



Analyzing Land Readjustment

Economics, Law, and Collective Action

EDITED BY
Yu-Hung Hong and
Barrie Needham

WITH A FOREWORD BY WILLIAM A. DOEBELE

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Land Assembly, Land Readjustment, and Public-Private Redevelopment

LYNNE B. SAGALYN

One of the firmest premises of redevelopment is the need for public action to deal with the practical problems of urban land assembly: numerous small parcels, fragmented ownership, and balkanized derivative interests, all of which hinder spontaneous market-driven transformations. Relying on the process of eminent domain to assemble land has been the stalwart convention of urban renewal as practiced in the United States during the decades following World War II. That process typically couples government's sovereign power to seize private property—for a “public purpose” with payment of “just compensation”—with its police power to control which new land uses will be put in place, and it packages those powers in a special-purpose entity designed to facilitate public-private development ventures. For urban redevelopment, government is often, in effect, redistributing property rights among private interests. The political power to do so comes from an evolved legal system that countenances a broad standard about what constitutes public purpose and bestows judicial deference to agency execution of public-private endeavors.

Political risk, therefore, remains one of the clearest policy legacies of the federal urban renewal program's sweeping use of condemnation to clear large swaths of city centers. Though relied on repeatedly, compulsory purchase—whether employed for urban renewal or for economic development—remains fraught with political problems. As policy, it is often considered heavy-handed. Because it is politically unpopular, public official advocates are put on the defensive from the first announcement

of condemnation intentions. Because it is inherently controversial, delays from ensuing litigation are inevitable. While government tends to prevail in contests of condemnation, the process is not without legal and political costs. Despite fresh evidence of the public's ultimate judicial success, time has not lessened the controversy in the court of public opinion.

The legal and policy arguments for the use of eminent domain are often rational, proven, and, more often than not, sanctioned by the courts. Yet, given that the condemnation process is cumbersome and costly, inherently litigious, and full of political risks, what other policy options exist to effectuate public ambitions that call for land assembly? In particular, what is the applicability of land readjustment to the types of public-private redevelopment projects evident in U.S. cities today?

Based on a major study of the redevelopment of Times Square (Sagaly 2001; see figure 7.1), this chapter addresses the question in light of the lessons learned from the 42nd Street Development Project (42DP), where land was assembled by the customary method of condemnation.

Land Assembly for the Redevelopment of West 42nd Street

From the start of the cleanup in 1980, New York's objectives for West 42nd Street (Times Square) were clear and dramatic: (1) to sanitize the "Deuce," 13 acres in midtown Manhattan that had long been a bottleneck in the westward expansion of the midtown business district; (2) to effect a transfer of land to new commercial uses—"good" uses to wipe out the "bad"; (3) to retain, rehabilitate, and reuse the nine midtown theaters; and (4) to renovate the Times Square subway station complex (see figure 7.2). The policy of choice (and necessity) was public development. The tools were land assembly through comprehensive and simultaneous taking, using eminent domain and a financing strategy that shifted the costs of condemnation (as well as other costs) to the private sector and offered extraordinary development density and tax abatements in exchange.

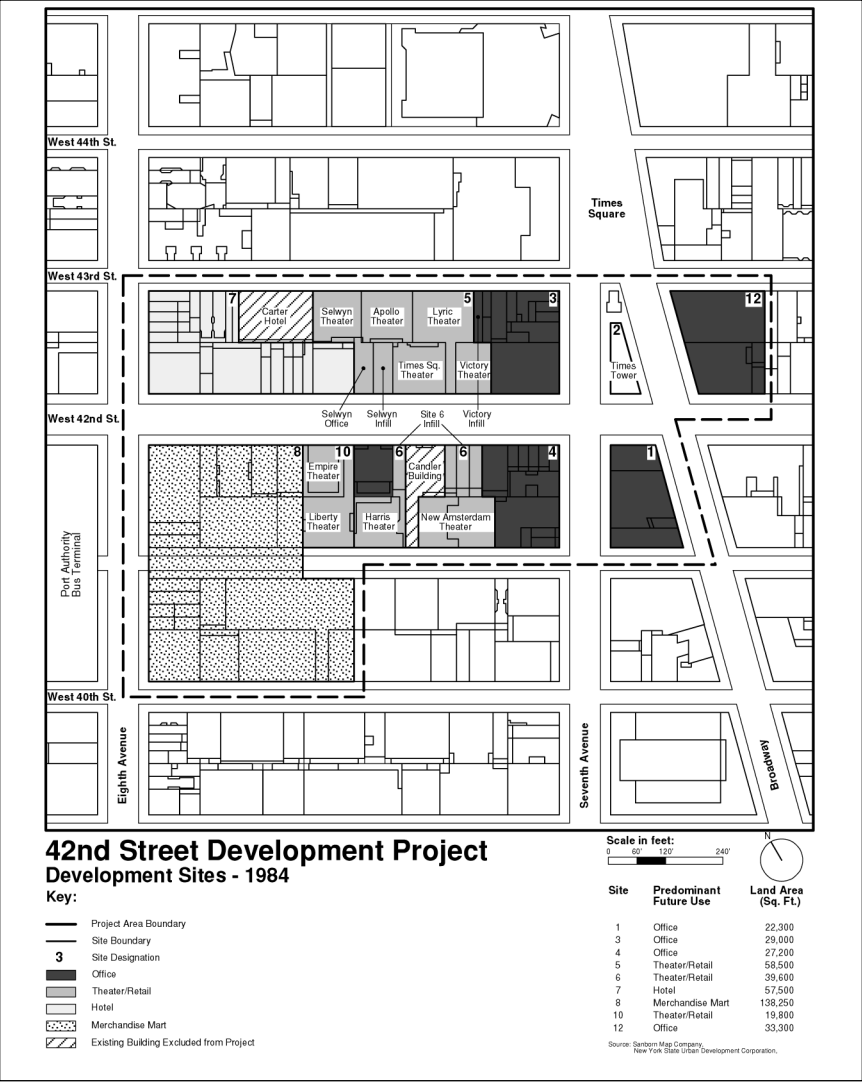
If condemnation appeared to be the obvious solution, it was unprecedented as city policy. Until the 42DP, New York had refused to use eminent domain for a commercial project in midtown Manhattan. The city's policy stance had been firmly grounded in the belief that the market alone, through private development, could lead redevelopment in midtown Manhattan. Public development, particularly if it involved land condemnation, was to be reserved for specific areas or projects in which

Times Square

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Figure 7.2 42DP Area, 1984



Source: Morgan Flemming for the author.

the market clearly needed assistance, the classic example being to create a cultural arts complex for the city at Lincoln Center.

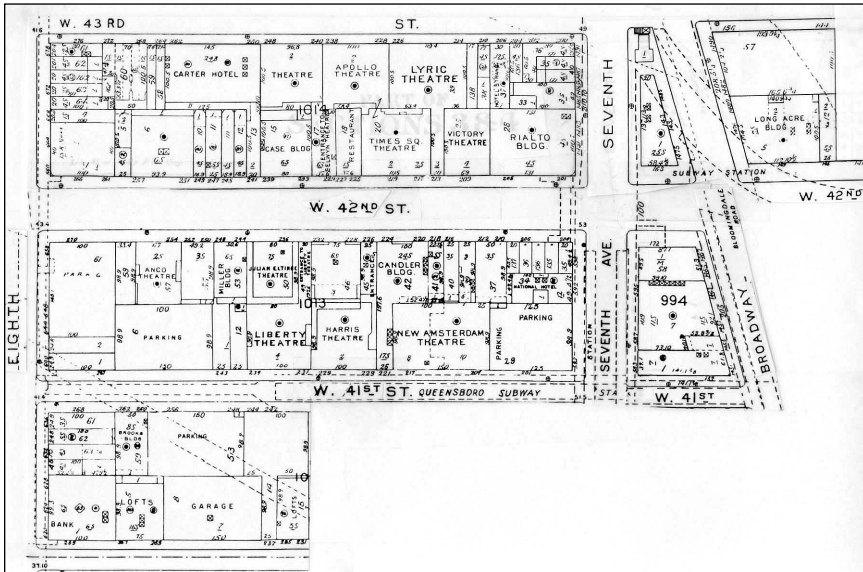
The land assembly task facing city and state officials in the contemplated cleanup of West 42nd Street involved 74 lots (see figure 7.3) and many times that number of derivative interests: leases, subleases, and sub-subleases (sometimes even sub-sub-subleases) of space to investors and operators of sex-related businesses as well as of conventional retail shops and small restaurants. Such layering of property interests (typically on short-term leases) often defines transitional real estate areas, especially those with a concentration of adult entertainment uses. Urban land assembly involves buying out all of these interests, not just the interests of the underlying owner of the fee position.

The taking task was further complicated by an inventive, if unusual, funding arrangement by which the city privatized the public financing of the costs of condemnation.¹ The city was constrained by its mid-1970s fiscal crisis, and the political mandate of the time required city officials to protect against rising land values as the project moved toward execution. The city could not and would not pay out of pocket for the cash costs of condemnation; instead, it would rely on off-budget financing mechanisms: density bonuses, tax abatements, and rent credits.

Litigation is part of the development process in any large-scale project in New York and other cities. Nonetheless, the record of the 42DP was extraordinary: 47 lawsuits in three distinct rounds. The first round of cases, the so-called strike suits, numbered 27. These tested the legitimacy of 42DP as public policy and are most relevant here. Two challenges based on First Amendment rights brought by owners of the theaters and operators of stores selling sexually oriented materials were fairly unique to the project, with its existing concentration of adult entertainment uses. Seeking to stop or at least stall the project, other lawsuits filed during this intense two-year period challenged the findings of blight under the Eminent Domain Procedures Law (EDPL). Still others challenged the data studies of the project's anticipated environmental impacts under the State Environmental Quality Review Act (SEQRA). In a tactical maneuver,

¹The financing arrangement contemplated shifting the risk of rising land acquisition costs to the private developers of the commercial uses, primarily the office towers. The city planned to repay this loan advance through rent credits on the underlying lease payment for the office sites, which would be owned by the state entity responsible for leasing the sites to the developers. The financial imperative that the city take no risk shaped the program of uses and increased the political risk of the project, which the strategy sought to mitigate. Once two-thirds of the street was under the public sector's control, the later phases of condemnation were governed by financing arrangements that relied on traditional sources of funding from the city's capital budget.

Figure 7.3 Land Assembly Map



Source: 42nd Development Project, Inc.

another environmental lawsuit brought under the citizen suit provision of the Clean Air Act by a coalition of activists, economic interests, and residents of the nearby neighborhood of Clinton unsuccessfully aimed to have the case heard in federal court. The judicial success of the state agent in charge of the project, the New York State Urban Development Corporation (UDC), did more than validate the project's public purpose and policy rationale; it also clarified and confirmed the state corporation's expansive powers as a public developer.²

A second round of lawsuits filed after the UDC signed lease agreements with Times Square Center Associates (TSCA), the designated developer for the office sites, attacked the project on a variety of procedural fronts. All three second-round suits took aim at the public's financial deal with the developers.

The policy decision in mid-1987 to go forward with sequential development of the project spawned a third round of lawsuits. Instead of

²One decision in particular, *Waybro Corp. v. Board of Estimate* [67 NY2d 349.] 493 N.E.2d 931. [502 N.Y.S.2d 707] (1986), broke significant new legal ground when it affirmed the UDC's power to override the city's community-based Uniform Land Use Review Procedure (ULURP), hitherto a substantive legal issue because the UDC statute was less than crystal clear on this point.

waiting for agreements on all of the project's sites, UDC and city officials decided to proceed with the eastern portion of the site—the four office towers—letting the western portion slide until a later time. Since the original strategy for the project called for simultaneous condemnation, the General Project Plan (GPP) had to be amended to allow for sequential condemnation of the sites. Every such discretionary action, however, provides the impetus for a new round of litigation, which happened in this case. UDC carefully prepared the necessary feasibility reviews and a supplementary environmental assessment of the proposed modifications. Public hearings on the amendments to the plan followed, then UDC board approval of the amendment as well as of the terms of the leases with the office developer, and finally review of the leases by a state regulatory board. As soon as these procedural steps had been completed, the opposition entered into a third round of litigation, filing 13 new lawsuits within an 18-month period. “The things we were unhappy about weren’t things you could sue about,” developer Douglas Durst, a constant opponent of the project, said later. “But we could sue about the fact that the Eighth Avenue part of the site was being abandoned [Dunlap 1996].”³

This round of litigation also brought a lawsuit by a different competitor, Lazard Realty, Inc., a real estate affiliate of the Lazard Frères investment bank and the developer of the International Design Center of New York (IDCNY) in Queens, another city-state coalition project. Lazard claimed that UDC’s approval of the supplement to the Final Environmental Impact Statement (FEIS) did not examine the economic effect on IDCNY of the new use for site 8. The challenge was procedural: The amendment permitting site 8 to be used as a wholesale or interior furnishing mart, rather than for computer or apparel use as originally contemplated in the GPP, Lazard argued, was an “action” requiring *de novo* review under SEQRA. On a substantive basis, the investment bank/developer claimed that the change in use would have adverse effects on IDCNY and the Long Island City community. Although the lawsuit had the potential to delay or halt the project, Lazard Realty legitimately objected that its economic interests in IDCNY, fostered through public assistance, would be negatively affected by the public sector’s changes in

³Moving forward on all fronts at once had always been deemed necessary but, as events had proven, was frustratingly elusive. After approval of the project in 1984 by the city’s legislative body, the former Board of Estimate, a lot of discussion had taken place, but no definitive private commitments for the western front of the project had materialized. Given the stalemate, it became clear that the project had to be done sequentially, in phases.

the plan for the 42DP. Other delay-inspired suits similarly claimed that the modifications in the project triggered the need for another round of statutorily mandated reviews—new hearings and determination of findings pursuant to EDPL and a *de novo* EIS—as well as resubmission to the Board of Estimate (BOE) for approval. The court found otherwise in each case.

Finally, in May 1989, after having won the round three cases, UDC successfully filed its condemnation petition for the phase one sites. UDC took title to the properties in April 1990.

Predictable Motives

Transparency marks the motives and predictability the tactics when plaintiffs are identified in terms of their interests. As is evident from the profile of 42DP litigants presented in table 7.1, the overwhelming majority of legal challenges were brought by those immediately affected by the project: businesses in the project area whose sex shops, bookstores, and movie theaters would be shut down or whose property would be taken by eminent domain, as well as competing real estate interests with property holdings nearby that were destined to be adversely affected by the proposed new development.⁴

A small group of economic interests actually spearheaded approximately four-fifths of the lawsuits. The most prominent litigant was a family-run private firm specializing in factoring (a type of lending commonplace to the garment industry) that, according to court papers, did about \$1 billion a year in business out of its older, well-maintained seven-story building on the north side of 41st Street, within the boundaries of site 1. The company simply wanted to stop the project or, at least, the condemnation of its building. Erected in 1907, the building was, in the words of the U.S. Court of Appeals opinion affirming the District Court's dismissal of the case, "structurally sound, fully utilized," and "not blighted or substandard." The company's first suit posed a classic test of taking for a public purpose under the law of eminent domain. In finding for the defendant, the court reaffirmed well-established precedents underlying implementation of urban renewal efforts: that there was legitimate public purpose underlying the project and the proposed con-

⁴ The other seven, ostensibly, were brought by community or environmental interests who held the lead plaintiff positions. These community-interest lawsuits, however, were not what they appeared to be, given that, in five of the seven cases, legal counsels for the major economic-interest litigants were also representing community-interest litigants. Accounting for that crossover, vested economic interests instigated 45 of the 47 lawsuits.

Table 7.1 Interests Behind Litigation of the 42DP

INTEREST GROUP AS LEAD PLAINTIFF	NUMBER OF LEGAL CHALLENGES
Economic Interests	40
Adult entertainment operators	2
Theater owners and/or operators	5
Competing real estate interests	12
Property owners (nontheater)	21
Community Interests	7*
Clinton residents	3
Elected officials	2
Environmentalists	2
Total	47

*For five of the seven community-interest suits, the same attorneys represented two of the major economic interests.

demnation was rationally related to that purpose. If the ruling affirmed the constitutionality of the taking, it did nothing to quell what became a steady stream of litigation from the firm, its affiliated interests, and its counsel. Over the course of the five years beginning in 1984, they brought the single largest number of lawsuits—17—and did not give up until the very end.

Among the other litigants, the 42nd Street theater owners were the most obviously affected property owners. Of the 15 movie theaters in the project area, 14 were controlled by a family-run organization that had been a business force in Times Square since the late 1920s. Together with the other operator, the organization brought five lawsuits. During the bidding process, the dominant operator announced: “we’re just not going to turn over a business that’s been in our family for 50 years to some other operator.” Having failed to win the developer designation for the five theaters on site 5, the operator went on record with the statement that his company would “vigorously oppose the project at every level of proceeding on up through the courts” (Gottlieb 1984; Smith 1982). The theaters were revenue-generating machines that primarily showed low-budget martial arts and horror movies along with sexually explicit films and some mainstream Hollywood fare. They typically did “a volume of

business second only to the major Times Square first-run theaters,” according to the DEIS.

Developers with potentially competing property interests were another identifiable set of litigants. The Durst family interests put their name on five lawsuits directly, but the rumors of their financial backing of many more are legion. Longtime artful assemblers of land and developers and owners of midtown Manhattan property with extensive holdings in midtown west, the Dursts owned a major land assemblage adjacent to site 12 on which they hoped to erect a major skyscraper. The Milstein family, also long-established real estate developers in the city and owners of the Milford Plaza Hotel between 44th and 45th Streets on Eighth Avenue, wanted to participate in the project. Unsuccessful bidders for both office and mart development rights, the Milsteins brought at least four lawsuits.

Together, these seven vested economic interests accounted for 37 lawsuits representing 79 percent of the 47 lawsuits challenging the project. All the cases were dismissed, but one in which the court found a procedural defect in the FEIS technical analysis was later reversed on appeal. A winner, the public sector nevertheless remained powerless to control the interminable delays and crippling loss of momentum brought about by so many continuous lawsuits.

Delays and multiple suits notwithstanding, in April 1990, some six years after the city's legislative body had approved the project, the public sector finally took title to 56 parcels that made up two-thirds of the street. Two later phases of condemnation brought the entire block under public control. The last phase of condemnation (to accommodate new headquarters for the New York Times Company) is now complete, though the valuation settlements are ongoing.

Costly and Cumbersome

Contested valuations would undoubtedly trigger another lengthy set of procedures, as owners could take the state's good-faith offer based on the prevesting appraisals while litigating for larger payments. To settle valuation disputes, experts' opinions on valuations would be submitted by the state's appraiser and the condemnee's appraiser, with the final condemnation award resolved through either negotiated settlement or trial, a process two noted legal scholars characterized as “a battle of wits between experts” (Haar 1989). Measured in time, tenants moved, and owners compensated, eminent domain appears to be a clumsy instrument, as the numbers in table 7.2 attest.

Table 7.2 42nd Street Development Project Condemnation Statistics

TAKING	TAX LOTS: ¹		TENANTS MOVED:		MONTHS LAPSED UNTIL POSSESSION ² AWARD ³	
	NUMBER	PERCENT	NUMBER	PERCENT		
1	34	61	290	72	89	116
2	18	32	100	25	13	ongoing ⁴
3	4	7	14	3	8	ongoing ⁴
Total	56	100	404	100	110	

¹ The project area is made up of 74 tax lots, two of which—the former Times Tower and the New Amsterdam Theater—would not need to be condemned. Sixteen lots that make up the original configuration of site 8 (part of which is taken in phase 3) remain in private hands. Phase 4, the taking of 11 properties for the New York Times Company headquarters building, cleared its last judicial hurdle in mid-August 2002.

² The time between vesting and the departure of the last tenant.

³ The time between vesting and settlement of last ownership valuation claim.

⁴ As of January 2001.

The actual costs of condemnation remain elusive because most valuations to date have been settled privately rather than through trial. Site acquisition costs for the first phase of condemnation are estimated to be \$334.5 million. Accounting for the budgeted allocation of \$48 million for phases 2 and 3, the final costs of which will undoubtedly come in higher, the total of these takings to date comes to \$382.5 million.⁵

The Potential for Land Readjustment

The experience with land assembly for the 42DP vividly argues for a more efficient strategy.⁶ To what extent might the process have been less cumbersome and less delayed, if not less costly, had some form of land readjustment been the mechanism by which the city and state assembled the land? More generally, how might land readjustment be applied to typical urban redevelopment? This might not be the right question because the typical situation defines distinct planning objectives that might not mesh with the retention of the original property owners. In

⁵ A full and final accounting of all land costs for the project would have to take into consideration future acquisition costs for the two remaining sites, the parcels to be used for the New York Times Company headquarters and the privately owned parking lot.

⁶ The author would like to acknowledge the research assistance of Matthew Jacobs.

the case of West 42nd Street, for example, the city sought direct and active control (beyond regulation) over development. Under land readjustment schemes, in contrast, the public agency does not take responsibility for the building of nonpublic facilities such as housing or commercial spaces or for deciding on the redevelopers of the nonpublic sites. Under land readjustment, instead of acting as a clearinghouse for parcels of land, the government agency acts as the facilitator of a formalized process of cooperation among property owners.

Apart from a large-scale redevelopment project in which issues of control and the redefinition of land uses are often paramount, land readjustment may have the potential to be a useful mechanism in the United States. It may be a more effective tool than conventional municipality-led redevelopment involving eminent domain or conventional acquisition, for example, to rationalize land use patterns in failed subdivisions, obsolete cooperative apartment houses, older inner-city suburbs, or neighborhoods blighted by failed projects of any kind. Land readjustment is potentially much more efficient than municipal site ownership precisely because the original owners are retained as participants, thereby eliminating the need for a request for proposal (RFP) process to choose project redevelopers. This is the procedure's greatest advantage in terms of saving time. Additionally, the process can create either salable publicly owned parcels or public improvements, both potentially at no cost to the public, while at the same time increasing property values and, thus, the tax base.

When compared with the typical eminent domain-RFP process, one major disadvantage stands out: Urban land that is the object of a redevelopment scheme is frequently controlled by speculative investors who lack long-term interest in either the neighborhood or the property and who may also lack skills to successfully redevelop property. As in the case of the 42DP, these types of owners are likely to either passively oppose or actively challenge the process.

Conversely, community development corporations, which exist in many U.S. cities, may be suitable entities to manage the land readjustment process. Municipalities confronted with a mix of blighted properties owned by speculators and stocks of properties acquired through municipal property tax delinquencies may find readjustment to be a useful tool to enable property owners to undertake the redevelopment process. Institutional capacity obviously becomes a critical consideration in such situations.

As an approach to land assembly, it is fair to ask whether a land read-

justment process could be carried out more efficiently than a compulsory taking and with greater fairness to property interests beyond just compensation. Would the process engender less opposition because landowners would have vested rights to participate in future redevelopment? What type of new economic interest is created through a land readjustment system that might mediate opposition by property owners? Since vested economic interests are a major source of litigious opposition, as evident in the case of the 42DP, how might a system of land readjustment convert economic interest into political currency?

A number of generic problems, both technical and political, adhere to the execution of land readjustment schemes (Larsson 1993). These include large upfront expenditures of time, tricky valuations of contributed interests and determinations of cost-equivalent land, and hold-outs. In addition, the length of time it takes to execute a readjustment scheme defines owners' opportunity costs of pooling their land interests. These issues have already been covered in this book.

The application of a land readjustment model to urban land assembly for public-private redevelopment involves several key policy issues. These issues include: (1) the creation of new economic interests; (2) the balance of public objectives and private interests; and (3) the implications for public finance of a voluntary land-pooling system.

Creating New Economic Interests

Land pooling through a readjustment scheme creates a vested economic interest in the project's future overall development value beyond the present value of the contributed land interest. Under New York State's eminent domain statute, valuation of condemned parcels is determined at the time of vesting without adjustment for the effect of project impact on an impending future or negative effect of current blight. Whether or not a landowner seeks to subsequently redevelop the newly plotted land parcel, it can be traded or sold (as with transfer of development rights programs) or combined with parcels of others who have the motivation and capability to redevelop. In other words, it has financial currency. This might provide motivation for cooperation. In contrast, the buy-out model common to eminent domain provides no cooperative motivation and no upside from redevelopment's future potential, only a financial settlement of current-value just compensation.

To envision this new type of economic interest, consider a system in which the public sector creates a legal entity to redevelop land within a

defined project area, some type of joint stock corporation⁷ whose shareholders include cash investors (private and governmental) and existing property rights owners (owners, tenants, and leaseholders) who are issued shares in proportion to the value of their property rights as determined by a fair and just system of valuation.⁸ Share interests in the larger redevelopment venture allow existing property interests to benefit from the expectations of future capital appreciation; they can be monetized—through sale, barter, or financing (subject to any short-term initial restrictions)—at the holder's discretion via the marketplace for real estate development investments and on the holder's own timetable. At a minimum, because the shares issued are based on appraised fair market value, existing property owners theoretically would receive just compensation as under eminent domain procedures, yet if held for investment, the shares promise an upside—returns derived from owning a piece of the whole project, which has greater market value than does any particular individual component. Earnings in the form of dividends and capital appreciation might, as a matter of municipal policy, be exempt from taxation for some specified period of time, similar to the tax abatements that cities commonly give to corporations and developers to further economic development goals.

This scheme is, in fact, the outline of the redevelopment structure put in place by the government of Lebanon in the early 1990s to implement an ambitious plan for rebuilding the war-torn central district of Beirut after 15 years of intense civil strife caused social havoc, devastation of buildings, and complete deterioration of the city's infrastructure and public facilities. Redevelopment implied the restoration and construction of 4.4 million square meters of built-up space and the installation of modern infrastructure in the core of the city. The ambitious endeavor required a comprehensive legal, financial, and executive approach to

⁷ The main activities of the joint stock corporation would be financing and ensuring the execution of infrastructure improvements, property development, and property management of the redevelopment in accordance with the approved master plan and a development strategy submitted to the appropriate governmental bodies. The principal roles of the public sector would be broad: to define the limits of the area affected by the project, approve articles of incorporation for the joint stock corporation, develop the master plan of land uses and infrastructure and ensure its approval, set out and manage the system for appraisal valuations, hold priority rights to the subscription of capital, and maintain a voting presence in the corporation through representation on its board of directors.

⁸ As project-specific entitlements, these shares are passive, meaning they carry no implied rights to actively redevelop the parcels, participate in the direct decision making for such redevelopment, or reoccupy specific sites within the project area. The passive character of the shares does not, however, diminish the long-term economic benefits of the arrangement, especially if the redevelopment corporation is publicly traded on a listed stock exchange. Depending on the scale of the redevelopment endeavor and the format of the joint stock corporation, the rights of existing property owners might also include rights of first refusal to redevelop a site as long as the submitted proposal is in conformance with the approved plan for renewal.

implementation. Many complications affected the reconstruction plans of the capital city, including extreme fragmentation of property rights, entangled relationships between tenants and landlords, and a large number of small lots—conditions not unlike those in the typical American urban center. In an oversubscribed initial public offering (IPO), the government-backed Lebanese Company for the Development and Reconstruction of Beirut Central District, popularly known as Solidere, raised US\$926 million, 42 percent of the initial subscription target—representing perhaps a third of the project's estimated cost—from some 20,000 investors. Contributions of approximately 1,650 real estate lots from existing property rights owners for a fixed amount of US\$1.18 billion (determined on the basis of the final value of such property and rights published by the Higher Appraisal Committee, which was set up by the government to determine valuations) made up the other piece of Solidere's initial capitalization. In a dramatic privatization of the reconstruction process, Solidere was gambling on the capital markets to finance Beirut's redevelopment. Soon after the 1994 IPO, DuBois (1994) reported on one analysis that indicated that the company's real estate assets were worth more than what Solidere paid for them. In fact, the shares available to Lebanese and Arab investors other than the project area's property rights holders were issued at a par value of US\$10 per share and had traded at between US\$11.25 and US\$17.75 in the months following the IPO.

Retaining Owners as Participants

Retaining original owners as participants in redevelopment introduces individual landowner preferences into the public-private process and mediates, in part, the potential political problem of displaced interests. Rather than being victims, the original owners can directly participate in the planning process and express dissatisfaction with the proposed readjustment scheme. Retention of the right to develop at will and as desired, subject to municipal land use regulations, might lead to less contention and opposition.

In that sense, this potential seems to address William Doebele's question about how the advantages of a land readjustment scheme might be converted into political constituencies.⁹ A natural constraint exists,

⁹At the Lincoln Institute 2002 workshop on land readjustment, William Doebele raised a set of questions for all participants to address (Doebele 2002).

however, in urban areas with layers of property interests, since the right to participate financially in the readjustment would lodge solely with the landowner and would exclude those who hold operating retail tenancies or residential tenancies. These interests, therefore, might still find it in their interest to litigate. Some form of retained development rights might be a solution; urban renewal in California provides existing landowners with some type of preferential position.

In concept, retained ownership strikes more of a balance between individual preference and publicly desirable development. This objective may be hard to realize in the typical redevelopment project, however, because public-private redevelopment projects typically seek physical transformation or economic development of a size that is not well-suited to retaining existing owners as future participants. Typically, the existing owners do not have the means, ability, or motivation to engage in redevelopment on the scale contemplated by the public sector. In some cases, as with the 42DP, existing owners and their tenants are themselves the target of removal. Redevelopment via condemnation has, in effect, come to mean a changeover in private ownership or, as it is sometimes described by opponents and journalists, taking from one private owner to give to another (Herszenhorn 1998; Starkman 1998).

Reinforcing the Self-Funding Mandate

One of the most salient attributes of redevelopment in the post-federal urban renewal era is the political mandate that redevelopment projects derive all or part of their funding internally—that is, from the planned commercial income-producing activities. Having to rely solely on their own funds to effectuate renewal, cities have drawn on a broad range of off-budget funding strategies. Whether funds come from tax-increment financing, development value created through zoning density incentive bonuses, or any other type of off-budget mechanism, the politically favorable off-budget preference is clear (Sagaly 1990). Redevelopment carried out through a special-purpose public authority often has special regulatory powers that enhance the project's ability to create development value through project-specific density arrangements, a situation referred to as density financing (Sagaly 2001, 91–95). When land assembly, whether through eminent domain or land readjustment, is combined with a redefinition of development rights, the public sector has the capacity to create development value that can help finance the public components of the project.

One clear advantage of a land readjustment scheme is the extent to which it can reconfigure the financial obligations of local government by reducing, if not completely eliminating, major upfront costs for land acquisition. Most significant, internalizing this cost reduces the financial risk of rising acquisition faced by a municipality during the inevitably lengthy process of land assembly. Land readjustment theoretically provides the potential to finance the public pieces of the redevelopment equation, infrastructure and public amenities, for example. On the other hand, would it eliminate the need for the land write-down that has been viewed as a necessary condition to buying the private developer's interest in redeveloping marginal or high-risk neighborhoods? Unless the original owner becomes the redeveloper, this seems unlikely. If there is risk of a weak or overbuilt property market on completion of the project, the need for subsidy will be magnified. Moreover, what happens if values at the end of the process are less than contributed values? Will the owners, the municipality, or the facilitating entity bear that risk?

Policy Issues Particular to Urban Redevelopment

The potential for land readjustment as an alternative to eminent domain comes up against several formidable practical problems common to urban redevelopment.

Persistent Fragmentation of Ownership

Perhaps most significant, land readjustment fails to deal with one of the most salient physical characteristics of cities: the multiplicity of small lots. This is especially acute in New York, where the typical grid parcel hosting a small residential building and ground-floor retail stores is just 25 by 100 feet. When land is readjusted as part of a larger project, these ownership interests will likely result in a reallocated land plot too small to readily facilitate redevelopment. Given that most urban redevelopment projects seek to create a new critical mass of commercial and residential private investment, this is a major constraint on application of land readjustment schemes.

Reduced Control

The flip side of providing a structure for owner-based land pooling is a loss of public control over redevelopment, other than what can be

accomplished through the conventional means of land use regulation. The removal of RFP-based disposition procedures, to cite one example, could result in less design and project control for the public authority. As a result, even in a land readjustment model, some municipalities may prefer to directly take title to properties, especially tax-delinquent properties that can be foreclosed on. For large-scale public-private redevelopment projects initiated by public entities whose ambitions are beyond the means of regulatory policy, the lack of broad-based control—as a public developer—would work against an expansive view of land readjustment’s potential.

Resistance and Fractious Development Politics

No scheme that upsets the status quo in property relations is going to be immune to resistance from unwilling property owners. Apart from those who object to redevelopment for ideological reasons, opposing property interests might include owners who overpaid during market swells, owners with building densities greater than what current zoning would allow, owners with land uses that might not be permitted in a redevelopment program, owners of environmentally contaminated sites, and others with preferences for the status quo. Eminent domain challenges might also be brought by unwilling sellers because the end use does not necessarily provide a quantifiable or visible public good, especially if no significant public use is created as a result of the readjustment and redevelopment.

If the system described earlier as the Solidere model could have been put in place in New York to carry out the ambitious goals for West 42nd Street, would it have been more efficient, or would it have afforded the city a more modest risk exposure? Could the economic interest created have mediated the risk? The question is akin to asking whether some form of land readjustment could have been applied to the task of land assembly on West 42nd Street.

Several policy-related questions present themselves. Abstracting from legislative hurdles and judicial questions about whether a Solidere-type model would violate the takings provision of the U.S. Constitution, how would such a model alter the political risks of effectuating a transfer of land among private interests? Considering the political risks of failure, would a Solidere-type model decrease the probability of doing it wrong? Operating within the framework of a Solidere-type enterprise whose stock trades on a public exchange, would the type of disclosure required

by the Securities and Exchange Commission and demanded by private investors raise the standards of financial accountability for public-private ventures, which are uncommonly low in New York? Is there a way to generalize about whether the economic costs of land readjustment in a densely built urban commercial center would be less than those incurred via condemnation? In short, what does the Solidere model of privatized redevelopment have going for it from a government risk-taking perspective?

No model of implementation can immunize an ambitious development scheme against civic opposition, litigation delays, budget uncertainties, conflicts of interest and business fraud, supply and demand in the real estate cycle, collapsed deals and renegotiations, partnership tensions, and negative media coverage. Nor can it eliminate the problems linked to uprooting tenants and pricing them out of neighborhoods experiencing gentrification. In short, the model does not redefine the characteristics of development risk taking: coping with uncertainty, managing unforeseen difficulties, and gambling on the future without knowing the outcome. The Solidere model is an intriguing and innovative experiment in public-private development, but it is not an insurance policy against failure. What it does guarantee, however, is a broader sharing of urban redevelopment's inevitable risks.

Through the structure of its capitalization, the Solidere model of a joint stock corporation can access diverse sources of funds, both private and public, from large and small investors without being dependent on a single deep-pocketed partner. A broader and deeper base of private investment capital might ease the implied need to fall back on the public treasury, though it is naive to believe that it would completely eliminate the political need for government to camouflage its risk taking. The constituencies to which the redevelopment entity is accountable would undoubtedly change. Under a Solidere-type model, the framework for long-term decision making is removed from the immediate political arena by a corporate-governance structure. Although this would not shield the corporation's public directors from being accountable to their voter constituencies, the avenues of influence and control for public-sector directors of a Solidere-type entity would differ and would likely be fewer, which is the reason for the key political reluctance to try any new model.

One of the most compelling characteristics of the Solidere model is its promise of ongoing direct economic benefit—dividends and capital appreciation of shares—to existing tenants, owners, and leaseholders.

Moreover, public markets are transparent and unambiguous in valuing economic interests, and they afford liquidity to investors, big and small. These benefits aside, the social situation on West 42nd Street (as well as most, if not all, U.S. big-city cores) differed so drastically from that in Beirut that it casts serious doubt on the likelihood of a Solidere-type model as an alternative to condemnation. Elected officials in New York evoked images of battle to describe their efforts to rid the street of crime, pornography, and moral despair, but the deterioration of that single street could not compare with the bombed-out landscape of what once was a flourishing and sophisticated Middle Eastern capital city. The extensive damage resulting from the Lebanese civil war created a strong political consensus to rebuild the rich heritage of Beirut, a pressing imperative absent from the fragmented political turf of West 42nd Street.

Could a Solidere-type model, with its promise of enhanced economic benefits, have furthered the development of a stronger political consensus and eliminated much of the litigation and many of the delays that marked the opposition to redevelopment of this contested urban area? A Solidere-type mechanism might have worked in theory, but the economics of property ownership and tenantry on West 42nd Street—profitable, if not praiseworthy, businesses—precluded an approach that did not mandate closure of existing businesses and compulsory sales of property. Would participation in a Solidere-type mechanism and retention of a portion of the redevelopment benefits through price appreciation of stock holdings have given existing property owners the incentive to remove the not-so-praiseworthy operations from their sites? Perhaps, though many small owners would have had to be inspired by the same motive within the same time frame. In the end, would city and state officials have been realistic if they had expected the vested interests on West 42nd Street to put aside proven short-term profits for the promise of capital gains sometime in the uncertain future? Not likely. In short, property shares in a Solidere-type arrangement would likely not have been sufficient to create a consensus on future action on West 42nd Street and thereby eliminate project-crippling opposition.

Conclusions

The strong conceptual appeal of a land readjustment scheme runs into practical and political problems when its application is considered in the

context of a large-scale urban redevelopment effort, as in the case of New York's West 42nd Street. The perceived difficulties arise from several sources: the typical ambitions of the public sector, the politics of development opposition, and the fragmented character of city property markets. These formidable obstacles are not ubiquitous, however; where they are absent, land readjustment schemes hold greater potential application. In particular, the model of a joint stock development corporation holds much promise in cities and states where the politics of development are less fractious and more consensual, where special interests have fewer means to successfully protest development, and where command-and-control decision making is more the norm. Solidere has been operating successfully for more than a decade, so a fruitful avenue for future work in this area would be an in-depth analysis of the performance of this approach from both an implementation and an economic perspective (see <http://www.solidere.com>).

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