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## **Land acquisition and expropriation performed decentralized: Experiences in Norwegian municipalities**

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**Abstract (English):** *Public land acquisition may be executed with assistance of centralized authorities: geographically, organizationally or by dedicated professionals with standardized skills and methods. Norwegian law makes the multifunctional municipality the central body for land use decisions and execution of those through land acquisition, but there are hardly any specific legal or traditional standards about how this function should be performed and by whom within the municipal organization.*

*This paper reports aspects of land acquisition in Norway based on questionnaires answered by employees of 21 municipalities. The questionnaire was designed to discuss the degree of professionalism within the Norwegian setup. With considerable refinement such tests could be done elsewhere.*

*Municipalities show large differences in how acquisition activities are organized. Very few have dedicated experts or departments. There hardly exist any networks between municipalities on these matters. Educational backgrounds among employees involved are highly diverse, and few have special training. Persons of local knowledge, experience and personal integrity are preferred as negotiators. In most municipalities land acquisition occurs as an ad hoc managed problem within the frames of a construction project.*

*Few municipal acquisitions are executed by expropriation, which in Norway is a court process, politically controversial and with high costs involved. In some cases municipalities achieve agreements by over-prizing, with land exchange or by offering goods or services. There are even examples of getting land in exchange for individual changes in planning regulations, building permits or other privileges. Some more or less severe examples of municipal informal occupation of land are reported.*

*Municipalities try to keep stable price regimes and handle landowners in a just and equal way. Still practices and prices vary in ways that may challenge law principles. Municipalities as a group of land traders are hardly predictable. There are even reported strange differences within municipally borders. Municipal pricing may in some cases disturb private land markets. Incomplete procedures and odd forms of compensation or procedures may lead to high costs and trouble for management over time.*

**Keywords:** *Expropriation, acquisition, municipality, organization*

**Sammendrag (Norwegian):** *Offentlige grunnnerverv blir i enkelte samfunn gjennomført med assistanse fra sentraliserte enheter; geografisk, organisatorisk eller ved dedikerte profesjoner som håndterer nasjonale standarder. Det norske lovverket gjør kommunen til den viktigste aktør når det gjelder offentlige grunnnerverv. Det eksisterer ikke noen sentralisert støtte for kommunene på dette. Basert på spørreskjemabesvarelser og diskusjoner med 21 norske kommuner, diskuteres erfaringer med en slik desentralisering til et slikt multifunksjonelt nivå.*

*Det er stor forskjell på hvordan kommunene organiserer dette arbeidet. Nettverk eller interkommunalt samarbeid på feltet eksisterer nesten ikke. Få kommuner holder seg med eksperter eller egne avdelinger på grunnnerverv og involverte medarbeidere har svært forskjelligartet utdanningsbakgrunn. Personer med lokalkunnskap, erfaring og integritet foretrekkes som forhandlere for kommunen. Ofte gjennomføres grunnnerverv ganske ad hoc som del av et byggeprosjekt.*

*Kommunene søker å unngå ekspropriasjon. Det vises til eksempler på at man får frivillige avtaler ved overprising, ved arealbytte eller ved å tilby andre goder og tjenester. Til og med finnes eksempler på at fradelinger, byggetillatelse eller andre privilegier inngår i erstatningspakker. Det gis til og med eksempler på at offentlige grunnnerverv ikke gjennomføres etter reglene – at inngrep har mer eller mindre preg av okkupasjon.*

*Stabile priser samt rettfærdig og lik behandling av eiere er viktig for kommunene. Likevel varierer framgangsmåter og priser så vel mellom- som innad i kommuner. Dette kan utfordre generelle rettsstandarder og kommunens forutsigbarhet. Eksempler antyder at kommunal praksis kan influere på det private markedet på diskuterbart vis. Ufullstendige rutiner og erstatningsmåter kan føre til kostnader og konflikter over tid.*

## 1 Introduction

Actual performance of land acquisition and expropriation is not only dependent on legislation and valuation methodology but also on the kind of organizations, skills and persons who are in charge. The active Scandinavian land acquisition expert networking (annual meetings) in the

1990's touched the subject by describing different Scandinavian formal set-ups, but did not come very far in critically identifying outputs and qualities of the different systems.

The Planning and Building Act of 1985 is the main law for land use control in Norway, constituting the municipality as the central planning and implementation authority. In this work Norway's 431 municipalities are not supported by an independent expertise (unlike other Scandinavian countries). There are no direct standards for how this work should be done (organization, competence, procedures etc). The municipal organization is directly and solely involved in negotiations with landowners and, if necessary, as part in expropriation court cases.

The aim of this paper is to describe some aspects of Norwegian municipal land acquisition as it works in reality, as an example of a decentralized system: geographical, organizational, standards of schemes and competence. The aspects chosen may be seen as a "test of professionalism". It is to be noticed that a Norwegian municipality is multifunctional, with a wide range of duties (of higher daily importance). Decentralized bodies in charge might have more targeted duties elsewhere.

The paper might give some input to later comparative research by looking into similar aspects of acquisition performance in other jurisdictions, or to a discussion about qualities to address when evaluating different systems.

## **2 Method**

Since 2003 the Norwegian University of Life Sciences have offered short postgraduate courses in land acquisition and expropriation designed for municipal officers. For homework the participants produced a report on land acquisition activities in their home municipality answering to a list of questions – in fact a questionnaire. The questions are reflected in the different paragraphs in this report. They were deliberately produced as aspects or standards of professional performance for a critical analysis of the situation – a "test of professionalism".

The delivered answers were assembled and then discussed in-group sessions to equalize the understanding of the questions. 21 municipalities are represented in the total sample, not everybody answering all questions. In two cases two persons from the same municipality produced separate answers - here merged into single answers. The discussions (including officers from approximately 10 more municipalities) added qualitative information to the questionnaire data.

Norwegian municipalities shows extreme differences in population (from 540,000 to only 209 inhabitants in 2006), in space (from 9,704 to 6 sq km), in natural conditions (distance by road between the southernmost and northernmost municipality in the sample is 2,300 km) in economic situation and in local political regime. Municipalities of most spatial and population sizes and most of Norway's regions are represented. Still a sample of 5 % of

the total numbers of municipalities (431) is too small to generalize in a statistical form.

There has hardly been any collection of information from this field in the past, with exception of some reports produced by postgraduate students (Seldal, 1992 and Moen, 2000); exemplifying uneven practices in smaller samples of municipalities. At an earlier stage of this project with a smaller sample I have presented some findings (Steinsholt, 2005).

### 3 Findings

#### 3.1 Municipal acquisition activity

Is the municipality a dominating actor in the local property market? To this question 10 out of 21 respondents (48%) answered “yes”, 6/21 (29%) “no” and 5/21 (24%) answered “somewhat”, meaning that the municipality could have different positions in different niches of the market (housing, industry etc). (Table 1)

*Table 1. Land Purchase for different purposes – 21 Norwegian municipalities*

	Municipal purchase last 5 years, average pr municipality		
	Housing	Industry	Infrastructure, schools, parks etc.
3 larger cities (Bergen, Molde, Bodø)	11.7 ha/year	2.9 ha/year	18.7 ha/year
Other 17 municipalities	0.6 ha/year	0.9 ha/year	0.9 ha/year*

\* not including one municipality (Lillesand) purchasing a large tract (222 ha) of coastal land as part of a State project during the period.

17/21 (81%) reports that most municipal purchases are done in connection with the municipality’s own construction projects (not as part of municipal land policies, clearing land for private developers, strategic position of municipal ownership etc.).

Most acquisitions are settled by voluntary agreements. In the last 5 years only 1.1 cases pr municipality (0.2 cases pr year) goes through “the hard way” of expropriation by court. Local political regime (parties in power) does not seem to have a clear effect on the purchase activity.

The material indicates one or more characteristics for municipalities with considerable position in the local land market:

- Cold private land development sector (economic depressed rural areas). The market does not satisfy land development needs of the population.
- Strong political agendas for development, population growth or urbanism.
- Healthy municipal economy (municipalities with hydroelectric power resources have traditionally been wealthy in Norway).
- A long time tradition for strong land involvement within the political or administrative regime – often connected to strong personalities.
- The municipality has over time been an important landowner.
- The municipality has avoided larger losses connected to land development projects (some municipalities burned their fingers during the 1989-90 land market crack).

### **3.2 Organization**

Norwegian municipality administrations are organized in many different ways. A question about where to find acquisition responsibilities within the municipal administrative setup opened for multiple answers:

Public works / engineering department	9/21 (43 %)
Planning department:	9/21 (43 %)
Property management department:	6/21 (29) %
Central staff:	8/21 (38 %)
Dedicated land acquisition group:	5/21 (24 %)

Municipalities with acquisition organized under public works or engineering department argue:

- Negotiations calls for close knowledge of the technical implementation of a project (and opens for compensatory technical projects).
- The total organization has no specialist on acquisition and senior engineers are closest to such competence.

Municipalities with acquisition organized under planning departments argue that:

- Acquisition is a part of plan implementation.
- The officers have already been in close dialog with the land owners during planning phase.
- The officers are better skilled in relevant law.

Municipalities with acquisition organized under property department, central staff or a dedicated group argue for:

- Competent, predictable and efficient performance.
- Centralized co-ordination of all departments involved and all relevant competence in the organization.

- Clear lines between administration and politicians.

### **3.3 Competence and training of involved employees**

The officers in charge of acquisition (negotiations and even preparing expropriations) show a great variety of educational backgrounds (BSc means 3 years, MSc means 5 years):

- Agronomy (1-2 years)
- Engineering (2 years, BSc, MSc)
- Planning (BSc, MSc)
- Economy/business (BSc, MSc)
- Law (MCc)
- Nature Conservation/Biology (MSc)
- Land Consolidation/Property (2 years, MSc)
- Surveying/Geomatics (2 years, BSc, MSc)
- Primary school only (7-10 years) (2 municipalities).

In general persons with technical background seem to be in charge in most cases. Few municipalities have competence in central subjects like general land and property law, expropriation procedure, valuation law and cadastre. Some remarks from the respondents personal capacities were noted, such as: "experience", "knowledge of local conditions", "personal integrity", "trustworthy", "confident", "communication skills" and even (3 comments) "is a landowner in the local society himself"!

All respondents tell that their municipality hires experts (lawyers, evaluators, property consultants) from time to time, most often in cases of expropriation. The respondents' evaluation of the capacity and skills of their organization:

The municipality has sufficient skills etc. within the organization:

5/21 (24%)

The municipality has some skills etc. within the organization: 6/21 (28%)

The municipality has insufficient skills etc. within the organization: 10/21 (48%)

Aware of this weakness in competence, landowners, developers or others may see an opportunity to play games with the municipality. Municipalities may receive claims for large public compensations if land use plans are not produced in certain ways etc. Often such threats are far beyond law principles or lawful compensation levels, even if claims are written by chartered lawyers. All respondents (100%) are familiar with such attempts to scare off administrators or politicians!

### **3.4 Networking**

All respondents tell that they have some contact with experts in State agencies, most often to discuss levels of prices. The State Road Authority and to some extent the State Railroad Authority are mentioned. These are among the few authorities in Norway that have dedicated “Land acquisition” as a profession within their setup. It may be commented that these agencies have no duty to offer such services to municipalities.

To make small municipalities more efficient, inter-municipal co-operation has been on the agenda for several years. Demanding specialized skills but rather seldom used, land acquisition should be an interesting field for this. Still only 1 of the respondents has established “land acquisition” as a dedicated subject for such co-operation while all others say that it has not even been discussed. The municipalities’ union: Norwegian Association of Local and Regional Authorities offers no education or networks on this subject. There are no central or regional agreements between municipality sector and landowners associations on pricing etc. Most of the relevant network activities are managed by The Norwegian Society of Chartered Technical and Scientific Professionals and The Norwegian Association of Lawyers. Only a few employees of larger cities have attended such meetings from the municipal sector.

### **3.5 Acquisition cost budgeting**

Compensations are most often covered from single project budgets. They rarely have their own description in such budgets but are covered under “additional/unknown costs” (many respondents admit they don’t even think about these costs at budgeting stage). Procedural costs (lawyers, private evaluators, court costs) are often covered from the central administration budget – even then without explicit notation. This adds to the impression that acquisition often is treated in an ad hoc way – not recognized as a procedure of its own within the professional setup. Getting land is often forgotten – and occurs as a surprise at a late stage in a project. The respondents tell about cases when acquisition costs have demanded additional budgeting from the municipal leadership.

### **3.6 Procedural anomalies**

Sometimes (hopefully not often) basic procedural rules are broken. Examples presented during discussions:

- No agreement of access or compensation was established at all (known from underground pipeline, air cable and even road projects).
- Violation of property by starting construction work without legal admission: The responses included comments such as “This project is short of time – we have to discuss this afterwards!” also “Try to stop this bulldozer!”.
- No or insufficient cadastral registration of rights, agreements or new holding structure (often connected to oral agreements).

- No payment of agreed or court decided compensation has been given (“We simply didn’t get the necessary budget to pay the landowners!”).

More of these anomalies imply violations of law or citizen rights. All of them give potential for later misunderstandings and conflicts. Some of these shortcuts were accepted in the past as a landowner’s contribution to local collective infrastructure and development. Today many of these structures are merged into larger systems or even commercialized.

### **3.7 Negotiation procedures**

None of the represented municipalities had developed solid (written) procedures for acquisition processes and negotiations. Even two municipalities qualified by ISO standards had no such procedures for acquisition.

Due to Norwegian tradition (or myths) land acquisition was the duty of the good old paternal mayor. Even if the mayor carries the acceptance signature of the municipality, such involvement may raise problems of professionalism or even complications of integrity. Even with politicians still playing a role many places, it is a reported trend to bring negotiations among the administrative responsibilities and keeping politicians to make frame decisions and finalize agreements only.

8/20 (40 %) reported that politicians/mayor most often has a central role, 6/20 (30%) reported that politicians only exceptionally (failed negotiations, larger acquisitions, special cases) participate, while 6/20 (30%) reported no such participation at all (except signature).

### **3.8 Negotiation strategies**

All respondents are aware of the danger of ascending price spirals over time by “offering a little more” in every case, and try to break this by offering “fixed price” with possibilities for some additions. Such additions are normally given or hidden as compensation for individual damage to the remaining parts of the property – not as addition to the standard land price. “Fixed price” is adjusted over time referring to market value changes or development in levels of compensations in expropriation cases in the district. 2 respondents describe getting to “fixed price” by calculations based on Compensation Law principles. Limited budget or limited time are seldom influencing municipality’s offer – or openly used as a form of pressure in negotiations.

All respondents state that they never deliberately use the possibility of expropriation as a threat during negotiations. Both parties still know about this alternative and the large costs involved. In some court districts compensations vary, and do not give a predictable alternative price level for the negotiation parties. In some municipalities the politicians are hardly willing to use expropriation anyhow.

None of the participating municipalities has written ethical guidelines for the officers’ behavior during negotiations (Norwegian Public Road



Administration, 1999). Some have general rules covering all municipal activities. The respondents still outline the importance of fair and equal treatment of the landowners; within one project and over time in the municipality. This is considered more important than “correct price” in judicial and economic sense.

### 3.9 Prices and price level problems

Norway shows large differences in natural and economic conditions, which are reflected in the value of land. Large differences occur within one municipality. All properties are unique, and acquisition may give different effects and call for different valuation principles. Reports of just some price examples are then difficult to analyze. Even so it is close to impossible to find good reasons for some of the numbers or differences presented. (Table 2)

**Table 2.** Price examples (upper and lower): acquisition in some Norwegian municipalities. (1997-2006).

Category of municipality	Prices paid, (lowest and highest example within area category of municipality) NOK/m <sup>2</sup>			
	Undeveloped land for housing	Part of existing dwelling property	Undeveloped land for industry	Agricultural land*
Cities	30 – 450	30 -100	40 – 100	3 – 20
Pressure areas outside cities	25 – 230	30 - 1000	3 – 200	3 – 20
Low pressure areas	6 – 50	12 – 150	4 – 25	3 – 25

\*Land used for cultivation without any development value added.

6 out of 17 respondents (35%) hold municipal price levels lower than private prices on similar purchases, 6/17 (35%) find their prices higher (of whom 3 finds there is no private market present in the area at all) and 5/17 (30 %) find the levels similar.

Public land acquisition prices might blur or even expel private land markets in problematic ways. In 1990 a group of postgraduate students did a study in the fast growing city of Førde (Gagnat et al. 1990). They described a situation where the local court’s expropriation practice through some years came out with extremely high compensations. This, according to interviews, resulted in very high price expectations among landowners such that private investments in land development were limited to collaboration with either the municipality (land control by expropriation) or with one of the 3 main landowning families. The results were at that time

high public costs, hardly any voluntary purchase agreements and these few families controlling most businesses in the city.

In the material no such extreme situations are described, even if the situation on low-pressure municipalities (hardly any private land investors present) have some similarities. On the other hand 70 % state that compensation prices differ significantly from the level of similar private transactions. Over time this must have some effect on the private market also.

Two participants in the course were not municipal employees, but private property consultants. They described a situation of offensive municipal use of planning power in combination with institutionalized low-price regime in the city of Stavanger. According to these two, this has effected in kind of municipal monopoly in basic land development giving strong land use control and even considerable profit to the municipal owned land development enterprises. A respondent from another municipality reports a similar politically deliberate monopoly establishment – expelling private land developers by plan decisions – even if no low-price regime is established.

### ***3.10 Alternative forms of compensation***

Acquisition in its basic form as (compulsory) purchase of land: Obtain to a price for a certain piece of land and compensation for damages to the remaining property. All respondents have had experiences with compensations (packages) in other goods or services.

All respondents have some experience with exchange of plots – as an alternative to purchase or as part of a compensation package. Most of such cases occur when the municipality (or other public body) has more or less useless plots in the area. With only two exceptions all respondents have avoided complex exchange processes – with more than two parties involved, or voluntary land consolidation processes with the aim to improve the land structure in an extended area. One respondent mentioned that land exchange once indecently favored one landowner. But the political leadership preferred this solution to a controversial expropriation process. This adds to a general impression that municipalities try to avoid “the hard way” which is both political controversial and costly (a simple expropriation case includes public procedural costs up to 50,000 – 100,000 NOK).

During larger private urban or semi urban development projects, land for infrastructure, parks and public services transferred free of cost to the municipality as part of plan regulations. Sometimes this is made a part of a “development agreement” in return for plan modifications or earlier implementation. Well known from larger cities, but not mentioned by these respondents, are constructions of municipal-private development agencies where land distribution is a part of an agreement.

4 respondents report that new building permits (exception from plan) or favorable plan changes (both the actual land demanding plan and plans

elsewhere) have been granted as part of a compensation package. Plan concessions agreed upon before formal procedure and decision may be controversial or even juridical unhealthy.

Four respondents offered other economical or juridical privileges. Examples: Free rent of land or dwellings, free connection to water and sewage net, private rights of road, exclusive angling (salmon) rights in rivers, share in development agency. 4 respondents accepted physical works (outside the land demanding project). Examples: Demolition works, stonewall construction, garden plantation, construction and maintenance of private roads, snow clearing, production of technical reports and plans, soil deliveries etc. Services offered and especially those who demand public resources over time may bind the municipality and rise additional conflicts.

#### **4 Conclusions**

The questions in the original questionnaires and aspects presented in this report may be seen as a “test of professionalism”. The main picture is that Norwegian municipalities hardly pass this test.

It may be argued that municipalities manage to get necessary land for schools, graveyards, water, sewage, roads and other public constructions and spaces. This report has not produced material to tell if the present organizational setups are more costly, less efficient or produce more conflicts than more institutional solid alternatives. Nor has the report discussed other variables than “decentralization” (like tradition, culture, politics, economy) to explain the findings.

Most Norwegian municipalities have not established expert units (or persons) to deal with land acquisition. It is quite obvious that small municipalities can't afford to hold such units, but this is also often the case for larger and wealthier administrations. Municipalities show an activity in land market mostly limited to necessary public projects. There may be economical or political reasons for this situation. Institutional deficits in acquisition and expropriation competence and capacity may also contribute to low activity, or hinder more active and long-term land policies.

Municipalities prioritize equal treatment of local landowners and avoiding expropriation costs, while less consideration is given to law standards, solid procedures and valuation methods. Respondents describe this as a choice of aims by importance or even a kind of policy, but through the discussions it's clear that this also is a question about training. Even if this could make the situation quite stable within one municipality, it may construct strange differences in compensations between municipalities and between municipal and other transactions. This may be a threat towards standards of citizen rights, predictability of results and may even disturb private land markets.

The close local link between land decision bodies, municipal technical services and land acquisition activities (often same department and same politicians) opens an arena for creative solutions – even unhealthy ones.

Reported examples of procedural anomalies (even municipal occupation) show a lack of expert knowledge and professional respect of important law principles.

## **5 Proposals**

This report presents findings that should call for a Norwegian national discussion upon professionalism within the public land acquisition institutions. The situation calls for reforms.

For others this presentation is just one (maybe exotic) example of acquisition performed in a decentralized way. It is also an attempt to produce a “test of professionalism” or “list of variables” which with considerable refinement may be used for further research and even comparative projects: not only describing law and formal setups, but also how systems function “out there” among landowners and public servants. The FIG initiative will hopefully come up with such tools.

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