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Institutions in Conflict Management of Highway and Railway Projects in Finland - General analysis and the property owner's perspective

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***Abstract.** Legislation for highways and railways was recently renewed in Finland. The new Highways Act (503/2005) has been effective since January 1st, 2006. The new Rail Tracks Act (110/2007) will be introduced on January 1st, 2008. In the legislative work the procedures for highway and railway projects have been greatly harmonised.*

The article presents the essentials of the processes and the actors in accordance with the new legislation and legal principles. Both the expropriation permit phase and the implementation phase are described in detail. Legislation and legal principles do not completely regulate the practical procedures and actors with their roles. Due to this the article strives to present the actors and their roles also in practical work. The perspective is property owner oriented. The presumption is that the theories of conflict resolution and management may be applicable as the analysis tools for this institutional consideration. The main focus is on the significance of the actors and their roles in conflict management and resolution.

Legislation, principles of law and practices fairly well guarantee the real property owners' fundamental rights in route projects. Information practices, however, often lead up to the fact that the property owners are not in an equal position regarding planning. Another unequalizing matter is related to the application of an agreement-based land acquisition. This is used by the authorities

according to their one-sided discretion. This leads to the situation where the assessment and compensation of losses may take place at the cadastral survey procedure by authority decisions, even though there is no conflict. This may cause a conflict if the property owner had wanted an agreement but was not aware of the opportunity for such. Legislation and principles of law determine the procedures; actors; and the roles of the actors in the legal road survey and legal proceedings. Potentials for case-specific consideration remain small. This may in some cases restrict the resolution of an actual conflict. A conflict theoretical approach seems to be applicable to the analysis of the functions, actors, and their roles in route projects. The theories formulated must, however, be applicable to the Finnish conditions.

Keywords: *Highways Act, Rail Tracks Act, institution, conflict, legal cadastral survey.*

1 Introduction

The new Highways Act has been effective in Finland since January 1, 2006 (Highways Act 503/2005, MTL). The new Rail Tracks Act (Rail Tracks Act 110/2007, RL) will take effect on January 1, 2008. The provisions for highways and railways were harmonised in the reforms. The practical procedures have also been changing (Kotilainen 2003, 53-54). Further, the fundamental rights of an individual have also become central in our society (Kotilainen, 2004). In this situation it seems necessary to study the highway and railways projects in general especially from the property owner's point of view. Although this paper discusses highway projects, the same plies to railway projects, as well but currently there are no railway project implementations yet in accordance with the new Rail Tracks Act.

The settings in society are determined by institutions, and they are also used for securing the fundamental rights of the real property owners. They determine the functions, actors, and the roles of the actors in highway and railway projects. Therefore, the approach here is institutional. In practice the institutions refer to legislation, principles of law, and general practices (North 1990, 3-10). These institutions may advance or restrict conflict resolution and shall, therefore, be analysed on the basis of empirical studies. The presumption for this study is that the theories of conflict resolution and management might be applicable for analysing tools. This paper is mainly based on the content analysis of Acts, literature, and previous study reports. The theories of conflict resolution and management are described first. The description of legislation, practical procedures, actors, and the roles of the actors are presented next. The principles of law are briefly presented in this context. Finally, the institutional settings are studied based on the theories of conflict resolution and management. The highways and railways are routes maintained by the state. Since the related statutes were harmonised, the term "route" may be used for describing both highways and railways.

2 Conflict theories

In a conflict a party sees another party as having a negative influence on the satisfaction of his goals (Wall & Callister 1995, 517). A cadastral conflict is judicial, mainly a location-bound conflict between two or more real property owners, or between a real property owner and the others concerned (Kotilainen 2007). It no longer exists after resolution. Conflict management will improve the communication so that the differences of opinion may be discussed constructively. (Daniels & Walker 2001, 35).

When a court of justice treats a conflict related to litigation or granting judicial relief, the objective is to achieve a right material decision. But when it is the question of conflict resolution (as in the district court settlement proceedings), the primary objective is justness achieved by reconciliation. The objective of the latter approach is the acceptability of the conclusion. Certainly the decision of a court of law or an authority can also be acceptable to all. Merely the fact that the decision is not appealed does not mean that the conflict is resolved. The conflict may have concerned some other matter than the resolved litigation (Ervasti 2004, 51, 86-91). On the question of valuation, compensation and cadastral matters, the goal is to achieve an objective compensation price / economically the best possible solution. But when the goal is to secure the resolution of the conflict, the objective is the acceptability of the decision. These two approaches differ in how justness is understood. It may be seen to be based on objective facts or subjective matters, such as the experiences of the actors (Ervasti 2004, 166-169, 171-174). The opportunity of participating in the decision-making is considered the fundamental of experienced justness (Tyler 1990, 163-165). The following is a short description of the factors related to successful conflict resolution, resolution methods, participation levels of the parties, and the status of the decision maker/participant outside the conflict, in order to obtain the settings for the conflict processing in the Finnish route projects.

2.1 Factors relating to conflict resolution

Ervasti (2004, 184-186) has defined the factors affecting the success of conflict resolution and management in the Finnish legal practice. These factors are the conflict, the method for conflict resolution and management, the environment, the parties and the intervener. However, he emphasises that the factors are situation-bound, i.e. differently associated depending on the situation. The same applies to the importance of each factor.

2.2 Methods for conflict resolution

The methods for conflict resolution and management can be classified in many ways. Singer uses a simple and well-defined classification: non-assisted negotiation, assisted negotiation, and resolution of a judicial conflict. Resolution and management of a judicial conflict can further be divided into court decision, arbitral decision, and authority decision. When transferring from non-assisted negotiation to an assisted one and further to

the resolution of a judicial conflict, the influencing potentials of the parties will diminish. (Singer 1994, 15-16)

2.3 Participating levels of the parties

The influencing and participating potentials of the parties (parties involved) in cadastral procedures and land use planning (planning) have been studied in Finland and Sweden based on the American participating theories. This setting may also be availed when considering the potentials of the conflict parties to participate in the decision-making in a route project.

The lowest level in participation and influencing is the right to participate in the process (Access to Justice Approach. For more information see (Ervasti 2004, 27-30). But the mere potential for participating is not sufficient for actual influencing. One must also have a chance to be heard and a chance to interact. There are various levels of participation having an effect on the roles of the parties. Viitanen (1996) and Ahllund (2004, 37-38) have used Mattsson's (1985, 1) interaction scale for analysing the cadastral survey procedure and land use policy, as well as land consolidation, see Table 1. In addition, Lääti (2006) has applied the scale in road projects. Such an approach might also be a good tool for studying conflicts.

Table 1. Interaction chart in a route project (Based on Mattson 1985, 1; Viitanen 1996; Ahllund 2004, 38; Lääti 2006, 13).

No potential for influencing	No hearing Hearing after decision-making Hearing before decision-making	} Participation } Influencing
Right to participate	Right to negotiate Real property owners' mutual right to negotiate Right to negotiate with the authorities Limited right to decision-making	
Right to decision-making	Right to opt out of the project/part of the project Right to stop the project /part of the project Full decision right	

2.4 Status of the conflict intervener (external decision-maker/participant)

The intervener will participate in the conflict resolution and management as an external party. The role of the intervener is often significant. According to the classification done by Ervasti on the grounds of international studies, the intervener may be an autocrat, arbitrator, conciliator, motivator, organiser, adviser, and researcher. The autocrat controls the process, outcome, information and interpretation, and makes a binding decision. The arbitrator is a person chosen by both parties and he will make a binding decision. He is not, however, responsible for the information and interpretation. The task of facilitator is to bring the parties together and help them to resolve their conflicts. The evaluator, besides bringing the parties together, also participates in the conflict resolution. The motivator encourages the parties to reach a common resolution. And the organiser tries to help the parties with an agreement so that they will not have any interaction in the future (Ervasti 2004, 190-192).

3 Highway planning

3.1 General description

The Finnish Road Administration (Finnra) is responsible for the planning, construction, land acquisition and maintenance of highways. Highway planning is a part of the entire land use planning. The Highways Act defines the preliminary and final engineering plans. They shall be based on a legally relevant plan specified in the Land Use and Building Act (Land Use and Building Act 132/1999, MRL). The Regional Council is responsible for the regional plan and the municipality is responsible for the general plan and the city plans. (Government Bill 101/1998, Detailed preambles, paragraphs 2-3; MRL, Sections 3-4, 19-20) These plans determine the location of the highway considering the rest of the land use (MTL, Sections, 11, 17).

The preliminary engineering plan includes a report of the need of the highway, alignment options, traffic-related and technical solutions, approximate location of the highway, cost estimate for the project, and a description of the environmental impacts of the project. The plan also presents the options for reducing or preventing detrimental impacts. Also the impacts on land division shall be presented. When necessary, an environmental impact assessment will be made separately based on the Act on Environmental Impact Assessment. (Act on Environmental Impact Assessment 468/1994; MTL, Sections 18-19; Final Engineering Plan 1999)

The final engineering plan presents the accurate location of the road, altitude, cross section, and other technical descriptions, and the cost estimate. The plan must consider the land ownership conditions, if only possible. (MTL, Section 22).

The road planning starts with feasibility study. This stage is done before the preliminary engineering plan. Its objective is to examine the need and scheduling of the road project. (Progress of Highway Planning 2002) In Finland there is no legislation obliging the hearing of real property owner at

the feasibility study stage. In practice studies have been made so that the real property owners have not been involved, although detailed descriptions e.g. of rights of way for private roads and land exchanges have been made at the feasibility stage. According to Lääti (2006, 18, 29-30, 52-55) the real property owners have not been satisfied with this kind of procedure.

In Finland real properties are quite small in scale. This means that in extensive projects land acquisition procedures concern very many real properties. And when agreeing, contracts should be done with each real property owner. So in this situation, only 12 % of land acquisitions are an agreement-based. The remaining 88 % are acquired through road surveys. (Finnish Road Administration 42/2003, 8, 10)

3.2 Detailed descriptions of the engineering plan stages

The decision for a preliminary engineering plan and final engineering plan is made by the road authority (MTL, Section 11), who then orders the concrete planning from the consultants. The planning of a road project is often coordinated by a control group. Its duty is to ensure that the plan is compatible with city plans, master plans and regional plans, and will not cause excessive environmental hazards or damages. Generally the control group consists of members from the Finnish Road Administration, local municipality, provincial federation, environmental authority, and the consulting company (Särkkä 2007). After the road authority has decided to start the preparation of the preliminary engineering and final engineering plans, they are permitted to carry out explorations on real estates in the area. If these explorations cause damages and harm to the real estate, they will be compensated using the cadastral procedures, unless otherwise agreed. (MTL, Sections 16, 70, 74; Report of the Road Act Working Group, 59-60).

A property owner has the right to participate in the preparation of the preliminary and final engineering plans. The owner has a chance to evaluate the plan and express his opinion. (MTL, Section 27) This procedure is based on the parties' right to be heard, (legal principle of contradiction, Jokela 2005, 71-72). Legislation does not define in detail the way the property owner is informed of the initiation of highway planning. The owner will not always get a written invitation to the hearing meeting, which is held at the beginning of the highway planning, as a notice in the local newspaper is adequate. Research results have shown that the property owner has not always been aware of the planning. (Highway Plan 1999, 14-48; Kotilainen 2003, 78, 110) According to Kotilainen (2007) the planning should be based on communicative practice of planning. The method is actually in use (Kotilainen 2007) but there is no empirical data of the extent of its use.

After the preliminary and final engineering plans are completed the municipality shall have the plan publicly displayed for 30 days. The property owner has the right to appeal against the plan. The display for public inspection is informed of as the municipal announcements in general. If a property owner of an impact area is not a permanent resident of the municipality, but his address is known, a written notification must be sent to

him. In addition, the road authority will send the plan for statement to the authorities impacted by the plan. After the public display the central administration of The Finnish Road Administration will principally approve the plan. Before making the decision of approval it will ask for the opinion of the road authority in charge of preparing the plan. (MTL, Sections 27, 99; Hämäläinen 2007).

The property owner has the right to appeal against the plan to the Administrative Court and further to the Supreme Administrative Court. The composition of the courts of justice is regulated by legislation. The members have juristic education. (Administrative Judicial Procedure Act HLL, 586/1996, Sections 7, 9; Act on Administrative Courts 430/1999, Section 4; The Constitution of Finland 731/1999, Sections 100, 102) The courts of justice exercise the principle of party disposition and the method of investigation. The principle of party disposition means that the court of justice will only hear the matters appealed against by a party. According to the method of investigation the court of justice, however, seeks and presents the facts and produces the evidences. (HLL, Section 23, 33; Jokela 2005, 175-179)

4 Land acquisition for road projects

The road authority has changed their practices during the past years. The production authority has turned into an assignment office. This means, for example, that private developers and contractors construct the highways. The intention of the road authority is also to purchase increasingly bigger bundles of services. One actor may plan, finance, construct and maintain the road (Kotilainen 2003, 26, 53-54). Incorporating land acquisition into such a bundle of services is also considered. (Komppa 2007, 88-94)

4.1 Public road survey

Public road survey is a procedure used in Finland for acquiring land for road areas. It resembles the Swedish-Finnish legal cadastral survey (Larsson 2000, 9-23; Kotilainen 2003, 42-45). The procedure is a special administrative procedure akin to court proceedings. Unlike in administrative procedure it is possible to pass judgement on a related civil dispute. (Korhonen 1999, 137-138) Legal principles in court proceedings are hearing of the parties and compliance with the oral, direct and centralized hearing procedure (Jokela 2005, 73-75). When applicable, these are also valid in the cadastral survey procedure. Administrative principles of law are used in addition. Principle of service is essential. The legal cadastral survey may be performed so that the parties are not needed to take part with the proceedings without losing their rights. This is due to that according to the principle of judicial investigation the authority will investigate all the matters in the case. The authority also sees that all matters are considered (the method of inquiry). (KML, Sections 174, 201). The procedure must also be so simple that everybody can attend to his interests, if he or she

wants so (Hyvönen 1998, 27, 35, 45; Government Bill 227/1994, 10-11, 61, 71).

The public road survey is generally applied for by the road authority. In special cases the property owner also has the right to apply. The matters are discussed at cadastral survey meetings where all parties have been invited to. The property owner has the right to use a representative and an adviser. The expropriation committee (surveyor as chair and two trustees) will make the decisions. At the cadastral survey the road areas are expropriated with title and other real estate rights are limited if necessary. The expropriation committee will decide on the compensation of losses and the potential private road readjustments and land consolidation. Further, the road areas are measured and staked out, a map is prepared, and the data is transferred to the cadastre. (Real Estate Formation Act 554/1995, KML, Chapters 2-3, 15; MTL, Chapter 5)

The property owner's right to be heard means the right to receive information. The owner must be informed of the reports of the adverse party. He must also have the right to respond. (Hyvönen 1998, 38, 388-389) The information procedure is enacted in the law. Principally all property owners receive an invitation letter. Announcement in the local newspaper is also used where the owner or his address is unknown. (KML, Sections 168-169)

At the cadastral survey the property owner has the right to dispose of some substantial and procedural issues. The disposition is unilateral (e.g. consent) or bilateral (e.g. agreement) expression of intent with the purpose of directly influencing on the survey. It shall be implemented if the statutory prerequisites are valid. The bilateral dispositions are implemented at the cadastral survey meetings. Civil agreements, on the contrary, are made outside the cadastral survey. (Hyvönen 1970, 25-30, 53; Hyvönen 1998, 388-399)

Concerning procedural issues all parties may jointly agree upon having the cadastral survey meeting without prior notice, and those present at the cadastral survey meeting may agree upon the next meeting. The only unilateral substantial disposition is the parties' right to accept the outcome of the cadastral survey. (KML, Sections 170-171, 192) If the project is regarded of minor importance, the property owner may set the possession date. (MTL, Section 56.3). Considering substantial issues the property owner may agree upon private road readjustments (Act on Private Roads, Section 49) and voluntary land exchanges (MTL, Section 65). The property owner also has the option of agreeing upon compensations (MTL, Section 70).

Property owner and the road authority may appeal against the cadastral survey to the Land Court. Land Court is chaired by a lawyer and the members are a land court surveyor and two lay members. The decision of the Land Court may be appealed to the Supreme Court, if leave to appeal is granted. (MTL Section 55; KML, Sections 238, 243) Both court instances may hear witnesses, use experts and hold inspections (Code of Judicial

Procedure, OK, Chapter 17, Sections 44, 18). The court of justice also has the right to look for material, which is not included in the cadastral documents or in the documents supplied by the parties (Honkanen 2006, 16).

No studies have been made in Finland on the property owners' position in route projects. Hyvönen has studied the procedural statutes of cadastral proceedings in the 1970's. He noticed that an individual party only has the chance to influence on some matters of minor importance. Especially in extensive cadastral surveys it is difficult to make agreements, which relate to all parties. This situation increases the executors' power of decision. (Hyvönen 1970, 69, 123-125). Ahllund has studied in the 2000's the landowners' position and influencing potential in land consolidation. The findings show that the landowners' influencing potential is restricted by institutions. Their potential for influencing was actual in substantial matters. If they made agreements, they were almost always observed in the cadastral survey. There were no delays, although the numerous changes were implemented during the cadastral survey. (Ahllund 2004, 236-240)

4.2 Agreement-based land acquisition and compensation

According to the Paragraph 4 of the Expropriation Act, expropriation is not allowed if the matter can be resolved in some other way (principle of moderate means). However, it has not been necessary in route projects to find out any options for agreements before implementing the expropriation (Ojanen 1978, 43). The Finnish land division is rather small-scale (Ylikangas 2004), so the expropriation often concerns small areas from numerous real estates. Due to this an agreement-based procedure has not been considered as practical means for land acquisition. The present practice is based on the principle of expediency consideration. According to that the procedure shall be reliable, quick and inexpensive. (Hyvönen 1998, 37).

However, according to the relativity principle the authority shall proportion the intensity of his actions so that the rights of private persons are restricted as little as possible (Kulla 2004, 76). Heinonen considers that the principle of moderate means represents the relativity principle. According to him nowadays, there are sufficient legislative options for applying the principle of moderate means if land exchanges and land consolidation are considered as such. (Heinonen 2005, 48, Appendix III)

As appears above, agreements are not favoured in land acquisition. The Finnish Rail Administration hardly ever uses them (Komppa 2007, 43-44) and The Finnish Road Administration only occasionally. The Finnish Road administration purchases special objects, such as real estates with buildings. They also make compensation and possession agreements. The Finnish Road Administration case-specifically decides whether to inform the property owner of the transaction options (Hämäläinen 2005, 35, 83). Otherwise the option for an agreement is the property owner's concern. (Kotilainen 2007b; MTL, Sections, 56.3, 70)

5 Conclusions

The methods for conflict solution and management formed by Singer appear in the highway projects but for one exception, as arbitration decisions are not used (see Table 2). In those cases where communicative method is used in the planning, it is a question of assisted negotiation. If practical planning does not resolve the conflict, it will be settled or at least managed by authority solution or court decision. Some of the land acquisition conflicts may be resolved by an agreement-based procedure (non-assisted negotiation). Alternatively a land acquisition conflict can be resolved or managed by authority solutions in a public road survey. Considering land consolidation and private road surveys the public road survey is an assisted negotiation, as the parties may largely agree upon the reallocation. If the conflict is not resolved in a public road survey, the resolution may be attempted by a Land Court decision and further from the Supreme Court.

The procedures of a public road survey and legal proceedings are specified by the institutions in detail. Only the communicative nature of the planning procedure is regulated. The manner for negotiating agreements is free for the parties to choose.

The actors in a public road survey and legal proceedings are regulated by the law. The regulations concern both the parties and the interveners. Even in the road planning the parties are determined by the law, but not the consultants acting as interveners. In addition to the parties also interveners, if necessary, may participate in the agreement-based procedure for land acquisition. The classification used by Ervasti (section 2.4) does not show the role of the coordinators as actors. As their duty is to provide facts in a conflict situation, they seem to be external interveners in a highway project. Experts, witnesses and persons issuing statements can also be regarded as interveners.

Mattsson's interaction table is suitable for the basis when the roles of the parties are described in various actions. According to legislation a party is a participant or a decision-maker. The participant may also have power of decision in certain matters or actions. In practice, in the planning stage a part of the property owners belong on the step "Hearing after decision" or "No hearing" on the interaction scale. The role of a participant is not guaranteed for them. In a public road survey the property owner always has the right to be heard, and be informed of the comments of the opposite party. Further, in certain issues the owner has the right to negotiate both with the other property owners and the road authorities. This relates to a limited right to decision making. However, the property owner has no right to opt out of the highway project or a part of it. In an agreement-based land acquisition the property owner has full power of decision.

Table 2. Conflict resolution and management procedures and actors with their roles in a route project (general description)

<i>ACTIVITY</i>	<i>Method</i>	<i>Actors</i>	<i>Party/ Intervener</i>	<i>The role of Actor</i>
FEASIBILITY STUDY	Assisted Negotiation	Local route authority	Party	Decision maker
		Other authority	Party	Participant
		Planning consultant	Intervener	Evaluator
STATUTORY ROAD PLANNING (PRACTICAL)	Assisted Negotiation	Local route authority	Party	Decision maker
		Real property owner/representative	Party	Participant
		Other party considered	Party	Participant
		Other authority	Party	Participant
		Representative of municipality	Party	Participant
		Project management group	Intervener	Advisor
		Planning consultant	Intervener	Evaluator
ROAD PLAN ADOPTION	Decision of authority	Central administration/Route authority	Intervener	Autocrat
		Real property owner	Party	Participant
		Local route authority	Intervener	Informant
APPEAL OF ROAD PLAN	Judgement	The Administrative Court/The Supreme Administrative Court	Intervener	Autocrat
		Real property owner/representative	Party	Participant
		Local route authority	Intervener	Informant
		Witness	Intervener	Informant
		Expert/Expert witness	Intervener	Informant
AGREEMENT-BASED LAND ACQUISITION	(Assisted) negotiation	Real property owner/representative	Party	Decision maker
		Local route authority	Party	Decision maker
		Land acquisition consultant	Intervener	Evaluator
		Expert	Intervener	Informant
ROAD/RAIL SURVEY	Decision of authority, assisted negotiation	Expropriation committee	Intervener	Autocrat
		Local route authority	Party	Participant
		Real property owner/representative	Party	Participant
		Other party considered	Party	Participant
		Expert	Intervener	Informant
APPEAL OF SURVEY	Judgement	The Land Court /The Supreme Court	Intervener	Autocrat
		Route authority	Party	Participant
		Real property owner/representative	Party	Participant
		Expert	Intervener	Informant
		Expert witness	Intervener	Informant
CONSTRUCTION OF ROUTE	Decision of authority	Local route authority	Party	Decision maker
		Builder, entrepreneur	Party	Participant

The interveners have different importance in the various phases of a highway project. The court of justice has the role of an autocrat, the expropriation committee, in addition, has the role of an evaluator in land

consolidation and private road issues. The planning and land acquisition consultants are also evaluators. The roles of a facilitator, motivator or organiser are not used in the Finnish highway projects, when cadastral issues are concerned. The coordinators may be seen as advisers. The experts, witnesses and persons issuing statements, on the contrary, are informers by nature. It seems that only a part of the classes in Ervasti's intervener classification is used in Finland. A part of the interveners fit none of the classified roles.

6 Consideration

In route projects the institutions seem to guarantee the fundamental rights of the property owners fairly well. However, in the planning stage the owners have not always been able to participate. In addition, the informing regulations vary between the local inhabitants and those living elsewhere. Thus all property owners are not in an equal position. Another issue increasing inequality relates to an agreement-based land acquisition. The authorities use their unilateral discretion. The reason for this is most obviously the demand for economic efficiency. This may lead to the fact that the valuation and compensation for losses is executed in the cadastral survey procedure by authority decision, even though there is no conflict. This alone may cause a conflict in a case where the owner would have liked to make an agreement but was not aware of the option. In general, when the proceedings, actors and their roles are determined by legislation, the resolution of an actual conflict may be hindered.

Conflict theoretical approach is applicable for analysing the actions, the actors and the roles of the actors in route projects. The theories must, however, be adapted to the Finnish circumstances.

In the future the consultants may have the role of an evaluator in an agreement-based land acquisition. The purpose of the change may partly be the encouragement of conflict resolution. It is, however, not certain if the situation turns better or worse for the property owner. The change may also result in the increase of total costs for society. Cadastral survey procedure is a concentrated procedure where the route areas are also measured, staked out, and the data is transferred to the cadastre. These issues must always be attended to, no matter what the method for land acquisition is. The present rote project proceedings might be reformed by information technology. The proceedings might be more reliable, flexible and economic. This reform should also include a study on transaction costs. This presentation deals with highway and railway projects. Similar conflict theoretical analysis might be necessary in planning projects, which are also land use readjustment projects.

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