid die voor de economische crisis van 2008 standaard waren voor de Nederlandse overheid worden echter niet meer in dezelfde mate toegepast. Liberale invloeden hebben in de loop der tijd de top-down door de overheid gestuurde planningsaanpak doen verschuiven naar een aanpak waarbij publieke planningsvraagstukken geïntegreerd worden in een praktijk waar het initiatief niet zelden bij de markt ligt. Toch heeft een faciliterende overheid nog altijd een taak in het vormgeven van de gebouwde omgeving, ook wanneer zij geconfronteerd wordt met versnipperd grondbezit, of met de noodzaak om niet-economisch-efficiënte ontwikkelingsfuncties te integreren.

Nou is het verwezenlijken van alle bovengenoemde stedelijke ambities duur, al helemaal wanneer integratieve ontwikkeling noodzakelijk is. En zonder de actievere vormen van grondbeleid kan de overheid niet langer rekenen op inkomsten uit de eigen grondexploitaties. Toch is het volgens eerdere studies mogelijk om deze integratieve meerwaarde bij gebiedsontwikkeling te bereiken in privaatrechtelijke overeenkomsten, op een manier dat alle betrokken partijen die meerwaarde als zodanig ervaren. Echter, er is nog weinig tot geen onderzoek gedaan naar hoe dergelijke overeenkomsten dat doen in de context van het Nederlandse ontwikkelaarslandschap.

Doel interviews
Om deze reden richt het afstudeeronderzoek van student Rick van Tatenhove zich op (privaatrechtelijke) overeenkomsten bij gebiedsontwikkelingen, om zo inzicht te krijgen hoe die overeenkomsten in de praktijk vormgeven aan bijvoorbeeld kostenverhaal, maar ook hoe ze bijdragen aan de ontwikkeling zelf.

Dat onderzoek kan maar ten dele uit boeken en artikelen. Het uiteindelijke antwoord op de afstudeervraag ligt verscholen in uw ervaringen. Omwille inzicht te krijgen in uw ervaringen wordt het semigestructureerde interview gebruikt. Dat is een interview van ongeveer 1 tot 1,5 over een specifieke casus in uw praktijk. Uw inzichten en ervaringen dragen daarin direct bij aan het beantwoorden van de onderzoeksvraag.

Kader van het afstuderen
Dit onderzoek wordt uitgevoerd door Rick van Tatenhove, afstudeerstudent aan de faculteit Architectuur van de Technische Universiteit Delft, in het kader van het afstuderen van het mastertraject Management in the Built Environment. Bij voorkeur wordt het interview opgenomen,

Deelname aan dit interview is geheel vrijwillig, en u kunt uw deelname op elk gewenst moment weer intrekken. Het staat u vrij om vragen die u niet wilt beantwoorden, over te slaan.

Indien u deelneemt, gelieve dit document onderaan te ondertekenen en de vakjes aan te kruisen die voor u van toepassing zijn. U ontvangt een ondertekend kopie van dit formulier. Uw persoonlijke gegevens zullen zorgvuldig worden behandeld. Mocht u vragen hebben over het onderzoek, dan kunt u contact opnemen met Rick van Tatenhove via R.vantatenhove@student.tudelft.nl.

☐ Ik wil deelnemen aan dit onderzoek, en geef toestemming om geciteerd te worden bij
- ☐ naam
- ☐ pseudoniem

☐ Ik verklaar dat ik helder ben geïnformeerd over het doel, de methode en de reikwijdte van het onderzoek

☐ Ik heb geen vragen of de vragen die ik had zijn naar mijn tevredenheid beantwoord

☐ Ik begrijp dat audio en/of visuele opnames (of de bewerking hiervan) exclusief gebruikt zal worden voor analyse, en wetenschappelijke presentatie en publicatie

☐ Ik zou graag een kopie van de uiteindelijke onderzoekssamenvatting ontvangen, en hiervoor mogen mijn contactgegevens tot dat moment bewaard worden.

Name Interviewee:

Date:
Signature

Interviewer: Rick van Tatenhove

Date:
Signature

Annex 2 – summaries of the explorative interviews

The interviews below have been conducted with four partners of the consultancy firm TwynstraGudde. Each interviewee has received the interview guide and the letter of informed consent two days prior to the interview. The purpose of these interviews had mainly been to get a better understanding of the concept 'value capturing' in practice, and to therefrom draw possible insights that could further sharpen the research question and direction of the thesis.

Explorative interview 1 – G. (Gregor) Heemskerk.

The first interview is with Gregor Heemskerk. Mr. Heemskerk is a partner of the consultancy firm TwynstraGudde, in the department of Space, housing and economy. He is involved with urban area development, and therein mostly the more complex projects. TwynstraGudde is involved with the entire array of specialities that are concerned with the project and process management of urban area development, as well as the financial sides thereof. Mr. Heemskerk's speciality lies in the first half of that expertise, from where he advises on both the organisation as well as execution of Projects. It's a role where he works for Dutch municipalities, and where a large part of the task is to connect public and private – parties that don't always connect well to another because of their varying interests.

An example of his work that is discussed during the interview is the question of how to go about the varying interests of the parties involved in a potential greenfield development location in Woerden. On the one part there is the explorative nature of the consulting, namely to assess to what extent there is a need for a change in the current greenhouse programme, and on the other hand there are the current greenhouse farmers who hear the proverbial clink of the coin. Complicating factor is the neighbouring Rijnenburg Case in Utrecht, where developers and housing associations – speculatively – bought up land in a particular location, expecting that to be "Leischenrijn 2.0" (1.0 being a former greenfield location in Utrecht). In Utrecht, the municipality is refusing to rezone the agricultural land to residential because it is of the opinion that development ought to take place within the 'red contours' and that it should make use of the readily present infrastructure. Understandably, it will cause some friction, should greenfield development be allowed by the municipality Woerden, which is at a stone throws distance. Mr. Heemskerk underlines the importance of taking the time to explore the varying interests, and that he prefers to think about the process and the possible parties, before starting on the substance of a project.

When talking about the process of recovering the costs made by the municipality that would have to provide the necessary infrastructure (for either greenfield case), Mr. Heemskerk expresses a preference for active land policy: After all, if you hold the land, you can decide what will be developed and you also retain the fruits of profit maximisation. Anecdoting the case of a farmer seeking permission to build an additional house on his agricultural land for his son to live with him, Mr. Heemskerk ask whether we should find it normal that the value increment that would occur when such a change is granted, not unlikely to be around €100.000, should then remain with that farmer. Although such a perspective is slightly socialist in nature, it is indicative of a larger challenge. However, Mr. Heemskerk says, referring to the letter of informed consent, if you think about the value increase as the result of a public investment, it should also be viewed from a broader perspective. Active land policy might be a way to profit from the value increases, but if public investments can incite otherwise unrealisable private developments and the costs of those investments can also be recovered, it could be argued that the municipality is still gathering added value, albeit it in the form of housing, jobs or other economic benefits.

If the municipal goal is to capture monetary value above what is possible in terms of cost recovery, the municipality really has no other options than deploying active land policy and acquire the land positions beforehand. Otherwise, she's left to the profitability and proportionality criteria of cost recovery.

A deal might be struck between public and private developer, but if such a private party expects a better deal under the land management plan (Dutch: Exploitatieplan), said party could pass on the deal. This might also become a grey area, because when a municipality refuses to change a land-use plan on the basis that the developer is unwilling to pay more than what can be asked of him through the land management plan, this could be labelled as payment-planning (Dutch: Betaalplanologie), which is forbidden. Anterior agreements can provide possibilities because the have a form-freeness to them, and allow for more far-reaching agreements to be made.

And the more parties are involved in such a process, the more complicated it gets. Governmental policy expects municipalities to explore private-law anterior options, so there is certainly some negation space wherein public and private can meet each other, but there are always public-law principles guiding the municipality in such cases.

A good example of how to look for legally sound ways to incorporate other regulatory instruments and find a way to apply them in new situations. TwynstraGudde for example drew up a space-for-space regulation of sorts that was applied in Dronten. That municipality wanted to build migrant lodging and at the same time decrease the amount of student housing. The lodging, being a rather profitable function, could therein equalize the non-economic-efficient ambition of decreasing student housing. By zooming out, and making the problem bigger, instead of smaller, integrated solutions could be found that did right by all parties involved. And, as it became a regulation, there was no arbitrariness.

Looking at the agreement made in the case of Wateringsveld, to the extent that is described by Deloitte and De Zeeuw, namely that a when the prices of the developed housing (Dutch: V.O.N. Prijs) exceeded a certain threshold, that the excessive profits would accrue to a funds that would be invested in the plan area. Mr. Heemskerk poses that here it could be interesting to look into the agreements made, with what reasons the parties joined the joint-venture, who held what lands and had what goals. All in order to understand why a private party would agree to possibility having future profits capped at the behest of the area quality. The existence of such an agreement would indicate a certain position of power held by the municipality at the time of negotiating.

Value capture is simply very difficult if you do not have a position of land or power. However, a municipality always has a position of power, because it can look beyond one specific piece of a project, and because it has the instruments to achieve its spatial goals. If, in a negotiation, you are stuck on wanting to realise something on one specific piece of land, then such a developer will reckon himself as rich.

In this sense, value capture is the result of strategic area development and good negotiation. If you lock yourself in to a certain area or a certain urban development, then you hand yourself over to the landowners.

The biggest challenge is to come up with these kinds of strategies before you start making plans. If you lay down these kinds of things in strict spatial planning, you just make it very difficult for yourself. This is a very difficult process, because the municipality must constantly weigh up some sort of strategic preparation on the one hand and transparency on the other. These are moves that not every municipality knows how to make in advance.

Another possible instrument discussed is leasehold. Mr. Heemskerk provided the example of the well-known Dutch Zuid-as. Over two decades ago, when it was still an area providing sports facilities, one particular plot – a tennis court – was bought by a developer for 30 million euros. Although already a lot of money for a tennis court, the municipality bought it then for 40 million euros. After rezoning the area, the plot was set out for leasehold with a land value of 200 million euros. Which is an enormous increase in value, in this case benefiting society. Leasehold gives additional possibilities under private law to determine the content of the development.

If the society wants to change the function, it has to pass through the municipality and there is room to make new agreements after negotiations. So even if the ground rent has been bought off in perpetuity, the municipality reserves the right, under private law, to take a position on the destination of the plot.

As a municipality you would almost be making a mistake if you knew that you were going to do certain developments, such as a tunnel, and you did not buy up any land. You don't even have to buy it all up, as long as you acquire strategic land positions in order to participate in the increase in value and influence the way the area is filled in. In essence "The municipality should be the best speculator in the world" Mr. Heemskerk says conclusively. Moreover, as a municipality, you should not fall into panic football. The municipality of Apeldoorn sold off a lot of land for a low price during the crisis. But now that the land is actually needed again for spatial management, they have to start buying again the same land that they've sold at a loss.

Explorative interview 2 – M. (Martin) Stout

The second interview is with Martin Stout. Mr. Stout is a partner of the consultancy firm TwynstraGudde, in the department of Space, housing and economy. He is involved with urban area development, and therein mostly on the financial side. Having studied in Delft, he started working as a planning economist for a municipality. After three years he switched to TwynstraGudde, where he took the role of a financial manager. The difference being that a planning economist builds GREX models based on the information of others, and therein has a rather reactive role, and the financial manager aids to help in the cockpit of the system, allowing a more proactive role. Mr. Stout works mostly for municipalities or for development combinations of multiple municipalities that work together. Therein he then also takes care of the financial management of the legal entity of the combination. He focusses on the administrative flow of information, as well as the fiscal side and parts of the legal side. Although being specialized in finances, he aims to take a broader view, because otherwise you might get financially interesting neighbourhoods, but with zero appeal. Upon inquiry, he lists an impressive list of projects on which he has worked, that turned out to be 'only of the last two years'.

Of the top, Mr. stout explains that value capturing, as laid out in the letter of informed consent and the interview guide are difficult topics, and that – in that form – he has not really encountered them. In the form of cost recovery however he has, and he explains that the two are very strongly related. Should agricultural land be changed in location, the municipality has in principle only the land management plan and anterior agreements as instruments to capture the value. A challenge therein is that the municipality can never recover more than the costs that it has made. Should the value rise by 500, and the municipality invests in a new road for 200, the municipality can only recover the latter, and the increment of 300 still befalls the land owner. This can, in a way be related back to the question who the value increase of land should belong to. Where planning compensation is based on the logic of damaging someone's property, land value increase from a liberal point of view, simply befall the owner of the land. By looking into the subject, a political debate, or at least admission of political colour is inevitable. In the research, Mr. Stout prewarns, this shouldn't be omitted, even if its only to explain the framework to which you can later reflect on in particular cases.

As an example, Mr. Stout talks about a paper has once written for the council for the environment to contribute to the answer how to fasten up the housing challenge. Together with a colleague he has concluded a number of interesting points. But at every point they came to the conclusion "Great, but then you have to do something about the expropriation legislation". Time and again. Because in the Netherlands, there are a great many ways of blocking area development. Expropriation, for example, is very difficult at the moment. If someone invokes self-realisation, especially if he enters into a partnership with a developer, as he then becomes both willing and capable. You'd have to put him under pressure: I want to do it now as a municipality. Then it becomes a discussion about being able, but not willing, and then expropriation becomes possible again, but that is a very difficult, long and difficult discussion. This is both a very negative process, as well as a costly one.

On of the projects Mr. Stout has worked on is an equalization fund (Dutch: Planvereveningfonds) in Rotterdam. In the city, a land development block is approved by the City Council and Budget is allocated.
But the municipality may not offset the plus from one project against the minus from another, as the plus must go to the general resources. The council also having other interests and portfolios, such as health care and social services, does not always return that plus to another land plot of area development.

For the city council in Rotterdam, Mr. Stout set up a system whereby the plus from one project does not go to general resources, but to a fund, within which rules are drawn up to determine when money from the fund goes to a minus in another project. In this way, money can be earned one of your land exploitations projects on the one hand and use it to pay for something in a less profitable development elsewhere in the municipality. That way it doesn't actually cost the municipality any money, because you earn it in one place and pay for it in another.

The tricky thing in Rotterdam is that there is no greenfield left to find a real plus. This means that it is also difficult to find a plus for projects to contribute to the fund. That is why it has been agreed that money from general resources should also go into the fund to make inner-city projects possible. Mr. Stout has made that part of the municipals' administrative process. Because it is no longer about the purely financial goals, but about developing the city, where goals such as sustainability, liveability and accessibility are operationalised to see what should be added to the fund from general resources. After all, it is difficult to create a plus within the city, but that does not mean that no money is earned at all. The general resources would then have to contribute the difference.

Upon further inquiry about the difficulties of making a profitable development business case in the inner city, Mr. Stout explains that every plot bought already has a defined use. After purchase, demolition, redevelopment and construction, there is not much left to earn a profit, as long as the spatial regulations are not expanded. To make it feasible within the city - to close the business case - a factor of 4 must be returned in terms of quantity. If you go up in height, the individual units become worth even less (about 85% of a ground-level variant), so you have to build a lot to close the deal, and the factor becomes 4 to 6. Mr. Stout has done the calculations and explains that if you include all the costs, such as the public space and the planning costs, you end up with a factor of 8 for inner-city redevelopment. So inner-city redevelopment is basically so unprofitable that for every house you buy and demolish, you have to build eight more. If you can't densify, a balanced business case is not really possible in the inner cities. But if you are able to achieve (extreme) densification, it is possible.

The probing question "Looking at the question as I wrote it down initially, namely the story of value increase due to public investment, could that logic perhaps be reversed? That municipalities invest in public parts of inner-city area development in order to make the development more attractive and bring that factor down?", is answered with detailed a detailed explanation:

Mr. Stout explains there are various things to consider. A government subsidy has been made available from the housing impulse, which subsidises municipalities when they buy up parts, demolish them and make them available for renewal. Half of the minus that the municipality must take is then paid by the national government - provided, of course, that it meets certain conditions. Then the other 50% has to be paid by the municipality, but at least development can take place. When talking about value recovery, it is of course difficult in these examples, because there is no immediate value to be recovered. There will undoubtedly be places where this is the case, but in general it is less likely to be the case in inner cities.

When the government invests in an area and the potential of a location, already owned by a private owner, increases as a result, the owner will want to develop in order to cash in on that value. As a municipality, two things can be done when the owner asks for a zoning change of, say, a factor of 7. One, you can focus on spatial quality and permit for example a maximum of a factor of 2 or you can ask the owner to contribute

to the public investment on the basis of his business case. Cost recovery is the starting point here, and the minimum you can demand by law, but the room in the negotiation lies in the way in which the added value of extra development is translated into an added value in spatial quality. This is a challenge, because it naturally threatens to skirt the edges of payment planning. All agreements must be properly laid down in the anterior development agreement. Incidentally, the party who is in the greatest hurry in such negotiations often loses out to some extent. Municipalities must therein continuously pay close attention to whether their negotiations still fall within the boundaries of what is permitted. In the end, an anterior agreement is a private-law contract between two knowledgeable parties, so if they both want to agree to such a deal, that is fine.

Looking back at the question as formulated in the written the letter of informed consent; a joint venture is of course an appropriate way of capturing value. The parties involved both supply land to a joint land company, and share the profit in proportion to the deposit or as otherwise laid down in an agreement. Here again, the conversation you have with each other is important, of course, and the outcome is subject to the negotiations between the parties and their negotiating position.

In the thin line between negotiations and the danger of payment planning, the framework of decent spatial planning can provide a basis for assessment. As a municipality, you do not want any development to take place that is not spatially sounds, even if you were to be paid for it. It simply would not contribute to the city.

Another form of value capture may be achieved with the building rights (Dutch: Bouwclaim) model. If the municipality buys the land from market parties at a lower value than that at which it sells it, then the difference between the two values contains a piece of value capture that can be used to pay for the unprofitable parts of the area development.

As a conclusion, Mr. Stout advises me to take a good look at how to define the term PPP in the research. A building claim may be a cooperation between public and private, but apart from that there is no question of integration into a legal entity. The building rights model is a type of agreement that the public can make with the private sector, which in his view can also be used for value capture. In this sense, it is perhaps less relevant to look at how value capturing can take place within a traditional PPP (joint venture), but rather to look at which instruments from the toolbox are best suited to the situation. The municipality has a whole kit of instruments, including the joint venture, building claim and also the land management plan itself (as the proverbial stick behind the door).

The biggest challenge for the public party can then perhaps be derived from the fact that it used to be possible to earn money from area development, but that is now increasingly difficult. In the past, nice things could be done with the contributions from the land company, such as building a swimming pool, but that is no longer so easy to translate. Now, it may not be a goal in itself to start making money again, but it is important to keep developing the city. Developing your city does not necessarily mean making money, but then in principle it does not have to, because money is not the goal, but those terms such as sustainability, liveability and accessibility are. Perhaps the recovery of value is not necessary, and the recovery of costs is sufficient for the municipality, because it also gets those other aspects. The value to be recovered may then lie in the economic growth resulting from area development, rather than the hard euro.

Explorative interview 3 – H. (Henk) Hoogmoed

The third interview is with Henk Hoogmoed. Mr. Hoogmoed is a partner of the consultancy firm TwynstraGudde, in the department of Space, housing and economy. He is involved with urban area development, and therein mostly on the financial and process side of things. He has some 30 to 35 years of experience in urban area development, and started his career at the Land Department of Alphen aan den Rijn. He joined TwynstraGudde

in the year 2000. He mostly works on questions of financial feasibility regarding area developments. From land acquisition and redevelopment to the financing of public infrastructure. Jokingly he calls it like monopoly, but with real money. He has worked on projects throughout the entire country, and is currently also involved with a list of projects. Most of which are multi-municipal collaborations through a legal entity, of which he then takes the role of financial manager. His job, inherent to the nature of urban development, has a certain level of politics to it, as there are always very many interests involved with area development.

The conversation starts of with the notion that value capturing is difficult to contain in a definition. And that the way that you understand it is open to interpretation. Mr. Hoogmoed provides an example of Alphen aan den Rhijn, where once a new city centre and a new theatre needed to be realized. In that case the centre was entirely demolished and rebuild in a densification. The difference in the real property value (Dutch: WOZ) of the new situation compared to the old, contained a rise in value with which the theatre could be build and operated. In most of Mr. Hoogmoed's projects value capturing occurs when new roads or other infrastructure is being built, making certain plots more accessible, and then thus resulting in a higher plot value. Most often Mr. Hoogmoed works with active land policy, which readily allows for a recouping of the rise in value. Mr. Hoogmoed notes a personal preference for active land policy within the Dutch system.

Alternatively, looking at a project of Mr. Hoogmoed, in the municipality of Hoeksche Waard a neighbourhood of 2000 homes is to be built, but the land is fully owned by private developers. Those developers will also have to build the roads, so they will have to pay for that. Of course, they get that from the increase in value as a result of the zoning change. For the municipality, sharing in such an increase in value is of course interesting, and at the same time difficult, but changing the zoning is in basis a policy choice. When that question comes up, the municipality deal with it administratively, for example through active land policy or by leaving it to the market. In Hoeksche Waard, it was left entirely to the market, which is unusual in itself, but in an anterior agreement it was agreed that the developer would build the entire public area according to certain agreed upon quality requirements, and that the municipality would take it over at the end. What is agreed in such an anterior agreement depends very much on the negotiations, of course. For example, there are also costs that have to be incurred outside the planning area that the government cannot recover. Think for example of a new bus line or an above-plan road connection. Sometimes such costs can be recovered, but that is purely a matter of negotiating with a market party.

In such negotiations, Mr. Hoogmoed explains, it actually comes down to the interests of one party versus those of the other. The market party wants to build homes, and the municipality also wants to make things outside of that. The parties may have a different pace in mind than the other, which also plays a role in the negotiations. The municipality will show that something contributes to a location, and will present an argument about the extent to which it thinks the market should contribute. The market party will, of course, have a different opinion. The space in between is where the negotiations take place, and in the end, something comes out that both parties agree on. This can also simply be a financial contribution to the out-of-plan provisions by the private party.

The tension in such negotiations lies in the fact that the municipality cannot force the market to build, but at the same time, the market cannot force the municipality to change the zoning plan. The disadvantage of that is that you get each other in a kind of vice, where ultimately nothing happens. The parties will therefore have to get around the table to see where the interests lie, and the question of who is in a hurry plays a role in this, of course. Whoever is in a hurry the most often draws the short straw, as it were. And with rising house prices, market parties may want to wait a little while in such a discussion.

The above ends, of course, in an anterior agreement. The Municipality could also say that instead of an anterior agreement, an exploitation plan is drawn up, which simply states in concrete terms what the private party must contribute. This does, however, limit the amount of costs that the municipality can charge and, at the same time, the scope for discussion between the parties. The land management plan is also explicitly laid down in law as

a kind of fallback option. So, the intention is to come to an anterior solution, and the land management plan is more of a backup plan (a big stick, as it were). But even with such a plan, the Municipality cannot force the market to build.

The number of parties involved certainly influences the extent to which agreements can be made between public and private parties. In Hoekchse Waard, for example, there are seven project developers with a piece of land in the area. They need the municipality, but they also need each other, because the distribution of land may not correspond on a one-to-one basis with the way in which the roads should run through it. In this case, the seven developers have formed a development coalition, from which they conduct the negotiations with the municipality. These kinds of negotiations can take a very long time; the Hoekchse Waard example, for example, has already been going on for four years.

From this point of view, there is something to be said for a more active role on the part of the municipality, that it should pursue more active forms of land policy, but of course, the crisis of ten years ago plays a major role in this. Then the market collapsed, and there was no longer any need for housing. The Netherlands was finished. Now, ten years later, that doesn't make any sense. But the land that was sold and written off for a rock-bottom price then, now costs many times as much to acquire again. Mr Hoogmoed re-expresses a personal preference for active land policy, if only because the municipality is in it for the long haul, and active land policy enables it to implement its policy much better. It is also possible, of course, to use facilitative land policy, in which case the municipality lays down in the zoning plan what is to be built, and then leaves it to the market.

In the inner cities, the whole game is a different story. The shift in value is not nearly as great in the inner city. Whereas a greenfield location can have a jump in value of e.g., 200, such is shift is perhaps only a fraction in an inner-city development, but you do have to deal with extra costs for purchase, demolition and redevelopment. Inner-city redevelopment is simply very expensive. The extent to which value capturing can take place depends, of course, on the amount of land the municipality has and the shift in value that can take place with a new development. The feasibility of a project and also the extent to which value capturing can be applied, is very much dependent on the location. The location partly determines that potential value shift, but also which infrastructure is already present and which still has to be built.

The Dutch system also has its own character. In other countries there are also examples where a developer or owner pays a higher contribution for his property, but does not have to contribute to the construction of infrastructure during the development. These kinds of systems are interesting to look at, but difficult to translate to the Netherlands, because you would have to change your whole system to make it work. These kinds of issues are also very politically determined.

Another challenge that comes with the Dutch system is that land positions of this kind can also be traded. In Hoeksche Waard, there is a piece of land between the city and the ring road where everyone knew that houses would be built one day. This land has been traded several times by speculators, whereby the value has risen but nothing has actually been realised yet. In this way, a lot of value is draining out of the area, which in turn makes development more difficult. The speculators do run a risk, of course, but they also know how to devise constructions to shift that risk onto the farmers from whom they buy the land, for example by taking over the land at a low price now, and agreeing on an additional price per square metre if any houses are ever built on that piece of land. These kinds of contracts are then again also tradable, so this has its own market. It should be noted, however, that any new acquirer will of course always reason and calculate on the assumption that houses will one day be built.

When asked what strategy a municipality could adopt to facilitate talks/negotiations with the market, Mr. Hoogmoed explains that it starts with a municipality understanding what happens when it changes a zoning and that it has choices to make. The municipality can strengthen its position if it creates for itself a good

overview of what it wants and where it wants it. In this way, it can get an overview of what is possible and who the landowners are. Advice from TwynstraGudde often starts with an analysis of the landowners, both their positions and their interests, because then this can be weighed against the municipal interests. With all that mapped out, discussions can begin and negotiations can get underway.

We continue to talk about the various possibilities for understanding value capture. In the letter of informed consent, I am talking mainly about value capture as a result of a public investment. Mr. Hoogmoed explains that with active land policy, it is of course easiest to capture that kind of value increase, but that beyond that you are still largely bound to cost recovery measures from developers on the one hand, and tax measures from existing owners on the other. From this point of view, value capture can also be seen in a broader sense, and you could look more broadly at how you organise the system.

The question could also be asked, Mr. Hoogmoed says, whether the small amount of effort that the Municipality makes by changing the 'A' from agriculture into the 'R' of residential justifies taking away the increase in value. The other way round, it is often the case that in the event of a reduction in value, a claim can be made for planning permission, but in negating for an area development the municipality could also contract this out to the developer.

You could indeed ask yourself whether the municipality should want to recover more than the costs incurred, because if investments made or changed plans contribute to private developments that can solve municipal challenges, that could also be classified as added value. If your aim is to recover the increased value, you will have to acquire land in advance. If you don't, you don't participate in the increase of value, but you don't have any risks attached to the land positions either.

In conclusion, Mr. Hoogmoed tells me that Value Capturing can be defined in different ways. And that the interpretation of that definition largely determines the extent to which it is still an issue of land policy. Land policy has a strong relationship with the interests involved in issues of area development, and the instruments of land policy are therefore more the toolkit than the actual goal. The way that things then get realized, are depended of the conversation between the parties involved.

Explorative interview 4 – M. (Marco) Van Lente

The fourth interview is with Marco van Lente. Mr. Van Lente is a partner of the consultancy firm TwynstraGudde, in the department of Space, housing and economy. He is involved with urban area development, and therein mostly in the process- and project management of urban area development. He started working at TwynstraGudde 20 years ago, prior to which he had worked for the municipality of The Hague for 11 years. He works on various projects, mostly on the level of governance: The how of organizing urban development projects or other such spatial endeavours. He has worked on numerous projects, among which currently the development Zuidplas.

Having inside knowledge from both Zuiplas but also Wateringseveld Mr. Van Lente explains that in those cases Value Capturing is mainly about capturing the increase in value resulting from a change the land use plan. When agricultural space or business parks are rezoned to residential, there is value in that. The municipality then aims to capture the increase in the value of the land, while the market parties aim to capture the increase in the value of the real estate, as the municipality itself does not build houses. It should be noted here that it is very much about the increase in value as a result of the transformation, but not so much about the increase (or decrease) in value of the area after realisation. That is where municipalities often lose out, because the areas have already been sold by then. There is a value to be captured through the property-tax (Dutch WOZ), but that is in a very indirect way.

Leaseholding, Mr. Van Lente explains, is a very good way for the municipality to benefit from the increase in value of the land. This is something that is often used in Amsterdam and The Hague, for example, but which is perhaps not always such a popular option among market parties. In the case of sale instead of leasehold, the municipality is limited in capturing the increase in value during the development phase only, in order to finance a public investment, but that is no longer an issue in the management phase. In addition, leasehold is not only a financial instrument, but primarily a steering instrument, because the municipality can use it to determine what is allowed or possible on a plot. Capturing the increase in value can therein actually be seen as a nice bonus. If a market party wants to change the use, then the leasehold contract can be broken to change the use through negotiation, and the leasehold provision (Dutch: Erfpachtcanon) can be reset. Something that also happens not unfrequently in practice.

Apart from leasehold, it is difficult for the municipality to benefit from future increases in value. In Western Europe, the concept of property is appreciated rather highly, so it is difficult for the government to do much about it, apart from levying taxes or more active forms of land policy such as the purchase of land and participation in the market for area development.

Recovering costs is easier, as regulatory agreements have been made about that. Well, it is still easier through active land policy, by being able to sell the land yourself, but it can also be done through the land management plan. The recovery of profit really is something else then. Costs can be recovered, but the increase in value above that cannot be skimmed off by the government. In other words, if the government wants to share in that shift in value, it will have to deploy an active land policy, otherwise it will remain bound to public law measures of cost recovery.

Moving on to the case of Wateringseveld, Mr. Van Lente explains that when Wateringseveld was conceived, Bouwfonds was asked by the alderman at the time to buy up land positions. As at the time, the municipality had no money to do this. Bouwfonds did this, and an agreement was made to transfer the land to a joint limited company (Dutch: cv-bv) in which both the municipality and the Bouwfonds had 50% of the voting rights and interest. Bouwfonds did have that kind of money, so it was commissioned by the municipality to start work. This is still active land policy, but in cooperation with the developer. An additional agreement was made that Bouwfonds could also realise part of the housing. A kind of building rights claim that they have received as part of that agreement. In such a building rights claim, agreements can be made about how to deal with land prices. You make agreements about what you want to realise, and a certain land value is attached to that (fixed, residual or through land quotes). The agreement was that Bouwfonds would make plans for the area, and when 70% of the homes had been sold, it would buy the land from the joint land company. These housing sales prices (Dutch: VON prijs) can vary over time, and in order for the municipality to benefit from this, agreements of this kind are not made on the basis of fixed prices, but on the basis of a land quote, which means that the municipality also benefits from the increase in house prices when the land is sold. The percentage is low for social housing, sometimes even just a fixed value, but for regular housing it can be as much as 30-35% of the value of the houses. Of course, this also works the other way round if the market value falls, but in this way, the municipality shares in the profits and the risks. Such a building claim with a land purchase agreement has been a common arrangement at Vinex locations for the past 20 years.

The agreement that a certain surplus profit, or part of it, will be put back into the area is not unusual. Certainly not if you consider that the quality of the public area also contributes the value of the houses. The profits for a developer can mount up sharply in such an area development, through the sales prices of the houses alone, but also all the extra options that buyers opt for, which contribute greatly to their profit. Municipalities often do not realise to what extent, or how they should make agreements about this, and then they make, for example, fixed lot prices, regardless of the value development of the property prices.

There is however more to it, Mr. Van Lente explains. It for example also makes a big difference what position the municipality has in making these agreements. If the municipality has more land, or more strategic positions, it will be able to enforce stricter agreements in such a partnership than if it does not. In other words, the starting position as well as the market and negotiation experience of the municipality partly determines the extent to which the government can benefit from the increase in value. Just as the type of developer who participates is also very important. A hit-and-run developer has a different approach than an investing developer, who has a much more long-term vision. Such an investor also has a greater interest in improving the quality of the area.

Regarding inner-city redevelopment, Mr. Van Lente explains that these types of agreements can also be used in brownfield areas. However, below the line, inner-city development is much more expensive than greenfield development. That's logical, because there is already real estate that has value, and if you have to demolish it, you first destroy value before you create value. So first you have to recover your losses, before you can earn money. Consequently, inner-city area development is not profitable if the volumes are too low or if the value shift as a result of zoning is too small. In addition, if you develop within the city, you have to go up in height to achieve the desired densification that you need for a balanced business case, but that kind of construction also involves higher costs for building a parking garage, for example. Well, it's a bit relative, Mr. Van Lente remarks; in Amsterdam you can sometimes find such a value shift faster.

With greenfield development, of course, you still have to build a lot of infrastructure that is not there yet, which also costs a lot of money. But on balance, the shift in value within the city is so much smaller that brownfield redevelopment is much more expensive and not even always profitable. Inner-city development also simply takes much longer. You have to deal with many more parties who already live and work there, and you have to deal with fragmented ownership. Everyone wants something, and all in all, the planning process will simply take much longer. More parties, more interests, simply makes it much more difficult.

Making inner-city area development more attractive is possible, for example, by prohibiting outer-city development. Something that has happened in recent years. This type of steering is done mainly at provincial level, and no longer at national level since there is no longer a Ministry of Housing. But this type of steering is very important, because the government can simply determine under public law what happens where. At the same time, the government does not do it alone. There was a time when Amsterdam was keen to develop the Ij-shores but the market did not see any potential. The municipality then finally gave in, partly under pressure from the market, and designated another location. The municipality may be able to set frameworks under public law, but it cannot force the market.

This is something we are seeing to some extent now too, Mr. Van Lente explains. The government wants to build a lot, but does not offer greenfield locations in return, because of its ambition to stimulate brownfield development. Because brownfield development is so much more expensive, construction is still not taking place at the desired pace. In principle, inner-city development can be combined with greenfield locations, but the party making the losses must also be the party making the profits, otherwise it will be difficult to link the two together. The fragmentation of ownership in the inner cities is a factor that makes this difficult.

It does, however, depend strongly on the ambition of the government. If the government really wants to prioritise inner-city development, they can steer it. The problem for municipalities is that there may be neighbouring municipalities that do permit expansion locations, so this requires more interregional direction to prevent competition among municipalities. This does happen, although perhaps not very intensely. Most housing plans contribute to meeting the one million housing units target for 2030, 80% of which have to be built in the inner cities, but that will obviously not be possible within the current framework, it is simply too expensive.

There are currently some greenfield locations, but it has been agreed that a large part of these will be affordable or below the NHG threshold, and including the infrastructure that still needs to be developed, such a case soon closes at zero. Such types of development would simply not have been possible on brownfield locations because it would be too expensive.

That desired type of brownfield development will not succeed, unless a lot of money is made available. In the VINEX era, the ratio was about two-thirds greenfield to one-third brownfield; the national government made agreements to this effect, but also provided money in return. For about half a million homes, there was something like 6 billion in return, although these figures would have to be verified Mr. Van Lente remarks[1]. And now we have to build one million houses and the government has put up one billion in return. That is not in proportion. In addition, the government is extracting a lot of value from the housing market. The landlord levy, for example, amounts to about 2 billion a year, something that was not levied during the VINEX period. So, during the VINEX period, more greenfield development was possible, no landlord levy was levied and there was more subsidy available for a smaller housing target.

Alternative methods of tackling the current housing challenge are difficult. In the end it is all about money. And if a municipality thinks something is important, it will want to put money behind it, but that does require that the money has to be there. Certainly, in the case of unprofitable tasks such as affordable housing, or issues with a higher quality requirement in terms of, for example, sustainability, it becomes difficult if the money is simply not there. More expensive homes could pay for the task, but that would put further pressure on the affordability of the housing market.

In conclusion, Mr. Van Lente said that rules and procedures also contributed greatly to the way in which things are possible. Because of rulings by the Council of State, people can more easily instigate proceedings to stop things happening, something that does not contribute to the desired pace of area development. The nitrogen issue also makes a lot of things more difficult. All in all, the rules in that regard make it difficult to realise the major task in the period up to 2030. If you, as a government, really want to do it, you will have to do more than just try to stimulate it. But that is difficult, because when the Netherlands was considered finished ten years ago, the ministry of housing was disbanded. Something the government made a terrible mistake about, and now results in a shortage on the market. A situation for which the government is largely to blame.

In the first place, market parties only start moving if there is money to be made, be it through projects or investments. Then it simply comes down to arithmetic. A project developer will always make trade-offs between profits and risks, and try to hedge those risks before starting realization. The initial investment is therefore mainly in planning costs and time, and the return may come later. It has been like that for years. And if you know that, then you also know that you don't have to expect too much initiatory movement from developers in terms of quality, because they prefer to make a profit. Of course, they want to make the Netherlands more beautiful, but not at the expense of their profit. If you know that, then you as a government will have to make the first move.

It has to be said, though, that during and after the economic crisis, municipalities did adopt a more facilitative oriented attitude in their land use plans, after they had to write off a lot value on their assets. Now that the market has picked up again, to the level of overheating it has now reached, there are actually not enough plans, and all the procedures have also become more complicated. In this way, the government has actually got itself rather bogged down. A firm return to active land politics could offer an opportunity to achieve the overarching goals. Land policy should therein not be seen as a law, but the spatial organisation of the Netherlands cannot be achieved with public law instruments alone; it must be regulated through active intervention in both the land and the housing market.

The government must ask itself how it can achieve its objectives. Can it leave it to the market, will it do it itself, or are hybrid forms conceivable? The reflex 'not active' may have to be overcome. The government is also sensitive to the money argument, and has many more objectives than just housing, such as all kinds of social services. So, it is not surprising that it is difficult.

1. Volgens t ruimtelijk planbureau Rotterdam 97% van het doel van 648.800 woningen: https://www.pbl.nl/sites/default/files/downloads/Woningproductie_ten_tijde_van_Vinex.pdf - Geen eenduidig antwoord. Essay van Heurkens (et al, 2020) waren er in de vinexperiode (1995 – 2004) drie grote fondsen actief, al liepen die niet parallel aan de vinexperiode.