Compulsory Acquisition and Compensation
Second edition

Thomas Kalbro, Eije Sjödin, Leif Norell, Jenny Paulsson
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Cover photo: Banverkets bildarkiv, Stefan Bratt
Preface

This book is intended for use as set reading on the Compulsory Purchase course forming part of the Master’s programme in Real Estate Development and Financial Services at the Royal Institute of Technology, Kungl. Tekniska Högskolan (KTH).

This is the second edition of the book due to important amendments to the legislation as well as changes in and additions to the Compulsory Purchase course. The book contains excerpts from required reading for the Swedish study programme. The greater part of it comprises chapter 4 of the book *Markexploatering* by Thomas Kalbro and Eidar Lindgren, the fourth edition published in 2010, in combination with parts of the third edition published in 2007, by Norstedts Juridik. That chapter is here accompanied by parts of the book *Markåtkomst och ersättning - För bebyggelse och infrastruktur* by Eije Sjödin, Peter Ekbäck, Thomas Kalbro and Leif Norell, the second edition published in 2007, in combination with parts of the third edition to be published in 2011, by Norstedts Juridik. There are also a few short excerpts from chapter 9, *Markåtkomst och ersättning*, by Eije Sjödin, in the book *Fastighetsekonomisk analys och fastighetsrätt/ Fastighetsnomenklatur*, tenth edition, published in 2011 by Fastighetsnytt Förlags AB, the Association of Swedish Valuers and the Swedish ASPECT’s Section for Real Estate Economics, SFF. Chapter 4 of *Markexploatering* is reproduced in its entirety, but with certain changes and additions from the other two books mentioned.

The material was selected and compiled by me. Most of the text was translated from Swedish into English by Roger Tanner, but parts of it were translated by me in regard to the additions and changes made for this second edition of the book.

Stockholm, August 2011

Jenny Paulsson

Real Estate Planning and Land Law
KTH
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### Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>AL</td>
<td>Anläggningslagen (Joint Facilities Act)</td>
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<td>ExL</td>
<td>Expropriationslagen (Expropriation Act)</td>
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<tr>
<td>FBL</td>
<td>Fastighetsbildningslagen (Real Property Formation Act)</td>
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<tr>
<td>JB</td>
<td>Jordabalken (Land Code)</td>
</tr>
<tr>
<td>LBJ</td>
<td>Lagen om byggande av järnväg (Railway Construction Act)</td>
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<tr>
<td>LL</td>
<td>Ledningsrättslagen (Utility Easements Act)</td>
</tr>
<tr>
<td>LM</td>
<td>Lantmäterimyndigheten (Cadastral authority)</td>
</tr>
<tr>
<td>MB</td>
<td>Miljöbalken (Environmental Code)</td>
</tr>
<tr>
<td>NJA</td>
<td>Nytt juridiskt arkiv (avdelning 1) (Court reporter for the Supreme Court)</td>
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<tr>
<td>PBL</td>
<td>Plan- och bygglagen (Planning and Building Act)</td>
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<tr>
<td>Prop.</td>
<td>Proposition (Government Bill)</td>
</tr>
<tr>
<td>RF</td>
<td>Regeringsformen (Constitution Act)</td>
</tr>
<tr>
<td>RÅ</td>
<td>Regeringsrättens årsbok (Supreme Administrative Court’s Yearbook)</td>
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<tr>
<td>SOU</td>
<td>Statens offentliga utredningar (Government Inquiry)</td>
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<tr>
<td>VägL</td>
<td>Väglagen (Roads Act)</td>
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This book deals with basic reasons for properties changing hands during the development process. Subject to certain conditions, property owners can be forced to surrender land against their will, and an account will therefore also be given of possible justifications for compulsory purchase. Lastly, a description will be given of the legislation on compulsory purchase and the situations in which different enactments are applicable.

1 Why are there rules for compulsory acquisition and compensation?

Even a cursory review of the book containing Swedish Acts shows that there is a comprehensive regulatory regime for “land acquisition and compensation”, i.e. provisions making it possible to compulsorily acquire land or rights. It can be exemplified by the following list that gives an overview of various special laws governing compulsory acquisition.

*Building legislation*
- Planning and Building Act
- Joint Land Development Act

*Infrastructure legislation*
- Planning and Building Act
- Roads Act
- Railway Construction Act
- Utility Easements Act
- Joint Facilities Act

*Legislation on the use of natural resources*
- Environmental Code
- Water Enterprises (Special Provisions) Act
- Minerals Act
- Peat Deposits (Various) Act

*Protection and conservation legislation*
- Environmental Code
- Forestry Act
- Heritage Conservation Act
- Planning and Building Act
In addition to the special legislation, there are two Acts that have a more general function. Firstly, the *Expropriation Act*, which contains basic provisions on access to land and rights for various important public purposes. Secondly, the *Real Property Formation Act*, which may apply to compulsory purchase of land and rights for both general and specific purposes.

The very existence of legal provisions is obviously a strong indication that they fill a need. But what exactly are the motives behind the legislation? Why do we have legal provisions for land acquisition and compensation? In this chapter, these issues will be clarified.

### 1.1 Land Use Change requires changes in the property structure

Most countries have a, more or less far-reaching, public control of how land may be used. There are regulations on planning and the authorities must give their permission for many activities. In Sweden, the Planning and Building Act and the Environmental Code are examples of this “planning and permission legislation”. The rules for land acquisition and compensation should be viewed in this wider context, i.e. land acquisition rules should make it possible to implement desirable changes in land use.

Land use and property and ownership structure are closely interconnected – just compare the division of towns and cities into precincts and plots with the fields and farms of the countryside. Accordingly, when land use changes, the property and/or ownership structure also has to be adapted to the new mode of use. There are two basic reasons for ownership conditions and division into property units needing to be changed when a detailed development plan comes to be implemented.

- The existing division into property units may be inappropriate to the new land use, i.e. property boundaries need to be adjusted by transferring land from one property to another, e.g. when a new road is going to cross a number of properties.
- A property owner may be unwilling – or unable – to utilise his property in accordance with the land use planned. Take, for example, the case of a farmer whose land is needed for housing, industrial development, etc. and who is unable to manage the new operation.

In addition to direct land acquisition changes in society may require that the property owner’s use of the property is restricted. Preservation of nature, cultural and environmental values can justify that the owners cannot use their property as they see fit. Thus this type of regulation, “disposition constraints” means that there are changes to the property owner’s rights.
Ownership is influencing planning and building

A property owner is in a position to influence land use and building. Where private individuals and companies are concerned, ownership makes them “stakeholders” when detailed development plans are being drawn up. In this way the property owner can influence land use through consultations about the plan.

In the case of a municipality, property ownership means a possibility of deciding who, i.e. which developer or developers, will be allowed to effectuate the plan. Is the land to be developed under municipal auspices, transferred to a non-profit housing enterprise or sold to a private developer? During the 1960s and onwards, municipalities were urged by the State to pursue an “active land policy”, based on voluntary sale or expropriation, so that the municipality in turn would be able to transfer the land to the developer or developers best suited to build housing etc. Some 80 per cent of all new homes in the 1980s were built on land originally owned by the municipalities.¹

Even today, land ownership plays a big role. In the three largest municipalities in Sweden Stockholm, Gothenburg (Göteborg) and Malmö, the share of new residential apartments on municipally owned land is between 60 and 80 per cent, see figure 1.

![Figure 1](image1.png)

**Figure 1 The proportion of dwellings produced on municipal land in a number of municipalities.²**

This municipal land ownership has meant that a large number of developers, under competition, have been able to purchase land.

It can be exemplified by Stockholm City who, since 2005, has allocated more than 16,000 apartments to 70 construction companies.³ Nearly 40

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¹ See Boverket (1991) and Vedung (1993). By international standards, the land allocation system in the City of Stockholm has helped to bring about a widespread geographic distribution of different developer and housing categories and, in the big cities, a very mixed housing stock, according to Bodström (1994).


³
companies have obtained 100 apartments or more, and 14 developers have been allocated 500 apartments or more. Malmö Municipality has, over the past decade, allocated approximately 9,000 apartments for nearly 70 developers (excluding 400 “free building lots” to private individuals).

Financial incentives

There are financial motive forces behind land transfers before and during a land development process. The new owner may acquire the land in order to benefit from the appreciation which a change of land use (normally) gives rise to. Private construction companies or the municipality may acquire an area of land to a greater or lesser extent in advance of its development, with a view to developing the area and either managing the finished buildings themselves or selling them off at market prices. Where private persons are concerned, the purchase of an undeveloped house plot may, for example, enable them to get the house they want and a good residential environment to go with it.

The financial motive forces are connected with the movement of land value before and during development. Very schematically, this appreciation can be described as in figure 2.

![Figure 2 Schematic illustration of appreciation in connection with land development.](image)

- The value of the properties before the idea of a change in land use is conceived is determined by the current land use. This can mean agricultural or forest land or land which has been developed already.

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3 Stockholm City Land Allocation Register.
4 Source: Sjödin et al. (2007).
• Anticipation of a change in land use gives rise to what are termed expectation values. The term undeveloped land (literally, “raw land”) is applied to land which is not yet covered by a detailed development plan but on which it is expected that building development will be permitted. In certain cases, expectation values may be founded on assessments, some more certain than others, regarding future building development. In other cases the process may be triggered by municipal statements concerning a development, a deep/detailed comprehensive plan or a municipal planning notice. How expectation values evolve until the detailed development plan is adopted may, however, be discussed. Is it like the solid curve in the figure, or the dashed curve after that the municipality has decided on a so-called “planning approval” (planbesked)?

• When detailed development plans become legally binding, this creates certainty regarding the land use permissible. Appreciation then follows and the land graduates from “raw land” to undeveloped building land (“raw building land”). The time following the adoption of the detailed development plan includes additional phases and value levels. In order for development of the plots in the plan to be permissible, charges have to be paid for streets, water and sewerage facilities, property formation etc. When this has been done, a value of building land ready for development is created. The final value level refers to the developed plot, i.e. after building permission has been granted and development of the plot has been completed. From a financial point of view, then, it is important – to private developers and municipality alike – that land should be acquired at the right time before the detailed development plan is drawn up. This point in time hinges on the price of the land when purchased, interest expenses, pre-development earnings if any, and the value of the land/buildings after development.

Land acquisitions before the detailed development plan – and land acquisitions to implement the plan

One important point in the land development process occurs when the detailed development plan becomes legally binding. In this light one can distinguish between land acquisitions occurring respectively before and after the detailed development plan.

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5 As per Chap. 4, Section 5 of PBL.

6 The described value development relates to building land for private development. In the case of, for example, land for public places the market value would be reduced, and after the adoption of the detailed plan become non-existent.

7 The appreciation described here concerns precinct land (kvartersmark) for private development. Where land for public places is concerned, for example, market value is likely to fall, becoming non-existent after the detailed development plan has been adopted.
Land acquisitions before the detailed development plan

Land acquisitions in an early phase of the development process give the municipality and private developers more scope for influencing the design and implementation of the detailed development plan and also for benefiting from the land value appreciation occurring when an area is made subject to a detailed development plan.

Land acquisitions for the purpose of implementing a detailed development plan.

Land acquisitions occurring as part of the implementation of the detailed development plan are of a more “technical” nature, their purpose being to adapt ownership conditions and division into property units to the new plan. Land for communal facilities must be transferred/granted to the mandator designate. Precinct land which is to be used for “public building development”, e.g. schools and day nurseries, must be transferred to new ownership. Plot boundaries on precinct land have to be redrawn.

1.2 What justifies coercive rules?

Adjustments to division into property units and to ownership conditions are normally achieved through voluntary agreements, i.e. negotiations between purchaser and seller, but beyond this property owners can also be compelled to surrender their property rights against their will. Thus there is coercive legislation which can be applied in certain situations and under certain conditions.

Forcing someone to surrender land against their wishes is of course a considerable interference in the right of ownership, and so there have to be very good reasons for building up legislation which allows coercion to be resorted to. Thus, the question is what justifies the use of coercion.\(^8\)

In order for compulsory purchase to be permissible, the purpose of the acquisition must be a matter of “public interest” (see Chap. 2, Section 18 of the Swedish Constitution Act (Regeringsformen, RF)). In order to assess what is a public interest three general conditions can be set up: \(^9\)

- Firstly, the socio-economic benefits of the acquisition must outweigh its disadvantages, i.e. it has to be profitable.
- Secondly, the purpose of the acquisition has to be important or essential. It is a debatable issue, which purposes are to be deemed “important”. But included is normally the basic infrastructure needed for individual properties to function in a good way, such as roads and utilities for water and sewage, electricity and telecommunications.

\(^8\) See e.g. Werin (1982) and Miceli & Segerson (1999).
\(^9\) See e.g. Kalbro (2007b).
• Finally, the purpose of the acquisition has to be carried out on a particular area of land, i.e. there must not be any (realistic) alternative locations. When a specific area of land is needed, the seller finds himself in a very strong negotiating position vis-à-vis the purchaser. In such cases the seller can put pressure on the purchaser to pay a higher price than would have been obtainable if there had been a number of sellers competing together.  

These conditions do not mean to say that only the community or public authorities/organisations may resort to it. Private expropriation can also be in the public interest, e.g. when a power company needs land for power lines or a group of property owners needs to build a road to its properties. Thus, it is the activity and purpose of the acquisition, which determines whether compulsory purchase should be done. Regardless of who the acquirer is.

A main reason for the expropriation legislation is that the buyer should not have to pay too high a price because the seller happens to hold strategically located land, i.e. to regulate the compensation to be paid. According to what principles this compensation can/should be determined is discussed in Section 1.4.

1.3 Why must compensation be paid?
Public bodies, the State and municipalities, take a host of measures aimed at making society more efficient and increasing total “welfare”. One problem with these intrinsically justifiable measures is that they do not automatically guarantee increased welfare for all citizens. Some are liable to be “winners”, others “losers”.

Are we to accept that there will be losers? Is it so that we can accept losers in certain situations while in other cases it is absolutely necessary for compensation to be paid? Michelman (1967), analysing these and other issues, has formulated the problem in the following terms:

[When] social decisions to redirect economic resources entail painfully obvious costs, how shall these costs ultimately be distributed among all the members of society. Shall they be permitted to fall initially or shall the government, by paying compensation, make explicit attempts to distribute them in accordance with… the tax structure… or some other principle. Shall the losses be left with the individuals on whom they happen first to fall, or shall they be “socialized”? (p. 1169)

10 In legal economics this is usually termed the hold-out problem, meaning that in negotiations the seller can hold out on the purchaser in a bid to force the price upwards.

11 A further motive for coercion rules is that the legislation may function as “rules of the game”, which provide predictability and stability in terms of compensation. This may reduce transaction and negotiation costs. Finally, the legislative provisions guarantee in principle that all property owners are treated equally in terms of compensation, which may have a value in itself, especially when many property owners are involved, e.g. in road or rail projects.
Every social decision should lead to an improvement, i.e. the total benefits from the decision should exceed its total drawbacks. The decision should, in other words, be socio-economically profitable.

To the requirement of socio-economic profitability, however, must be added the criterion of fairness, because a measure taken does not necessarily lead to a desired apportionment of advantages and disadvantages. Suppose, for instance, that a motorway is going to be built and land for it has to be claimed from a number of property owners. The motorway is a profitable project, and we could leave it at that, i.e. not bother about who, respectively, reaps the benefits and picks up the bill. But most of us feel intuitively that it would be unfair if the property owners were not to receive any compensation for surrendering their land.

But why exactly do we consider this unfair? Are there logical/ethical rules explaining this? And can the same rules, in a different situation, justify the non-payment of compensation to a “loser”? These, then, are issues which Michelman analyses. Michelman begins by defining three economic effects of a social measure.\[12\]

- **Efficiency gains** are the appreciation produced by the measure itself.
- If compensation is paid, there will be *transaction costs* (settlement costs) entailed by negotiations, court proceedings etc.
- If on the other hand compensation is not paid, there will be *demoralisation costs*, incurred primarily by the compensation claimant but also by others who may conceivably be indignant over the non-payment of compensation.

In these terms one can lay down a number of rules indicating when a measure should be taken and when, in that case, compensation should be paid.

1. If both settlement costs and demoralisation costs exceed the efficiency gains, the measure ought not to be taken in the first place, since it is unprofitable. In order for the measure to be taken, either the transaction costs or the demoralisation costs must be smaller than the efficiency gains.
2. Whether or not compensation must be paid depends on the relation between the transaction and demoralisation costs. If the transaction costs exceed the demoralisation costs, compensation should not be paid. And, conversely, if the demoralisation costs exceed the transaction costs, compensation should be paid.

Compensation, then, should be paid in those cases where the demoralisation costs entailed by non-payment of compensation exceed the transaction costs. In which cases can this situation conceivably apply? Michelman argues, in general terms, that, the more obviously a party is disproportionately burdened by a

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12 The analysis is based on the moral philosophy approach called *utilitarianism*, which, roughly speaking, teaches that we should opt for the course of action maximising the efficiency gains to society.
measure compared with other members of the community, the stronger the demands for compensation will be! This can be instanced with the situation of one property owner having to surrender land for a road, a green area etc. which will benefit several others. Any situation where a party has to surrender land is probably of the kind in which compensation should be paid.

When compensation regulatory systems are being constructed by the legislature, nobody knows for sure whether he or she will be affected by a negative public measure. This being so, Michelman asks what general rules of conduct or law a rational person would like to have, considering that he runs a potential risk of being adversely affected by a government measure. At first sight it may seem natural to desire compensation in such a situation, but closer reflection leads one to question the rationality of advocating rules which always provide compensation whenever someone is burdened.

Briefly, Michelman maintains that if the rules mean compensation having to be paid in a very large number of situations, there is a risk of the settlement costs frustrating measures which are profitable. A regulatory system of this kind threatens to disfavour all parties, including the party burdened by a government measure, because the long-term benefit to the community may be reduced. On the other hand, a risk assessment has to be performed if compensation is only to be paid in a few situations. Even if this would facilitate the implementation of measures from which everyone can benefit, certain property owners would risk having to put up with losses of a magnitude which, benefit to the community notwithstanding, would mean their incurring a loss.

Summing up, Michelman argues that compensation ought not normally to be paid when the “burdens” of a government measure are shouldered by many (which usually also means high transaction costs). This can apply to general restrictions of the right to enjoyment of a property, e.g. a ban on the use of certain ecotoxic pesticides. Nor should compensation be paid if the loss which a person sustains is a very small one, especially if the damage is far smaller than the transaction costs.

Swedish legislation offers instances where compensation is not paid and where Michelman’s arguments are applicable.

1.4 What is fair compensation?

The question of what is fair compensation has to be judged from the viewpoints of both purchaser and seller. On the one hand, the purchaser must not be made to pay “too much” as a result of the seller exploiting his monopoly position and securing a price which would otherwise have been unobtainable. On the other hand the seller is justified in demanding a measure of compensation which is not “too little”.

Thus the issue of what compensation might be “too little” or “too much” could be worded as follows: What price would a buyer and seller agree on voluntarily when

(1) the purchaser needs this very land of the seller’s and
(2) the seller does not exploit his strategic land holding (monopoly situation) when negotiating over the price?

The seller need not surrender his land for a lower price than he is willing to sell it for without coercion. And the purchaser need not pay extra in consequence of the land being obtainable from one seller only.

**Price formation in voluntary sale and purchase**

One basic precondition for voluntary sale of land/property is for the purchaser and seller to put different values on the land. In order for the seller to give up his land, the purchaser must pay a price at least equaling the value which the seller puts on the property. At the same time the purchaser is not prepared to pay more than the value which he himself puts on the land. The price agreed on, then, must come in between the values assigned by purchaser and seller respectively. The level of the price finally settled on will then depend on such things as the strength of each party’s negotiating position.

The difference between the values put on the property by purchaser and seller is the profit derived from the sale. If the price comes close to the value assigned by the seller, i.e. if the price is low, then the purchaser will obtain a larger share of the profit (see figure 3). Please note that the prize amount has no impact on overall profit – it is an allocation issue between the buyer and seller.

![Figure 3 Price formation and allocation of profit (profit-sharing) in the voluntary sale of a property.](image)

The property value concept that is relevant to all voluntary agreements is the buyer’s and seller’s so-called *reservation prices*\(^\text{14}\), i.e. the highest price the buyer is willing to pay and the minimum price the seller demands to sell their property. The reservation price is made up of three factors.

\[^{13}\text{Source: Kalbro & Sjödin (1993).}\]

\[^{14}\text{The reservation price is thus the minimum price demanded by the seller if he or she is not to keep/reserve the property for himself/herself.}\]
Firstly, the buyer and the seller put an *individual value* of their own based on the benefit they deem to get from the property.

Secondly, the seller demands a share in the *profit* resulting from the sale.

Finally, the seller wants compensation for *transaction costs*, i.e. expenses, labour, negotiations etc. occurring in connection with the transfer of the property.

The *individual value* of the property hinges on both monetary and non-monetary factors. If the owner is running a business on the property, then of course the firm’s outgoings and earnings will make an important difference. If it is a housing property, aspects are added which, broadly speaking, have to do with how “happy” the owner is with his property.

Normally the seller always requires a certain *share of the profit* in order to be willing to sell his property. So he will not be content with a price which leaves him in *exactly* the same situation after the sale as before it. The *size* of the profit which the seller expects may conceivably depend on who is buying, what the property is going to be used for, how big a profit the purchaser will reap, and so on. The following classic experiment in negotiation will serve to illustrate the fact of a reasonable apportionment of profit between seller and purchaser really being a prerequisite of agreement.

Suppose two people, A and B, are in a position to share SEK 100 between them. A decides how the money will be shared. If B accepts A’s way of sharing, they will both share the money accordingly. If B does not accept the proposal for sharing, neither of them will get any money at all.

In this situation, it is in A’s own interest to give himself SEK 99 and B SEK 1. It is in B’s interest to accept this apportionment, since SEK 1 is better than nothing at all.

Surveys have shown, however, that B will *not* accept this unequal distribution. B, then, is prepared to give up SEK 1 for the “pleasure” of seeing A miss out on SEK 99. Surveys indicate that B requires at least about SEK 25 or 30 in order to accept the division.

Transaction costs often make up a minor proportion of the owner’s asking price, but in the partial sale of a property they can, relatively speaking, constitute a large part of the price the seller is asking for.

**Possible reimbursement rates for compulsory acquisition**

That the compensation in principle should correspond to the “voluntary case” in figure 3 is a possible solution. But there are other options.

Werin wrote in the 1970s an article on compensation for expropriation, which includes a discussion on the different motives that may exist for
expropriation legislation. With some modification of Werin, these motives can be summarized as in figure 4.

![Diagram](image)

**Figure 4** Different motives for expropriation legislation.

**The monopoly motive**

The starting point for Werin’s reasoning is the fact that compulsory acquisition is subject to a certain area of land being acquired. By taking advantage of his strategic position, the owner can demand a very high price. This motive of coercive legislation can be called the *monopoly motive*, i.e. the legislator wants to prevent a property owner from profiting by what can be described as a monopoly gain.

As discussed previously, the reservation price is the lowest price for which a property owner is willing to sell the property in voluntary negotiations. The monopoly profit is, therefore, the share of the demanded price that exceeds the reservation price, up to the level where the price is so high that the purchaser cancels his plans because the project becomes unprofitable, i.e. a-b in figure 4.

How pricing works in a competition or monopoly situation will be illustrated with a general example.

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16 After Lars Werin, Expropriation - en studie i lagstiftningsmotiv och ersättningsrättsliga grundprinciper, Svensk Juristtidning 1978, p. 88. Werin also brings up a fourth motive, the *veto motive*, which means that the seller refuses to give up his land no matter what price the buyer offers. This may be appropriate in cases where the seller’s reservation price exceeds what the buyer can pay. But that situation is not discussed here.

Suppose that NOKIA manufactures mobile phones in which a component can cost SEK 70 before the current phone model becomes unprofitable. To produce the component subcontractors are used. In this case, two suppliers, \(U_1\) and \(U_2\), have expressed interest in producing the component. \(U_1\) is willing to sell at SEK 40, while the lowest price that \(U_2\) accepts is SEK 30.

Under these conditions, negotiations with \(U_2\) are opened, in which a final agreement should be between SEK 30 and 40. Lower price than SEK 30 is \(U_2\) not prepared to accept. And NOKIA does not have to accept a higher price than SEK 40, since \(U_1\) is willing to sell for SEK 40.

The buyer’s, NOKIA, value for the phone component is SEK 70 - the maximum amount that can be paid without the phone model becoming unprofitable. But this value is not yet relevant to the agreement with \(U_2\). Regardless if the limit of profitability is at SEK 70, 100 or 200, the company would not have to pay more than SEK 40. The price ceiling is determined namely by the company’s options in this situation, i.e. a deal with the “second best” subcontractor \(U_1\).

In the example there is competition where the price range for an agreement between NOKIA and \(U_2\) will be between SEK 30 and 40. However, if the subcontractor \(U_2\) had a monopoly over NOKIA the price range for a deal is somewhere between SEK 30 and 70. The part of the price in excess of SEK 40 can thus be seen as a monopoly profit, which is not possible to get if there is competition.

The redistribution motive

Even if the property owner does not use his monopoly position, it can be considered that the property owner’s claim for compensation in a voluntary agreement, i.e. at least the owner’s reservation price, is too high. Another purpose of the expropriation legislation might be to benefit the purchaser, i.e. a redistribution motive. One possibility then is that the compensation is lowered from the owner’s reservation price to the property’s market value, i.e. from \(b-c\) in figure 4.

A comparison of reservation price and market value

The legislation makes the market value of the property the basis for determining the compensation payable (as we shall see presently). This being so, it may be interesting to see how the market value relates to the seller’s reservation price.

The following can be noted. A property owner, as we have already seen, will not sell his property unless he is paid at least the reservation price. If the price offered is lower than that, he will hang onto the property. We may further assume that, at any given point in time, the number of property owners contemplating sale is relatively small. It is only those who, for various reasons, are “dissatisfied” with their properties who will put them on the market. The owner will not begin to contemplate a sale until the reservation price, for some reason, falls short of (or comes close to) the market value, and so the supply side in market price formation consist of the lowest reservation prices. We may
therefore assume that most owners’ reservation prices exceed the market value of their properties.

If the relation between reservation price and market value could be measured for a number of properties, then in principle the relation could be illustrated as in figure 5, below.

In figure 5, the owner of property A has a reservation price which falls just short of the market value, and accordingly he has reason to sell it. By contrast, the owner of property B would not dream of selling, because here the reservation price exceeds the market value.

In order for a property owner surrendering land to feel completely content with the compensation, the owner thus ought to get (at least) his reservation price, i.e. compensation that normally exceeds the market value.

The land gain motive
A third motive for coercive rules is the land gain motive. According to this motive it can be argued that the compensation should not even amount to the market value, if one considers that a certain appreciation (capital gains) of a property should not be allowed to fall to the property owner, e.g. in figure 4. The issue is very much connected with a social philosophy of thought on so-called unearned increment, which has had an influence, for example, on the design of compensation rules.19

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19 The term “unearned increment” was coined by the 1800-century philosopher John Stuart Mill.
Unearned increment

What may be regarded as “unearned” increment is based on what and who creates the increment.

The emergence of increment of properties is mainly due to four factors.\(^{20}\)

- *economic development* due to technological progress, population growth, interest rate reduction etc. which increases the demand for property.\(^{21}\)
- *permit* to building by, for example, detailed development plan and building permit.
- *public investment* in roads, water and sewage facilities, schools, public transport etc.
- *property owner’s investment* in buildings and facilities.

Who should be entitled to this increase in value? The fundamental idea is then that the creator of the increment is also entitled to get benefit from it. And conversely, if I have not contributed to the appreciation I am also not entitled to have part of it. If so, my appreciation is “unearned”.

To determine what increment property owners should be credited, two different interpretations have been presented.\(^{22}\) The first interpretation implies that any increment, which is *not due to the property owner’s own investments*, is unearned if it goes to the owner. Under the second interpretation, only the increment due to *public investment* is considered as unearned if it goes to the property owner. The difference between these two approaches is who should be credited the increment, which was neither caused by the property owner or the public sector. Under the first approach the increment should be credited the state / municipality - under the second approach the property owner.

These approaches will be exemplified by a compensation issue in case of expropriation, which was the subject of extensive discussion over the years. This applies whether the compensation to property owners should be paid for so-called expectation values or not.

Expectation values

Expectation values occur when there is hope that e.g. new buildings should be erected by order of a detailed development plan, building permits, etc. These expectations thus mean that the value of the property is higher than what is justified solely by the current, existing land use of the property, such as agriculture or forestry. This can be illustrated by figure 6.

\(^{20}\) SOU 1957:3.
\(^{21}\) Speculation on the property market is another factor that may contribute to increase in value.
\(^{22}\) See SOU 1957:3 and Holmström (1988).
If we now assume that a property is expropriated after the time when expectation values emerged - but before permit to new and more valuable land use - the expropriation compensation can in principle be based on two different value levels. Either the actual property value, including the expectation values, or just value under the current land use.

What compensation is fair then? In light of the two different interpretations of what is “undeserved”, two conclusions can be reached.

1. Expectation values are (usually) not due to the property owner’s own investments in the current land use. It can then be considered that the property owner shall not be able to profit by these values. That means in that case that the compensation shall be determined on the basis of the property’s value under the current land use. The compensation to the property owner will thus be lower than the price for which the property would have been sold had it not been expropriated.

2. On the other hand, one could have a more sympathetic attitude to the property owner by claiming that only the increase in value due to public investment should not go to the owner. If the expectation value in our example mainly was created by economic development and expected future building development, the compensation to the property owner should also include expectation values.

What is said above is not just of philosophical interest. Until the 1970s, the property owners received compensation for any expectations about changes in land use. However, in 1971 a provision was introduced that made it possible to not having to replace the expectation values. One argument for this change in
the law included that the landowners were not considered “deserving” to receive compensation for the value impact that had no connection to their own investments or operations.

Since the 1970s, many important changes occurred in the built environment, which includes influenced attitudes to how compensation rules should be designed. Through legislative changes in the Expropriation Act 2010 was determined, therefore, that it is fair that property owners again will receive compensation for expectation values.

**Compensation for damage or profit-sharing?**

The preparatory work for changes in the compensation legislation in the early 1990s contains the following wording.\(^23\)

A fundamental question is whether it is acceptable for the compensation at compulsory acquisition in some cases (real property formation cases) to be determined by a profit-sharing principle, and in other cases (expropriation cases) by a damage principle.

The quotation is clear that there are two basic principles to decide compensation. One is that the property owner is compensated for the *damage* caused by the land acquisition. The second principle means that the property owner in addition may receive a share of the *profit* which the measure entails. If we link to figure 3, these two principles schematically are illustrated as follows.

![Figure 7 Principles for compensation as compensation for damage and as profit-sharing.](image)

The legislator thus means that, depending on the situation, there may be a need for different levels of compensation. But what situations should be considered “indemnification cases” and which ones should be considered “profit-sharing cases”?

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Epstein has argued in approximately the following manner. If the net benefits (profits) from a compulsory acquisition accrue to many parties, i.e. if the purpose of the acquisition is to cater to a need on the part of many people, it can be reasonable for the profit to accrue to the acquirer. This means that anyone surrendering land shall only be compensated for the damage occurring. This could be instanced with the land acquisitions which have to be made by the Swedish Transport Administration to, at “cost price”, construct state-funded public highways. If on the other hand the profit concerns a very limited group, it is ought reasonably to be shared between them. This could be instanced with a boundary adjustment between two properties in order to achieve better property subdivision.

Similar conclusions can also be reached based on Michelman’s analysis. If land acquisition is made to accommodate many people’s (urgent) need, perhaps the seller’s “dissatisfaction” with only receiving compensation for his damage will be less? However, if the seller sees that the acquisition primarily benefits one or a few people, it should be closer at hand to demand a share of the profits?

Even if you can clarify what compensation situations should be handled as indemnification and profit-sharing cases, the problems are far from solved. How should, for example, the seller’s damage be estimated - and what property value concepts should be applied? And how should the profits be estimated and apportioned between buyer and seller in different situations?

1.5 Concluding remarks
The intention of the statutory provisions on compensation is not for compensation to agree exactly with the letter of the law. Instead the express purpose of the provisions is to provide “rules of the game” for negotiations between purchaser and seller and to facilitate voluntary agreements. The legislation, then, is meant to lay the foundations of a climate of negotiation in which the sellers feel “sufficiently” compensated at the end of the day and the purchasers do not have to pay “over the odds”.

In practice, purchaser and seller agree on the price in the absolute majority, 90-95 per cent or more, of cases where compulsory purchase is applicable. The price in these agreements is presumably higher than the law prescribes. Otherwise the seller would be unlikely to enter into any agreement. Incentives for the purchaser to agree to higher price level include, for example, savings on negotiation and litigation costs, increased goodwill and so on. In other words, higher compensation – a “bonus” – is paid to the seller in the event of agreement being reached.

24 See e.g. Epstein (1985).
From the equity point of view, it is above all the compensation amounts paid in practice that are primarily of interest, rather than the formal statutory provisions.

From principles to reality

Even if principles can be defined for compensation in different situations, it remains for those principles to be translated into practical reality. How does one go about – from explicit principles – achieving general and operational rules and methods for determining compensation in different types of cases?

The appropriate compensation is the “material” side of a distributive system. But there is also a “procedural” part, and so account must also be had of the transaction costs occurring if we opt for one or the other principle, i.e. costs connected with valuation work etc. Often there can be conflicts between, on the one hand, the demand for fair compensation and, on the other, the desire for low transaction costs, and so very often the statutory rules have to trace a fine line between the two.

In certain cases it may be impossible in practice to fix compensation in accordance with a certain principle. How, for example, do you estimate a property owner’s individual reservation price? That price, by definition, is known only to the property owner himself!

1.6 Compulsory purchase legislation

Sweden has almost 20 different enactments dealing with compulsory purchase in different situations, e.g. the Planning and Building Act, the Roads Act, the Railway Construction Act, the Joint Facilities Act and the Utility Easements Act. Although these Acts cover different fields, they are all constructed on essentially the same lines. They contain provisions concerning the purposes for which land may be acquired, who may acquire the land, what compensation is payable to the landowner, when possession can be taken of the land and the procedure for deciding whether compulsory purchase is permissible and for fixing compensation.

In addition there are two enactments which are of particular interest because the rules they lay down are more general in scope. Firstly, there is the Expropriation Act, which enumerates a variety of purposes for expropriation and lays down rules of compensation to be observed in the application of other special enactments. Secondly, there is the Real Property Formation Act, which deals with changes in the division of land into property units and contains rules of compensation which in some respects deviate from those of the Expropriation Act.

Before looking more closely to see which enactments are applicable to different situations, a description will therefore be given of the basic rules of the Expropriation Act and the Real Property Formation Act.
2 The Expropriation Act

In practice, the Expropriation Act (1972:719, ExL) is used to a very small extent. Even where the institute of expropriation is available for use, voluntary agreement is sought wherever possible.

The limited use made of the Expropriation Act does not, be it noted, imply that the role played by the Act itself is insignificant. The possibility of using the legislation, with its rules of compensation, indicates the rules concerning price etc. in negotiations between purchaser and seller. Since the purchaser has the possibility of using coercion, perhaps these agreements should not be characterised as altogether “voluntary”.

2.1 Purposes of expropriation

A real property unit belonging to a party other than the State may be requisitioned through expropriation with freehold title, right of user or easement. In principle, anyone can have the right of expropriation, but in cases where expropriation is carried out by a party other than the State, a municipality, a county council or an inter-municipal association, the expropriating party must be able to answer in a dependable manner for the expropriated property being applied to the purpose intended.

Chap. 2 of the Expropriation Act contains a list of purposes for which expropriation is permissible:

- urban development,
- transport and communications,
- electrical power, heat, water, sewerage etc.,
- economic activity,
- protection and security areas,
- military defence,
- national boundary changes,
- to remedy gross neglect of property,
- public fisheries conservation,
- preservation of settlement of outstanding historical or cultural interest or permanent archaeological remains,
- a national park, nature reserve or natural monument,
- sport or outdoor recreation,
- other activity for the benefit of everyone,
- expropriation by reason of property appreciation.

27 Chap. 1, Section 1 of ExL. It is also possible for special rights in the property, e.g. rights of user and easements, to be cancelled or amended by expropriation.

28 Chap. 2, Section 12 of ExL.

29 Chap. 2, Section 1-11 of ExL.
Expropriation for *urban development*\(^{30}\) may refer to land for housing, offices, industrial facilities etc. and ancillary facilities such as roads and green spaces.

In order for expropriation to be permissible, the municipality must be able to show with a certain degree of probability that the land is needed for the purpose intended. This can, for example, be accomplished by means of studies concerning population forecasts, housing construction needs, the comprehensive plan or a detailed planning programme.

In the event of expropriation, the municipality has first refusal of land needed for the purpose of urban development.\(^{31}\) The municipality can still expropriate even if the landowner could develop the land himself.\(^{32}\)

**Transport and communication purposes**

Expropriation is permissible for traffic, transport or other communications.\(^{33}\) The reference here is to roads, railways and tramways, airports, harbours, telecommunications etc. Note, however, that for some of these purposes there exists special legislation (the Roads Act, the Railway Construction Act and the Utility Easements Act), in which case the special enactment has to be applied instead of the Expropriation Act.

*Electrical power, heat, water, sewerage etc.*

This expropriation purpose can refer to facilities for hydropower production, nuclear power production, oil, gas, district heat, water extraction, water and wastewater purification plants, landfill sites etc. Here, just as with transport and communications purposes, there is special legislation which can be applied (e.g. the Utility Easements Act).

Note that land for, say, water and sewerage mains need not be expropriated freehold. Normally it is sufficient for title to the easement to be secured by means of an easement.\(^{34}\)

**Economic activity**

The Expropriation Act sanctions expropriation for the purpose of economic activity.\(^{35}\) This can mean, e.g., factories, agriculture and forestry, reindeer husbandry, fisheries and mineral extraction (though not mining, which comes under the Minerals Act, 1991:45), always provided, though, that the economic activity in question is of major importance to the nation, the locality or a particular group of the population.

Land and localisation issues should normally be dealt with through municipal planning, i.e. land requirements should be provided for primarily

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\(^{30}\) Chap. 2, Section 1 of ExL.


\(^{33}\) Chap. 2, Section 2 of ExL.


\(^{35}\) Chap. 2, Section 4 of ExL.
through expropriation for urban development. Expropriation for economic activity, then, is something of a “last resort”. 36

Protection and security areas
Expropriation for protection and security areas 37 can, for example, refer to water protection areas, safety zones round nuclear power plants or noise protection zones.

Military defence
The Expropriation Act sanctions the acquisition of land for defence purposes. 38 The reference here may, for example, be to shooting ranges, oil storage facilities, communication installations etc.

In addition to military defence, this section also applies to civil defence, economic and psychological defence and voluntary defence organisations.

National boundary changes
Expropriation for national boundary changes constitutes a special purpose. 39 Under this provision, land and water can be acquired in connection with redrawing of the national frontier. This section is prompted by border adjustments between Sweden and Finland due to changes in the course of the Torne River.

Gross neglect of property
Where gross mismanagement of a property prevails or is to be feared, expropriation may take place in order for decayed or unsightly buildings to be demolished. 40

The overwhelming majority of cases of this kind dealt with by the Government have concerned properties in an “advanced state of decay”. In such cases the Government has granted expropriation permits.

Public fisheries conservation
Expropriation is also possible for public fisheries conservation and scientific studies/experiments relating to fisheries. 41

Preservation of settlement of outstanding historic interest etc.
Preservation of settlement of outstanding historical or cultural interest or of permanent archaeological remains is a ground for expropriation. 42

37 Chap. 2, Section 5 of ExL.
38 Chap. 2, Section 6 of ExL.
39 Chap. 2, Section 6a of ExL.
40 Chap. 2, Section 7 of ExL.
41 Chap. 2, Section 7a of ExL.
42 Chap. 2, Section 8 of ExL.
National park, nature reserve or natural monument
Expropriation may be resorted to in order to preserve an area through designation as a national park, nature reserve or natural monument.\textsuperscript{43} Note that regulations and prohibitions relating to national parks, nature reserves and natural monuments can also be issued by authority of the Environmental Code, in which case matters of compensation come under Chap. 31 of that Code.

Sport or outdoor recreation
Land or facilities for sport or outdoor recreation can be expropriated if the land/facility in question is to be made accessible to the general public.\textsuperscript{44} This can refer to jogging trails, walking country etc. and to facilities connected with these purposes.

Expropriation by reason of property appreciation
The last purpose enumerated for expropriation is termed expropriation for property appreciation.\textsuperscript{45} Appreciation expropriation has not, as far as is known, ever been applied, as indeed was foreseen by the legislator.\textsuperscript{46} But the very existence of the provision could make a difference, in that it constitutes a basis for negotiations and “development agreements” between a municipality and a developer.

The background to the provision is that an expropriation enterprise can cause the values of surrounding properties to appreciate. The enterprise, undertaken, say, for the purpose of improving communications, may enable properties to be better utilised, thus enhancing their value. Under these conditions, the properties can be expropriated.

Appreciation expropriation, then, is a means of sequestrating “unmerited” land value appreciation in connection with public investments. The permissibility of expropriation is conditional on the appreciation being significant or considerably enhancing the possibility of using the property, and also on expropriation being reasonable, having regard to the costs and other circumstances.

General clause
Finally, there is a general clause sanctioning expropriation in cases where the expropriation purposes already mentioned cannot be made use of.\textsuperscript{47} This is conditional on the expropriation being “of essential importance to the kingdom or the locality or to a certain group of the population.” In the travaux préparatoires this is instanced with meeting premises, kindergartens, personnel housing accommodation etc.

\textsuperscript{43} Chap. 2, Section 9 of ExL.
\textsuperscript{44} Chap. 2, Section 9 of ExL.
\textsuperscript{45} Chap. 2, Section 1 of ExL.
\textsuperscript{46} Government Bill Prop. 1971:122, p. 164.
\textsuperscript{47} Chap. 2, Section 10 of ExL.
Suitability of expropriation and balance of interests

Chap. 2 of ExL concludes with a provision, the general purpose of which can be said to be the prevention of “unnecessary” expropriations.48

Expropriation may not take place if “the purpose ought suitably to be provided for in another way or the inconvenience entailed by the expropriation from a public and private point of view outweighs the advantages which can be derived from it.” This provision is important in several respects.

Compulsion or voluntariness?

The expropriating party must, before resorting to expropriation, enter into serious negotiations with the seller concerning acquisition of the area to be acquired.

It seems self-evident that a party in need of land should begin by contacting property owners. The question is what demands are to be made concerning negotiations about price etc. This will depend partly on how many properties are affected. Obviously, it makes a difference if one property is to be expropriated or if there are a large number of properties involved, as is normally the case, for example, in connection with road-building projects. The negotiation requirement does not, however, seem to have been pitched very high.49

Alternative locations?

The expropriating party must show that there are no alternative locations for the purpose with which the expropriation is concerned. It is of course unacceptable that a party wishing to expropriate should “randomly” designate a particular area.

A municipality wanted to expropriate a property in order to construct a sports ground. This desire was based on a report showing five possible locations for the sports ground; the municipality had decided that the property in question was the best alternative. The Government, however, was not satisfied that the particular area referred to in the expropriation application, and no other, was the one needing to be used for the sports ground.50

Extent of expropriation?

Expropriation must not be more extensive than its purpose demands.

This point can be illustrated with a case where the municipality was permitted to expropriate land needed to implement a detailed development plan, but not land outside the detailed development plan.51

48 Chap. 2, Section 12 of ExL.
**Benefit and balance of interests**

In the assessment of expropriation permit applications, the inconveniences of expropriation from a public and private viewpoint must be outweighed by the benefits which expropriation confers. In other words, expropriation must be socio-economically beneficial and a balance has to be struck between public and private interests. In the great majority of cases where expropriation is resorted to, it is more or less obvious that public interests outweigh the private ones, but there are cases where the Government has found that this is not the case.

A municipality in Central Sweden wanted to expropriate a single-family residential property for industrial use. The property belonged to an elderly lady who had been living there for 60 years. The Government found that expropriation would be severely detrimental to her, and accordingly no permit was granted.\(^5\)

**Special legislation takes precedence over the Expropriation Act**

The non-permissibility of expropriation where “the purpose ought suitably to provided for in another way” has a bearing on the relationship between the Expropriation Act and the special legislation which has been enacted for various purposes. Several of these enactments contain provisions as to when land or rights may be coercively appropriated. Where these enactments are applicable, appropriation is not to take place under ExL.

The special enactments relevant to land development will be considered more closely in chapter 4, but it should be noted right away that they do not render ExL insignificant. On the contrary, where compensation of property owners is concerned, the compensation rules of ExL are to be fully applied, or applied with some modification.

**2.2 Expropriation compensation**

The basic idea of the rules of compensation in the Expropriation Act is that the property owner’s wealth status must not be affected by expropriation, i.e. his economic position must in principle be the same after the expropriation as before it.

Compensation, then, is partly conditional on expropriation causing economic detriment. There is also the requirement of “adequate causality”, meaning that there must be a predictable causal connection between expropriation and the detriment.\(^5\)

Expropriation compensation is made up of several different items. Purchase money is payable for the expropriation of a property in its entirety, while


\(^5\) Thus detriment which occurs in connection with expropriation but which the property owner would have incurred even without expropriation taking place, does not qualify for compensation. For a more exhaustive analysis of adequacy assessment, see Hager (1998, pp. 265-278).
Encroachment money is payable if expropriation involves only part of a property. For other damage occurring over and above this, other compensation is payable.\textsuperscript{54}

The total expropriation damage may comprise different types of damage. Damage is of course dependent on the actual surrender of land. Another type of damage, enterprise-related damage, is caused by the way in which the expropriated land is used.

For these types of damage there are special rules if the damage is unforeseen or not readily assessable. There are also special rules for structural damage, i.e. damage occurring when work is done on the facility for which expropriation is made.\textsuperscript{55}

**Purchase money and encroachment money**

The basic rule of compensation is set forth in Chap. 4, Section 1 of ExL.

**Section 1.** For a property unit expropriated in its entirety, purchase money shall be paid to an amount corresponding to the market value of the property unit, except where otherwise indicated by the provisions made below. If part of a property unit is expropriated, encroachment money shall be paid to an amount corresponding to the reduction caused by the expropriation in the market value of the property unit. If damage is otherwise incurred by the owner through the expropriation, such damage shall also be paid for.

In addition to that, additional purchase money and encroachment money respectively of 25 per cent of the market value and reduction in the market value respectively shall be paid.

The main rule, then, is that expropriation money must correspond to the market value of the property. When part of the property is expropriated, compensation must be paid for the reduction in market value. In addition, a special “increment” of 25 per cent of the market value shall be made. This increment is justified in the following way.\textsuperscript{56}

The background is that compensation which amounts to the market value of the property or reduction in the market value cannot be considered as sufficient compensation considering the intervening consequences that an expropriation has for the property owner. Compulsory intervention of land should be done on terms more adjusted to the conditions on the market. The increment expressed as a percentage is intended to give the property owner compensation corresponding to the individual value. The notion individual value refers to the price for which the property owner is ready to

\textsuperscript{54} Chap. 4, Section 1 of ExL.
\textsuperscript{55} These latter kinds of damage will not be dealt with here any further. For a closer account, see Sjödin et al. (2007).
\textsuperscript{56} Government Bill Prop. 2009/10:162, p. 66.
voluntarily sell his or her property without threats of expropriation. This value is regularly probably higher than the market value.

**Market value**

Market value can be defined as “the price which the property would probably have fetched if placed on the market”. In practice, the estimation of market values is a complicated business, involving both theoretical problems of definition and practical difficulties of method.57 These problems will be disregarded for present purposes, but a few words will be said concerning valuation methods.58

The *local price method* means valuation with the aid of sale prices for properties of the same character as the one to be expropriated. This method requires good price statistics for comparable properties, which are often available, e.g. for normal residential properties.

The *yield method* means determining market value on the basis of an anticipated future net yield from the property, i.e. an assessment of the earnings and expenses which the property can generate in future. This method can be used for valuing properties used for commercial purposes, such as rental and commercial properties. It also applies to agricultural and forestry properties.

The *production cost method* is used mainly when none of the above methods is feasible, e.g. when there have been no other sales of comparable properties and the property in question is not a “yield property”. Churches and military buildings are two such instances. In principle the method means starting with the replacement cost, adjusted for age, wear and tear etc.

*Market simulation* involves trying to imitate the price-formation process in the market with the aid of quoted prices and/or yield value analyses. The difference between market simulation and the local price method is that the former tries to imitate the behaviour of the market while the latter refers to the outcome of market behaviour.

As has already been shown, when parts of a property are expropriated, the encroachment money must correspond to the reduction in the value of the property. This involves valuation problems of a special kind, because instead of valuing the entire property one is concerned with *marginal valuation* of it. In principle, however, the valuation methods described above can be used.

**Sundry damage and other compensation**

Compensation corresponding to the market value of the property (or the reduction in its market value) including a percentage increment does not always cover the total damage which expropriation causes to a property owner. For this reason, certain kinds of damage, *sundry damage*, not affecting the market value of the property, has to be made good by means of *other compensation*. This may

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57 See Lind (1997), discussing problems of definition, and Hager (1998), analysing the way in which a “juridical” market value is to be determined.

58 For a deeper consideration of valuation methods, see Sjödin et al. (2007).
come to be considered in two typical instances: firstly, when the property is used as a dwelling for the owner personally, and secondly when it is used for business activity.

When the property is used as a dwelling, expense may be involved in finding a replacement home. Relocation costs and title registration costs are made good, for example, by means of other compensation (NJA 1981, p. 780). Under certain circumstances, compensation is also obtainable for increased rental outgoings for a replacement dwelling (NJA 1981, p. 1025).

The expropriation of properties where business activity is carried out can have the effect of impairing the economic conditions under which the business operates, e.g. by impairing the business location. Other compensation can then be paid for an anticipated future reduction in the profits of the business.

**Enterprise-related damage and enterprise-related benefit – the influence rule**

Normally, then, compensation should emanate from the market value of the property. Under Chap. 4, Section 2 of ExL, however, exceptions are made to this rule in certain cases. The provision in question, known as the influence rule, means that the impact (influence) of the actual expropriation on the value of the property is not always to be taken into account.

**Section 2.** If the enterprise for the conduct of which a property unit is expropriated has entailed an effect of any significance on the market value of the property unit, purchase money shall be determined on the basis of the market value which the property unit would have had if such effect had not occurred, though only insofar as is found reasonable, having regard to conditions in the locality or to the general occurrence of similar effects under comparable conditions.

Enterprise influence can be instanced with land expropriated for road construction purposes. The road is then the enterprise for which expropriation takes place. The enterprise also includes the activity which will be conducted on the road, i.e. traffic.

The enterprise can generate both negative and positive effect. Enterprise-related damage can occur if the road entails inconvenience in the form of noise, dust, vibrations etc., which can have the effect of reducing the market value. On the other hand a new road can generate enterprise-related benefit in the sense of the property gaining access to better communications which enhance its market value.

**Enterprise-related damage**

Enterprise-related damage, then, is the reduction in value which can be caused by the use of the expropriated land. If a property surrenders land for a park, the effects of use may not be all that great, but if the same piece of land is to be used for building a major through road, the reduction in value may be considerable.
One basic idea underlying the influence rule is that enterprise-related
damage resulting from expropriation must be treated in the same way as similar
damage to properties which are not forced to surrender land. All properties in
the vicinity of the above mentioned through road will, for example, suffer the
same reduction in value as the property affected by the expropriation. The
owners of “the other properties” can then obtain compensation for
environmental damage under the Environmental Code (MB).\textsuperscript{59}

In order for compensation to be paid for enterprise-related damage (and
environmental damage) certain conditions must be fulfilled. Compensation is
\emph{not} payable if the disturbance to the properties is “common”. If the enterprise-
related damage or environmental damage are \textit{locally common} or \textit{universally widespread}, the property owners will normally have to put up with the reduction
in value, but the examination of what is locally common and universally widespread must always be accompanied by an \textit{equity assessment}. Enterprise-
related damage, then, may qualify for compensation even if the disturbance in
itself is regarded as “common”.\textsuperscript{60}

In addition, exceptions must always be made to the main rule for influences
which “are of no significance”, i.e. trivial reductions in value do not qualify for
compensation. The underlying idea of the so-called \textit{significance requirement} is
to avoid complicating individual cases and fix compensation at the market
value.\textsuperscript{61}

Finally, it should be noted that an increment of 25 per cent should \textit{not} be
made to the compensation that is caused by reduction in value due to enterprise-
related damage, i.e. the increment is only related to the reduction in value that
the actual surrendering of land causes.\textsuperscript{62}

It can also be noted that case law previously established a \textit{tolerance deduction} from enterprise-related damage and environmental damage
qualifying for compensation. This deduction was justified by many
property owners suffering environmental disturbances which are
“common” and thus below the qualifying threshold for compensation,
which could make it seem unfair if compensation was also paid for the
portion of the damage which other property owners had to put up with. A
standard deduction was therefore regularly made from the compensation.
Case law established this deduction at some 5 per cent of the undamaged
value of the property. However, no tolerance deduction should any longer
be made according to the amendments made to the Swedish expropriation
legislation from the 1\textsuperscript{st} of August 2010.

\textsuperscript{59} Compensation for environmental damage under Chap. 32 of MB is dealt with in section 13.
\textsuperscript{60} In the so-called Ålberga case, compensation was awarded in spite of disturbances from a
motorway being regarded as both locally common and universally widespread (NJA 2003, p. 619).
\textsuperscript{61} The significance requirement, however, makes little difference in practice, because the
significance threshold is probably quite low, a few KSEK. Cf. Axlund (1991).
\textsuperscript{62} Chap. 4, Section 2 (4) of ExL.
Enterprise-related benefit

The same principles as for enterprise-related damage apply when the influence rule is applied to enterprise-related benefit, and so in cases of this kind the rule is applied “in reverse”.

The basic rule is that if enterprise-related benefit is “common” everyone may claim it. The property owner affected by expropriation will then be spared having to “pay” for the benefit by receiving less compensation. The neighbours, after all, derive the same benefit without having to pay for it.

Typical enterprise-related benefits are the construction of a road to an area which previously had none, or a neighbourhood being connected up to public water and sewerage mains. In cases of this kind it is “common” for the properties in the area to be able to avail themselves of the benefit in the form of improved road and water supply/sewerage standards. Thus the compensation to properties having to surrender land for this “common” benefit must not be “penalised” through a lower level of compensation.

If, on the other hand, the benefit is “uncommon”, i.e. if in principle only the property affected by the expropriation can avail itself of it, then normally it is reasonable for the benefit to be deducted from the expropriation money.

Just as with enterprise-related damage, benefits which are not significant are excluded from “commonality assessment”. In other words, the property owner can always avail himself of small, trivial benefits. 63

Expectation values – the presumption rule

Another rule which was abolished by the amendments to the Swedish expropriation legislation made on the 1st of August 2010 is the presumption rule. As was shown in section 1, there may be expectations concerning a change in the way in which a property is used, and these may cause expectation values to be added to the property’s market value. This can be instanced with derelict industrial areas or old secondary-home developments where new building development is to be expected. The value of the existing land use is very low, while the value of the future development is a good deal higher. In such cases, this rule could be applicable.

This provision, commonly known as the presumption rule, meant that an increase in the market value of the property occurring after the so-called presumption point had to be presumed due to expectations (anticipation) of a change in the permitted use of the land. 64 And expectation values of this kind needed not be compensated for in connection with expropriation.

63 There have been few court cases concerning the extent to which a property owner in the individual instance must be allowed to avail himself of the enterprise-related benefit or whether the benefit must be deducted from the compensation. Sjödin et al. (2007), p. 84.

64 It is this presumption, of appreciation being due to expectations (presumptions), which gave the provision its name. The burden proof rested with the property owner, who accordingly had to establish that the appreciation was not due to expectations concerning a change in land use.
The presumption rule is to be seen against the background of social and urban developments in the 1960s and 1970s, which among other things resulted in the construction of a million new homes over a ten-year period. A lot of land was needed for housing and infrastructure development, and in order to restrain costs the land must be obtainable at the lowest possible prices. In the debate on “unmerited land appreciation” it was not considered reasonable for private property owners to benefit from this social development by cashing in on expectation values. Those values ought instead to accrue to the public sector, and so the presumption rule was added to the Expropriation Act in 1971.65

The application of the presumption rule can be instanced with a case where a property for which no detailed development plan existed was expropriated and its value was found to be almost 50 per cent due to expectations concerning an impending development (NJA 1982, p. 757). How far back in time one might go in order to disregard expectation values depended, then, on the “presumption point”. The main rule put that point at ten years prior to an expropriation permit being applied for, but there was an important exception.66 If the expropriation affected land for which there already existed a detailed development plan for private development when expropriation was applied for, the presumption point might not antedate the day on which the plan acquired force of law.67 The presumption rule and the influence rule partly overlapped, because the line of demarcation between anticipation values and enterprise-related benefit was not altogether clear. For example, was a general appreciation due to development and expropriation for communications etc. to be treated as expectation values or enterprise-related benefit?

Compensation for public places in a detailed development plan

Compensation for public places in a detailed development plan – streets/roads and green spaces – is covered by a special provision, Chap. 4, Section 3a of ExL.

Section 3a. Expropriation money for land or other space which, according to a detailed development plan, is intended for a public space shall be determined according to the planning conditions prevailing immediately before the land or space was indicated as a public space.

Compensation and valuation, then, must be based on planning conditions previous to the new plan. Accordingly, the use to be made of the property under

65 Social conditions today are partly different, and so it was asked whether the rule of presumption was not liable to give property owners “unreasonably” low compensation. See Kalbro (2003).
66 Another exception was that the presumption point may not come more than 15 years before the filing of expropriation proceedings with a court of law.
67 This exception, then, did not apply to precinct land for public building, e.g. school or day nursery plots. There the normal presumption period applied.
the new plan is to be disregarded. This provision, then, is another exception from the main rule of the Expropriation Act that compensation must correspond to the actual market value of the property or the reduction in its market value.

There is an obvious argument why the market value of the land, under the new plan, should not form the basis of compensation. When a property is designated as a public place its market value will in principle be wiped out, because there is no market for streets/roads and green spaces.

Compensation when a “public highway” is turned into a “public place”

One special instance concerns compensation for land which is a public highway but is to be converted into a public place in a detailed development plan with municipal mandatorship. In this case no compensation is payable at all.

The background to this provision is as follows. When land is used for a public highway, this is done with public road right, i.e. entitlement on the part of the road authority to use the land indefinitely. When a public road right has been granted the landowner is, in principle, compensated according to the same rules as if the land had been acquired freehold (see section 4.1.1). When the land subsequently becomes a public place the municipality must acquire it freehold and the grant of public road right will lapse. If the landowner were then to receive compensation from the municipality for surrendering the land, this would mean compensation being paid twice over for the same damage, which for obvious reasons has not been considered reasonable.

2.3 Expropriation procedure

Expropriation permit applications are normally examined by the Government. There are, however, two instances in which expropriation permits can be granted by the county administrative board, namely if the expropriation case is of minor importance, e.g. when the value of the land is negligible, and secondly, when the property owner does not object to expropriation itself but is not satisfied with the compensation which the purchaser has offered to pay.

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68 This provision, then, enshrines the principle of disregarding the value impact of the expropriation enterprise itself (cf. the influence rule in Chap. 4, Section 2 of ExL).
69 Chap. 4, Section 1 (1).
70 For the sake of clarity it should be emphasised that this section does not refer to the relationship between the Swedish Transport Administration and the municipality. The municipality taking over responsibility for the road from the Swedish Transport Administration ought not reasonably to mean the municipality having to pay compensation!
71 Chap. 3, Section 1 of ExL. Expropriation orders by the Government can be appealed in the Supreme Administrative Court under the Judicial Review (Certain Government Decisions) Act (2006:304). The review shall concern the issue of whether the decision is contrary to any legal provision of the Expropriation Act.
72 Chap. 3, Section 1 of ExL. In practice, relatively few expropriations have been handled by the county administrative board; see Lindén (1998), p. 5.
An expropriation permit application must be in writing. When the municipality is the applicant, the application must among other things include the municipal council’s decision to apply for expropriation, the use to be made of the land and current plans in support of the application, the property or properties affected by the expropriation and a list of property owners and other interested parties.

Following an expropriation permit decision, a summons application has to be filed with the Land and Environment Court, whose main task is to decide the expropriation money. The application must be made not more than one year after the grant of a permit by the Government/county administrative board. To gain time, a summons application can be filed with the court as soon as an expropriation permit has been applied for.

The summons application must contain particulars of the compensation which the municipality is willing to pay to the property owner. It must also be made clear whether the municipality wishes to take possession of the land by “simple” or “qualified advance possession”; see next section.

The land and environment court’s judgement can be appealed in the Land and Environment Court of Appeal (Svea Court of Appeal). If the issue is “important for guidance of the application of law” it can also be reviewed by the Supreme Court. When the judgement acquires force of law, property formation takes place automatically, i.e. no measures under the Real Property Formation Act need be taken.

2.4 When can possession of the land be taken?
The main rule is that the expropriating party may not take possession of the land until the expropriation money has been paid. Possession can, however, be taken earlier if an order is made for either simple or qualified advance possession.

In simple advance possession, the purchaser takes actual possession of the land but on the other hand is not entitled to take any legal measures such as property formation. Qualified advance possession confers both actual and legal right of disposal over the land, i.e. the title passes to the expropriator.

Advance possession orders are made by the land and environment court, which can also decide whether an advance is payable on the expropriation money. Usually the advance corresponds to the amount which the purchaser has offered the property owner in the summons application.

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73 Chap. 3, Section 1 of ExL.
74 Chap. 5, Section 1 of ExL.
75 Chap. 3, Section 6 of ExL.
76 Chap. 5, Section 4 of ExL.
77 Chap. 5, Section 5 of the Land and Environment Court Act.
78 Chap. 5, Section 17 of ExL.
79 Chap. 5, Section 20 of ExL.
2.5 Principles of encroachment valuation

General points of departure

Valuation is aimed at reducing market value

The reduction in the market value of a property when land is claimed for various purposes can be said to be due to two main kinds of harmful effect. One of these is connected with the actual loss of land or the circumscribing of the right of disposition.

The other main group of effects can be said to burden the residual property unit. Encroachment of this kind can, for example, consist in an agricultural property acquiring, as a result of expropriation, a configuration which renders it less suitable than previously for efficient farming. This is commonly the case, for example, when public highways are built. It can also happen that a parcel gets cut off in such a way that a longer distance has to be travelled to it. Another instance is that of outbuildings or other facilities on the property becoming oversized due to the reduction in acreage. Encroachment on undeveloped building land can, for example, mean the removal of a hedge, causing loss of privacy.

Encroachment money is payable at an amount corresponding to the impact of all effects on market value. That is the aim of the valuation indicated in the statutory text (Chap. 4, Section 1 of ExL). An increment of 25 per cent shall be made after that the division between encroachment compensation and other compensation has been made.

Evaluation methodology

The decline in the market value of a property ought, theoretically speaking, to be determined as the difference between its market value before and after the encroachment. According to this view, then, two market values have to be determined.

This way of determining reduction in market value is, however, hard to apply to small, marginal encroachments. In cases of that kind a direct estimate of the impact of the encroachment on market value is usually made, based on the detrimental effects occurring. Market simulation often plays an important part in this kind of estimate.

The travaux préparatoires of ExL also state that direct estimation can be appropriate in cases of minor encroachment:

“Sometimes, of course, e.g. when the area expropriated is only a minor portion of the entire property, it can be hard to prove any difference in

80 See SOU 1969:50, p. 175.
81 Government Bill Prop. 1971:122, p. 189. Cf. the travaux préparatoires of LL (Government Bill Prop. 1973:157, p. 138), concerning the justifiability of applying norms in cases where it is hard to prove any difference in the market value of the property before and after the claim.
market value between the undivided property and the residual property unit.
As a rule, however, it would seem fair to assume that a certain difference
exists, at least insofar as a purchaser would not be prepared to relinquish
any part of the property without a reduction of the price. Accordingly, it
appears justifiable to award compensation set, for example, at a certain
amount per square metre.”

As regards, for example, road encroachment on agricultural properties in the
form of impeded farming, one common procedure is to gauge the compensation
for encroachment on the residual property unit with the aid of market value-
related yield calculations.82 An estimate is made of the degree to which annual
earnings and expenses are affected by the encroachment, and the impact on the
property’s market value is then determined accordingly.

In connection with road encroachment on undeveloped building land, the
direct estimate is often based on determining the reduction of market value
caused by the loss of land, plot facilities and noise disturbance etc. The impact
of every such group of effects is usually estimated separately.

Judicial valuation
What we have now passed in review, e.g. the statement quoted from the travaux préparatoires, is a way of saying that valuation to determine compensation is of
a judicial nature. This perhaps need not always mean compensation being based
on a strictly economic market value. If a market value reduction cannot be
“measured” by current valuation methods as the difference in value between the
undamaged and damaged property, then, as we have seen, a certain amount of
encroachment money should be paid all the same.

Judicial valuation, then, can be said to include special elements. Against this
background, Hager has described the subject of valuation law as follows:83

The discipline of valuation law, broadly speaking, … can be said to consist
of a basic array of rules defined by each compensation provision, including
of course travaux préparatoires and other guiding legal sources. It should
be emphasised that this basic array of rules can also derive its content from
the law of damages, which in that case is incorporated in the rules.
Furthermore, some substance, with or without modifications, is taken from
the economic discipline of valuation; and finally, it should not be forgotten
that there is a procedural side which can be of greater or lesser importance
in the individual case.

Precedent shows that market value can have different meanings or be differently
interpreted in different enactments.

It must, however, be stressed that the foundation of the market value
concept in connection with expropriation is the (most) probable price, because

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82 See Norell (2001) concerning the principles for determining market value reduction in connection with encroachment on profit-yielding properties.
this is indicated in the *travaux préparatoires* of ExL. But in an encroachment situation there may, as we have now seen, be cause for making certain special allowances in the estimation of value.

Furthermore, it is reasonable that the *procedural* provisions for cadastral procedure, when the property owner does not need to claim compensation, can justify the application of valuation methods in such a way that the property owner does not risk being under-compensated. In utility easement procedures, for example, valuation norms or templates are commonly used for determining compensation. Valuation methods of this kind, then, should be constructed so that the property owners will not be adversely affected by the uncertainty of valuation. Putting it differently, encroachment money should be determined with a certain margin of legal security.\(^\text{84}\)

**A general valuation model**

With the compensation rules of Chap. 4 of ExL in mind, the following basic valuation model can be presented (see figure 8 below). The figure illustrates how effects of different kinds should be dealt with in the determination of encroachment money.

The model describes – in terms of compensation law – the procedure from encroachment effects to compensation amount. By *effect* here is meant “physical” damage to the property or some other perceived consequence, e.g. more difficult farming or crop reduction caused by an electricity pole or pylon on arable land or the loss of a certain amount of undeveloped (buildable) land (= physical damage). The effect may also take the form of impairment of a view or immissions from an overhead power transmission line or noise from a road traversing a housing property (= perceived consequence).

\(^{84}\) See Norell (2001), pp. 177 ff. concerning the possible reasonability of a margin of legal security being built into template methods used for cadastral valuation, considering that the property owner must be able to adopt a passive stance, in the assurance of receiving full compensation. Part of the reason for this view of the matter is that no two valuing situations are alike and no one should need to risk being under-compensated due to a template method being used in the valuation.
Bearing in mind the influence rule in Chap. 4, Section 2 of ExL, it is necessary to distinguish between, on the one hand, effects caused by the transmission and on the other, effects caused by the enterprise. Effects of the latter kind, e.g. the spoiling of a view or the emission of noise, as mentioned above, are due to the enterprise. Damage of this kind qualifies for compensation only if certain criteria are met. Moreover, it is doubtful whether other compensation occasioned by the enterprise, e.g. for the effect on a restaurant business of a spoiled view, can be paid under the provisions of Chap. 4 of ExL. But sundry damage of this kind can, where appropriate, qualify for compensation under the rules of Chap. 5, Section 3 of ExL and the corresponding provisions of Chap. 5, Section 12 c of FBL, Section 13 c of LL and Section 13 c of AL.

These last mentioned provisions are also applicable to structural damage, which has been specially delineated in the figure above. In connection with the grant of a utility easement, for example, damage to pre-existing buildings may be caused by blasting operations when the utility is under construction. To take another example, perhaps people constructing the utility go outside its proper area, causing damage, say, to growing crops.

Damage to growing crops within the utility area, on the other hand, is damage caused by the grant of easement and qualifies for compensation under the main rule in Chap. 4, Section 1 of ExL.

Both the grant of easement and the enterprise can have effects leading to damage which is hard to assess, e.g. if an underground utility affects wells. Damage of this kind can, on request, be examined later on where appropriate. Even if the figure does not show as much, in principle the future assessment

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procedure for damage which is hard to assess can be the same as for “ordinary”
damage caused, respectively, by the grant and the enterprise.

In particular, encroachment effects caused by the grant on profit-yielding
properties are normally of such a kind as to impact on both the market value
of the property and its economic yield. The encroachment money, the reduction
in the value of the property, is separately determined by a method appropriate
to the purpose. The best and safest way of judging whether sundry damage, other
compensation, is involved is for this to be computed as a residual item.

But there may be effects which are of such a kind that they cannot affect the
market value of the property. This applies in principle to purely personal
damage, e.g. relocation costs. These, then, can only give rise to sundry damage –
not to any reduction in market value – and so they do not need to be included
first in the total damage. (Hence the dashed arrow in figure 8 above.)
3 The Real Property Formation Act

Chap. 1, Section 1 of the Land Code (JB) provides the basic definition of what a property unit is:

Section 1. Real property is land. This is divided into property units. A property unit is delimited either horizontally or both horizontally and vertically. Special provisions apply concerning property formation.

The “special provisions” mentioned in the section is the Real Property Formation Act (1970:988, FBL). The changes in property division etc. that occur in connection with land development are thus governed by FBL. Property formation is thus a measure whereby (1) the division into property units is amended, (2) easements are formed, amended or cancelled, (3) joint properties are formed and (4) a building or other facility belonging to a real property unit (fixture) is transmitted to another property unit/facility.

FBL property formation measures are of two kinds: formation and reallocation of property units. These measures will be dealt with in the two following sections.

3.1 Formation of new property units

Formation of a property unit always implies the creation of a new property unit with a new property designation.

Formation of (new) property units can take place in three ways. (a) Subdivision means the division of an existing property into two or more property units. (b) Partition also means the subdivision of an existing property, but subject to the property having more than one owner. (c) Amalgamation means joining several properties together to form a single property unit. Only subdivision is dealt with here, since partition and amalgamation are rare measures in connection with land development.

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86 In Chap. 1, Section 1a JB the real property concept is further defined. Three-dimensional property unit is a property unit which in its entirety is demarcated both horizontally and vertically. Three-dimensional property space is a space included in a property unit other than a three-dimensional property unit and delimited both horizontally and vertically. Ownership apartment property unit is a three-dimensional property unit which is not designated to accommodate anything but one single dwelling. Chap. 2 JB defines what property fixture is, inter alia buildings, utilities and other facilities constructed within the property for permanent use.

87 Chap. 1, Section 1 of FBL.

88 Chap. 2, Section 12 of FBL.

89 Cf. Chap. 11 and 12 FBL. For a more complete illustration of the provisions of FBL, see Julstad (2005) and Bonde, Dahlsjö & Julstad (2007).
By subdivision an area of land or water can be hived off from a property unit. The area hived off is called a *lot* and the remainder of the property is called a *residual property unit*. In the below figure, the new property unit 4:33 (the lot) is parcelled off from the residual property unit 4:21.

Subdivision can be initiated in two different ways. Firstly, it can be applied for by the property owner, who will then become the owner of both the residual property and the lot/lots. This is common, for example, in connection with land development of the kind where the developer sells off detached, terrace houses or ownership apartments. Another possibility is for someone to buy an area of land on a property and then to apply for subdivision. In this case, in order for title to pass conclusively, subdivision must conform to the documents of sale.

### 3.2 Reallotment – re-formation of properties

Reallotment can mean e.g. *land transmission* between properties and formation, amendment and cancellation of *easements*.

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90 Provisions on subdivision are contained in Chap. 10 of FBL.
91 Chap. 10, Section 1 of FBL.
92 Lot and residual property unit each constitute a *subdivided part*.
93 In order for the purchase to be valid, subdivision must be applied for within six months of the contract of sale being drawn up (Chap. 4, Section 7 of the Land Code, JB). The validity of the purchase is also conditional on subdivision in accordance with the documents of sale being feasible, having regard to the requirements of Chap. 3 of FBL concerning the suitable design of property units (See section 5.3).
94 Chap. 5 FBL. As part of the reallotment process, *joint property units* can also be formed (Chap. 6 FBL), certain *fixtures* can be transmitted from one property unit to another and *“common works”* can be undertaken; see Chap. 9 of FBL. However, these provisions are of
**Land transmission**

Land transmission means the transfer of land from one or more properties to one or more other properties. Boundary changes of this kind are normally necessary as a part of land development, in order for detailed development plans to be implemented. For example, land may need to be transferred from individual properties to a street or road, and plot boundaries between property units may need to be adjusted. The below figure illustrates a transmission of land where the property unit 1:7 acquires land from the adjacent property unit for the purpose of forming a larger and more suitable plot.

The rules of reallocation have been tailored to and co-ordinated with other legislation so as to make them a truly efficient means of planning implementation.\(^5\) Reallocation thus is a practical expedient also used, almost without exception, where other legislation applies, e.g. for the transmission of land for public places under PBL (see section 4.1.2).

**Easements**

An easement entitles one property (the dominant property) to use another (the servient property) of an indefinite period. In other words, it is an allocation of rights between property units.\(^6\)

Under Chap. 7 of FBL, an easement can be created entitling one property to use another, e.g. for a road or a water/sewerage main.\(^7\) One prerequisite for the creation of an easement is that it has to be “of substantial importance” for the property unit.\(^8\)

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5. As with the Expropriation Act, *advance possession* of the land can be resolved on (Chap. 5, Section 30 a of FBL). Normally, an advance possession order is always possible if the land transmission is based on a detailed development plan.

6. If a person is entitled to use a property, e.g. as a lessee, this is a right of user.

7. Easements can also be amended and cancelled under FBL. Provisions on this subject are contained in Chap. 7, Sections 3-6 but will not be dealt with here.

8. Chap. 7, Section 1 of FBL. According to Chap. 7, Section 2 of FBL, FBL easements may
Provisos to safeguard private interests

Reallotment includes coercion, in that a property owner can be compelled to surrender land or to grant an easement in his property. In order for coercion to be permissible, certain conditions have to be met.

- The *benefit proviso* requires the benefits of reallotment to outweigh the expense and inconvenience.\(^{99}\) The *benefit proviso* guarantees that no property owner will be compelled to surrender his land if the measure is not conducive to a total improvement of the properties affected. Reallotment, must be justifiable in terms of property economics or, in other words, generate a “gain”.

- The improvement proviso requires the applicant’s property to be improved as a result of the reallocation.\(^{100}\)

- The opinion proviso means that reallotment may not take place if the property owners affected are more generally opposed to it and have “notable reasons” for objecting to it.\(^{101}\)

- Building protection means that land with buildings on it may not be transferred to another property, unless the building is of negligible value.\(^{102}\)

- *Property protection*, in general terms, means that the possibilities of using the properties involved must not be impaired.\(^{103}\) The size of the property units must not be reduced or increased in such a way as to cause “significant inconvenience”.

The protective rules which have now been mentioned are optional, i.e. derogation from them is possible if the property owners concerned are agreed and the suitability provisos in Chap. 3 of FBL are satisfied (see section 5.3).\(^{104}\)

Special rules apply to reallotment for the implementation of *detailed development plans* under PBL. Land may be appropriated for public places, not be created, however, if easements can be created under the Utility Easements Act, and road easements for a property that can be created under Section 49 of the Joint Facilities Act (unless the easement is created in connection with some other property formation measure, e.g. subdivision).

\(^{99}\) Chap. 5, Section 4 of FBL. Cf. the corresponding provision in Section 6 of AL.

\(^{100}\) Chap. 5, Section 5 of FBL. This provision is primarily concerned with major revisions of division into property units associated with the structural rationalisation of agriculture and forestry. The purpose of the provision is for the reallocation not to be made more sweeping than necessary.

\(^{101}\) Chap. 5, Section 5 of FBL. The opinion proviso will not apply, however, if the need for reallocation is “particularly urgent”.

\(^{102}\) Chap. 5, Section 7 of FBL.

\(^{103}\) Chap. 5, Section 8 of FBL.

\(^{104}\) Chap. 5, Section 18 of FBL. In addition, mortgagees/creditors must suffer no detriment; see Chap. 5, Section 16 of FBL.
“public plots”, public utilities, public traffic facilities and traffic facilities that are common for several property units building and property protection provisos notwithstanding. Corresponding rules apply concerning land to be included in a new plot in a detailed development plan and land included in a railway plan.

Compensation in connection with property regulation

The procedure whereby compensation is determined is called reallocation compensation evaluation. Then Chap. 5, Section 10 a of FBL is to apply.

Chap. 5, Section 10 a. In the valuation of property the provisions of subsections two and three are to apply.

In the valuation of property which can be requisitioned under Chap. 14, Section 14, 15, 16, 17 or 18 of the Planning and Building Act and in valuation in other cases where it is obvious that the property could instead have been requisitioned through expropriation or by some other, similar compulsory purchase, Chap. 4 of the Expropriation Act is to apply.

In the valuation of property which could not have been requisitioned as said in subsection two, Chap. 4 of the Expropriation Act is to apply with the exception of Section 1(2) and, in case of increase in property value, Section 2. Reasonable consideration shall also be had to the special value which the property has to the succeeding property unit.

Subsection two and three requires compensation to be paid in accordance with two different principles – what is usually described as compensation as “damages” and compensation as “profit-sharing” respectively.

Compensation as damages

Compensation in accordance with the compensation rules of ExL refers mainly to the planning implementation cases provided for in Chap. 14, Sections 14-18 of PBL, namely land which is to be used for (1) public places in a detailed development plan and building land for “public” development, (2) public roads under the Roads Act and also (3) precinct land (areas for building sites), for a public utility or a public traffic facility and for a traffic facility common to several properties.

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105 Chap. 5, Section 8 a of FBL. That is, land which would be purchased by authority of Chap. 6, Section 17 of PBL and easements for public traffic facilities as referred to in Chap. 14, Section 2 of PBL.
106 Chap. 5, Section 8 b of FBL.
107 Chap. 5, Section 8 b of FBL.
108 For a comprehensive in-depth discussion of these rules of compensation, see Kalbro & Sjödin (1993) and Sjödin et al. (2007).
109 Chap. 5, Section 10 of FBL.
110 Chap. 14, Section 14-15 of PBL.
111 Chap. 14, Section 16-17 of PBL.
112 Chap. 14, Section 18 of PBL.
Other situations in which the land could obviously have been requisitioned by expropriation (or some other such compulsory purchase process) must also be dealt with according to the rules of ExL. The purposes for which compulsory purchase is possible by expropriation are set forth in Chap. 2 of ExL (see section 2.1). This applies above all to cases where the purchaser is the State or a municipality and the purpose is clearly indicated in Chap. 2 of ExL.\(^{113}\)

**Compensation as profit-sharing**

“Profit-sharing” cases are defined, under Chap. 5, Section 10 a (3), as a “residual item”. Thus it must not be manifestly possible for land to be acquired under Chap. 14, Sections 14-18 of PBL or by expropriation.

In these cases, the profit of the reallocation must be apportioned between the property owners concerned. In these cases too, the statutory wording requires the party surrendering land to be compensated for the reduction in land value, but as part of the valuation “reasonable allowance” is also to be made for the value to the successor. A reasonable share of the profit arising out of the acquisition must therefore be added to the reduction in value. Reasonable apportionment of profit means that level of compensation which would normally have resulted from a “normal voluntary agreement” in the corresponding situation.\(^{114}\)

Since the reallocation as a whole must generate a benefit (Chap. 5, Section 4 of FBL), this also makes it possible for compensation to be awarded on such a level as to achieve a distribution of the total benefit between the parties respectively surrendering and acquiring land.

In order for a transmission of land to generate a benefit, the value of the land to the successor must exceed its value to the surrendering party.

The principle of profit-sharing can be illustrated as follows. Suppose the rise in the value of the successor’s property due to the land transmission amounts to SEK 50,000. Perhaps, for example, a property has been given access to a source of water supply. The reduction in the value of the surrendering party’s property is a good deal less, about SEK 5,000. The benefit is thus SEK 50,000 – SEK 5,000, i.e. SEK 45,000. When the benefit is apportioned, the compensation must come somewhere between SEK 5,000 and 50,000. Would a “normal voluntary agreement” between the property owners give something between SEK 25,000 and 30,000, i.e. roughly equal shares of the benefit? This level of compensation can be compared with the rules of the Expropriation Act, under which the compensation should be equal to the reduction in value of the property of the surrendering party, plus 25 per cent. In our illustrative example this would mean SEK 5,000 plus SEK 1,250, i.e. SEK 6,250!

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\(^{113}\) Expropriation permits are also obtainable by private parties, but this is very rare in practice and would therefore not seem classifiable as an obvious case other than in situations of a rather special kind.

3.3 Profit-sharing

The legislation makes it abundantly clear that economic damage in a land claim situation must be made good, but when determining compensation under FBL and AL, it is not only the damage which has to be made good in certain cases. In addition, a *reasonable apportionment of benefit* has to be effected between the party surrendering and the party acquiring the property affected.

**Example**

The difference between profit-sharing and compensation under ExL can be illustrated by the following simple example.

A parcel of arable land is transferred by reallocation from property A (vacating party) to property T (succeeding party). The value of the parcel to A is SEK 50,000 while to T it is SEK 70,000, the difference in value being due to T having a far shorter distance to go to the parcel. Thus the benefit of the measure amounts to SEK 20,000.

Compensation to A can be determined under FBL as an amount in between SEK 50,000 and 70,000. If the value is put at SEK 50,000, the successor reaps the entire benefit, in keeping with the rules of expropriation. If it is set at SEK 70,000, the entire benefit accrues to the vacating party. Compensation in between these two awards results in the benefit being shared between the properties.\(^\text{115}\)

**The regulatory system**

The system of profit-sharing is dealt with in Chap. 5 of FBL. Reference, in Section 13 of AL, to the FBL rules of compensation makes clear that profit-sharing is also to be effected when setting compensation under AL.

Chap. 5, Section 10 of FBL lays down that pecuniary compensation is to be paid if, as a result of reallocation, a property is made to surrender more land, joint property unit shares or easements than it gains from the process.

*Section 10.* If the value of the land and the shares in joint property units added by reallocation to a property unit do not correspond to the value of what is taken from the property unit through the reallocation, the difference is equalised through compensation money. A change in value occasioned by an easement measure or by a building or other structure passing to another owner as a result of the reallocation is equalised in the same way.

Compensation as aforesaid is determined on the basis of valuation (reallocation compensation).

The procedure whereby compensation is determined is thus termed *reallocation compensation*. The basic rule is that reallocation compensation is to be governed by the provisions of Chap. 4 of ExL. This is made clear in Chap. 5, Section 10 a of FBL.

\(^{115}\) For the sake of simplicity, we have disregarded the fact of the apportionment of benefit also being affected by the apportionment of procedural (settlement) costs.
Chap. 5, Section 10 a. In the valuation of property the provisions of subsections two and three are to apply.

In the valuation of property which can be requisitioned under Chap. 14, Section 14, 15, 16, 17 or 18 of the Planning and Building Act and in valuation in other cases where it is obvious that the property could instead have been requisitioned through expropriation or by some other, similar compulsory purchase, Chap. 4 of the Expropriation Act is to apply.

In the valuation of property which could not have been requisitioned as said in subsection two, Chap. 4 of the Expropriation Act is to apply with the exception of Section 1(2) and, in case of increase in property value, Section 2. Reasonable consideration shall also be had to the special value which the property has to the succeeding property unit.

Subsection two and three, then, requires compensation to be paid primarily for the decline in market value which the reallocation implies for the properties affected. The valuation process, however, distinguishes between two different valuation cases.

When profit sharing is not to be applied – indemnification cases

If the measure is of such a kind that it could have been taken by authority of other legislation under which the ExL rules of compensation would have been applicable, the rules of indemnification in Chap. 4 of ExL are also to be fully applied to cadastral procedures under FBL and AL. Chap. 5, Section 10 a (2) of FBL defines the cases to be counted as “indemnification cases”.

Compensation in accordance with the compensation rules of ExL refers mainly to the planning implementation cases provided for in Chap. 14, Sections 14-18 of PBL, namely land which is to be used for (1) public places in a detailed development plan and building land for “public” development\(^{116}\), (2) public roads under the Roads Act\(^{117}\) and also (3) precinct land (areas for building sites), for a public utility or a public traffic facility and for a traffic facility common to several properties.\(^{118}\)

Other situations where the land could obviously have been claimed through expropriation or some other such form of compulsory purchase have to be dealt with, however, according to the rules of ExL.

The purposes for which compulsory purchase through expropriation is possible are set forth in Chap. 2 of ExL. In each individual case, then, an assessment has to be made as to whether expropriation would have been a possible option. Above all this concerns cases where the purchaser is the state or a municipality and the purpose is clearly stated in Chap. 2 of ExL. It is also possible for a private individual to obtain an expropriation permit, but this very

\(^{116}\) Chap. 14, Section 14-15 of PBL.
\(^{117}\) Chap. 14, Section 16-17 of PBL.
\(^{118}\) Chap. 14, Section 18 of PBL.
rarely happens in practice and is therefore unlikely to be classifiable as an *obvious* case other than in very special situations.\textsuperscript{119}

The precise meaning of “some other such form of compulsory purchase” has not been defined in the *travaux préparatoires*, and so whether or not coercion could have been resorted to under any of the other real property enactments available is a matter to be decided on the merits of each individual case. Claiming of land for railways, however, is one instance of a situation regularly referable to indemnification cases, because land for this purpose can otherwise be claimed under LBJ. Another common cadastral situation connected with railways is the cancellation of right-of-way easements (for the closure of level crossings). Cases of this kind are also classed as indemnification cases, either because the closure is governed by a railway plan, in which case the land claim rules of LBJ are applicable, or else – in the absence of a railway plan – because expropriation is an alternative way of cancelling right-of-way easements encumbering a railway property.

On the other hand, compulsory purchase under Chap. 8 of FBL, i.e. transmission of land for the purpose of land consolidation or compulsory purchase of land within a detailed development plan regulating property division\textsuperscript{120}, does *not* count as an expropriation case in this connection. The same goes for compulsory purchase under Section 12 of AL. In these situations, then, profit-sharing must take place, because indemnification cases are those in which compulsory purchase could *alternatively* take place by authority of *other enactments* than FBL or AL.\textsuperscript{121}

**Profit-sharing cases**

Profit-sharing cases are “conversely” defined according to Chap. 5, Section 10 a (3). These, then, are situations which *cannot* be classed as indemnification cases. Thus it must not be manifestly possible for the property to be acquired under Chap. 14, Sections 14-18 of PBL or by expropriation or any other such form of compulsory purchase.

In practice, profit-sharing cases are not a small residual item but many in number, and include some of the very commonest cadastral measures. The following cases are among the most frequent:

*Plot formation.* By this we mean land transmission in order to create or enlarge property units. Easement grants and the formation of joint facilities – to “equip” development plots with roads, utilities etc. – also come under this heading.

\[\text{\textsuperscript{119} Enlargement of a property for a major industrial facility or a nuclear power station might conceivably constitute a special case of this kind.}\]

\[\text{\textsuperscript{120} I.e. compulsory purchase under Chap. 8, Sections 1 and 4 respectively of FBL.}\]

\[\text{\textsuperscript{121} Compulsory purchase under Chap. 8 of FBL or Section 12 of AL can, however, affect land which could be acquired by compulsory purchase under *other* statutory rules, e.g. for a public place within a detailed development plan. Situations of this kind are then classified as indemnification case, due, not to the possibility of compulsory purchase under AL/FBL but because of the *alternative* faculty of coercion.}\]
Reallocation of agricultural and forestry properties, i.e. land transmissions and changes of easement status and joint property participatory shares for “rural” properties. Road cadastral procedures under AL also belong to this category.

In these and other “non-indemnification cases”, the benefit of the completed reallocation must be apportioned between the properties affected. In these cases too, the statutory wording requires the vacating property to be compensated for its loss of market value, but for evaluation purposes “reasonable consideration” shall also be had to the value to the successor. To the assessed reduction in value, in other words, must be added a reasonable portion of the benefit resulting from the measure. The travaux préparatoires make clear that reasonable apportionment of benefit means the level of compensation which would normally have resulted from a “normal voluntary agreement” in the corresponding situation.122

In profit-sharing cases too, then, valuation with regard to the vacating property must be principally based on the provisions of Chap. 4 of ExL. Thus the point of departure is that the owner of the vacating property must be compensated for the reduction in market value which the reallocation entails, but that reduction in value is not to be determined altogether according to the principles of ExL. No increment of 25 per cent shall be made to the compensation in the profit-sharing cases.

The rules of “enterprise-related benefit” in Chap. 4, Section 2 of ExL are not to be applied to profit-sharing cases. Accordingly, in cases of this kind there is no cause to question the reason for an observed rise in value. Compensation must always at least equal the current market value, and positive value influence resulting from the reallocation enterprise and expectation values will therefore always be credited to the vacating property.

The rules concerning “enterprise-related damage”, however, are applicable. Thus, even in profit-sharing cases, negative influences of the reallocation enterprise are to be made good insofar as they are not locally common or universally widespread.

Adjustment of compensation

Chap. 5, Section 1 of FBL contains a special provision enacted to ensure that an individual property cannot be burdened with a loss or reap an unfairly large benefit. If there is a benefit to be apportioned, then obviously it is not reasonable that one party should reap a greater benefit at the expense of another party who incurs a loss.

Section 11. If the reallocation is conducted in such a way that the owner of a property unit suffers loss due to the value of the property unit being reduced without his being able to obtain indemnification under other provisions, or due to his being required to pay an amount exceeding the

increase in value of the property unit, the result of the economic settlement as referred to in Section 10 shall be adjusted in such a way as to cover the loss. If the compensation, calculated as provided in Section 10, for what is taken from the property unit through transmission, substantially exceeds the loss of value which the transmission implies for the property unit, adjustment shall be made if this is equitable, having regard to the circumstances.

If the cost of acquiring property used in the reallocation to reinforce a property unit does not tally with the reallocation compensation, adjustment shall also be made as aforesaid, except where this entails considerable inconvenience to an interested party.

It may seem odd, the legislator finding a special provision necessary concerning adjustment of compensation for the avoidance of a loss. Cannot this question be “automatically” disposed of in the apportionment of benefit? Besides, it is already clear from Chap. 5, Section 10 a (1) of FBL that the provisions of ExL are to apply. From this it should follow that compensation can never be less than the amount required to cover all damage (losses).

This provision, however, has to be viewed against the background of “indirect profit sharing”, which in practice is one of the usual ways of achieving profit-sharing under FBL/AL. With this kind of apportionment, the benefit is determined without the changes in the values of the properties affected being determined in detail. Adjustment may therefore be a necessary safeguard, both for the party who is to pay compensation in a profit-sharing situation and for the party who is to receive such compensation.

Sundry damage

Reallocation can of course entail damage of a more personal nature which cannot be made good through the payment based on market value. Insofar as this is economic damage, it must be compensated for as provided in Chap. 5, Section 12 of FBL.

Section 12. If in the course of reallocation damage is incurred by an interested party for which compensation is not paid under Section 10 or 11, that damage shall also be compensated for.

If the holder of a right which reduces the value of the property units is entitled to compensation under subsection one, the reallocation compensation credited to the owner of the property unit shall be reduced by the amount equaling the reduction entailed by the right in the value of the property unit. If the reallocation compensation cannot be reduced without damage being incurred by the holder of a preferential claim, the compensation to the holder of a right shall instead be reduced by the corresponding amount.

Liability to pay compensation not matched by a reduction of reallocation compensation as referred to in the foregoing is apportioned between the interested parties according to what is reasonable, having regard to the
benefit they derive from the reallocation being conducted in such a way that compensation is to be paid.

This section mainly corresponds to the provisions of Chap. 4, Section 1 of ExL concerning damage to be made good through other compensation. A particular problem arises, however, if damage of this kind occurs in a profit-sharing case. Is profit-sharing to take place before or after the “sundry damage” has been made good? The legislator maintains that any “sundry damage” should be compensated for only insofar as it is not covered by the property owner’s share of the reallocation benefit. In other words, the property owner affected must in the first instance cover his personal detriment out of his benefit (gain).123

Expenses

The increase in value is shared between the properties concerned by means of the compensation referred to in Chap. 5, Sections 10-11 of FBL. Another vital piece of the profit-sharing jigsaw, however, is concerned with the apportionment of costs, i.e. primarily procedural costs. The procedure for this is laid down in Chap. 5, Section 13 of FBL, which stipulates that costs are to be apportioned according to the benefit which each property unit derives from the reallocation.

Section 13. The cost of reallocation is paid by the interested parties according to what is equitable, having regard above all to the benefit derived by each interested party from the reallocation.

If it is appropriate, the cost of each particular measure may be separately apportioned. If the measure could have been taken apart from the reallocation and another basis for apportionment of the cost would then have applied, that basis may be applied.

Agreement on compensation

All the provisions quoted here are optional and can be derogated from if an interested party affected consents to the derogation. Freedom of agreement, however, is limited by the rule that the cadastral authority may not accept consent which can impair security pledged with mortgagees of the properties concerned. In cases of that kind, a separate valuation must be carried out by the cadastral authority.124

Basic principles and methods

In order for profit-sharing to take place, there must be an increase in value resulting from the reallocation. This can be a matter of arable land being transferred to a plot, the cancellation of an easement making it possible for land to be built on, the division of forest land into property units being improved on or land on a shoreline being granted for a joint mooring facility.

124 Chap. 5, Section 18 of FBL.
The total appreciation of the properties affected is called “advantage”. More exactly, advantage is the market values of the properties after the measure minus their market values if the measure had not been taken.\textsuperscript{125}

To achieve this advantage, costs (C) have to be defrayed, mainly procedural (settlement) costs. In more particular cases there may also be the cost of work done collectively in connection with the cadastral procedure.\textsuperscript{126} In this connection, however, costs do not include those incurred by the property owners in connection with attending a cadastral procedure, the cost of legal advice or representation or other “procedural costs”.

Subtracting these costs from the advantage, we arrive at the benefit (B) which the reallocation entails:

\[ B = A - C \]

Thus the apportionment of benefit between the property owners concerned hinges on the apportionment of the advantage (total appreciation) and also of costs. Advantage is distributed by means of a compensation order. Chap. 5, Section 13 of FBL lays down that costs are to be apportioned commensurately with the benefit (advantage) derived by each property owner. In this way the property units’ shares of the benefit will be the same as their share of the advantage. The sum total of orders, then, will govern the outcome for the individual property owner, and a normal case can be illustrated as in figure 9 below.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{basic_principles_of_profit-sharing}
\caption{Basic principles of profit-sharing.}
\end{figure}

\textsuperscript{125} The portion of the appreciation which the market cashes in on “in advance” in the form of expectations concerning the measures is thus included, purely in terms of principle, in the reallocation benefit.

\textsuperscript{126} E.g. “common work” as referred to in Chap. 9 of FBL.
For the affected properties A and B, the outcome of profit-sharing can be expressed as follows:

A’s benefit = Appreciation – Compensation – Share of costs

B’s benefit = Compensation – Depreciation – Share of costs

The further, detailed course of profit-sharing was discussed fairly thoroughly when the FBL compensation rules were being worked out in the 1950s and 1960s. Confining our attention to what is interesting at the time of writing we may note that there are two different basic methods for apportioning the benefit in connection with a reallotment (or partitioning or a facility procedure). Either the cadastral authority procures information concerning the depreciation and appreciation of the properties concerned and decides how, according to some express principle of apportionment, the benefit is to be shared between vacating and succeeding properties (direct profit-sharing), or else a valuation process of this kind is impossible or for other reasons not really appropriate. In this latter case the cadastral authority, without looking any further into the changes in the values of the properties affected, may determine the compensation for an area according to a certain principle, with the result that it will not be clearly stated how the benefit is actually to be distributed (indirect profit-sharing). The possibility of using both these essentially different forms of profit-sharing when settling compensation was made abundantly clear by the reform of the FBL compensation rules in 1993.

**Direct profit-sharing**

Direct profit-sharing, then, means the benefit being distributed according to a particular “distribution key” governing the benefit shares of the parties. One then needs to know how much the vacating property has declined in value and how much the succeeding property has appreciated, i.e. the size of the benefit.

In absolutely direct apportionment, the appreciation is distributed first, followed by the costs. Both distributions have to be made in accordance with the same distribution key. Otherwise the benefit will be apportioned by a combination of the distribution keys chosen.

**Indirect profit-sharing**

Indirect profit-sharing means that the changes in the values of the properties affected need not be studied in greater detail. Instead the compensation is determined according to a separate basic principle which can be considered to meet the requirement of a fair apportionment of benefit between the property owners affected. The most typical indirect methods used in practice are the

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average value principle and, secondly, the methodology employed for land consolidations.

Since with indirect profit-sharing the compensation is determined without the changes in the values of the properties being calculated, it can happen that the final outcome for a certain property is unreasonable, in which case the compensation has to be adjusted with the aid of Chap. 5, Section 11 of FBL.

**Equitable profit-sharing**

The basic principle of profit-sharing is that it must be “equitable”. The *travaux préparatoires* state that the definition of what is equitable has to be decided on the merits of each individual case, according to the principle that the benefit should be apportioned in the way it would have been in a “normal voluntary agreement”. But the *travaux préparatoires* do not go into any further detail as to the meaning of this. The situation on which the assessment is to be based would seem in principle to be an agreement for the transfer of land between a “normal” purchaser and seller.

Only in one instance do the *travaux préparatoires* furnish any more concrete instructions as to the appropriate outcome of the equity assessment, namely that the “average value principle” is to apply with regard to land for private building development. In other situations there are neither *travaux préparatoires* guidelines nor Supreme Court case law to which reference can be made. In these “other cases”, then, we are thrown back on assessment of the individual case on its merits, starting with the basic declaration that the compensation must resemble a voluntary agreement.

How do property owners’ minds actually work in different situations? This question has been studied in a number of “negotiation experiments” concerning various situations to which the FBL profit-sharing rules are applicable. The negotiations concerned land acquisition in connection with the formation of plots for new building development, and easement measures.\(^\text{129}\)

From these negotiating experiments we may conclude, firstly, that buyer and seller do not share the benefit equally between them, as one might initially expect. Secondly, there is no unambiguous distribution key for the apportionment of the benefit between the parties; instead the apportionment appears to hinge on the land purchase situation. For example, the agreed remuneration appears to be lower if the purchaser’s need of land is perceived as “urgent” by the parties. Thirdly, the survey indicates a general rule of distribution whereby the final agreement comes as the result of a “two-stage process”.

- Both seller and purchaser present opening bids which can be justified by some general (fair) distribution principle. But because both parties want as large a share of the benefit as possible, they opt for a principle favouring

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their own interests, subject to the restriction that this principle must also be accepted by the opposite number.

- Proceeding from these opening bids, purchaser and seller then meet halfway.

Purchaser and seller appear, then, to be “egoists”, but their egoism is circumscribed by social, cultural, ethical and other norms concerning what is “reasonable and fair” behaviour in different situations.¹³⁰

The experimental cases concerning acquisition of land in connection with the formation or enlargement of plots will not be dealt with here any further, since they are primarily to be viewed as a test of the equitability of the so-called average value principle.

Concerning the creation of easements, three different cases were tested. On average the negotiations resulted in the vacating party obtaining 1/3 of the benefit and the successor 2/3.

<table>
<thead>
<tr>
<th>Cases</th>
<th>No. agreements</th>
<th>Profit share to vacating party</th>
<th>Standard deviation</th>
<th>Confidence interval (99 %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>47</td>
<td>0.34</td>
<td>0.15</td>
<td>0.28 – 0.40</td>
</tr>
<tr>
<td>2</td>
<td>15</td>
<td>0.29</td>
<td>0.13</td>
<td>0.21 – 0.37</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>0.36</td>
<td>0.13</td>
<td>0.26 – 0.46</td>
</tr>
<tr>
<td>Total</td>
<td>72</td>
<td>0.33</td>
<td>0.15</td>
<td>0.29 – 0.37</td>
</tr>
</tbody>
</table>

Concerning the cancellation of easements, two different cases were tested. On average the negotiations resulted in the vacating party obtaining 1/4 of the profit and the successor 3/4.

<table>
<thead>
<tr>
<th>Cases</th>
<th>No. agreements</th>
<th>Profit share to vacating party</th>
<th>Standard deviation</th>
<th>Confidence interval (99 %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>13</td>
<td>0.22</td>
<td>0.16</td>
<td>0.11 – 0.33</td>
</tr>
<tr>
<td>2</td>
<td>20</td>
<td>0.25</td>
<td>0.11</td>
<td>0.19 – 0.31</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>0.24</td>
<td>0.13</td>
<td>0.18 – 0.30</td>
</tr>
</tbody>
</table>

Summing up, then, we can say that the “seller” obtained roughly one-third of the profit of the easement measure.

Implementation

Looking at implementation over the years – including a number of judicial decisions, most of them at appeal court level – one finds several cases where the apportionment of benefit, according to the basic concepts of equity and the comparison with the voluntary instance, has, quite independently and without

¹³⁰ We will not go any further here into the underlying ethical ideas applied to reallocation. Instead, see Kalbro & Sjödin (1993).
reference to any particular basic principle, been set at what was judged equitable in the particular case. But there are six more or less frequent distributive principles which crystallise out.

- **The average value principle**

This indirect method, which as we have seen is touched on in the *travaux préparatoires*, and which has been reaffirmed in two Supreme Court decisions, is applied to matters of “plot formation”, i.e. reallocation of land for private building development and for the creation of rights in certain fixtures on such land.

- **Apportionment according to the change in the value of the properties**

This is a direct method of apportionment and is mainly used in connection with easement measures.\(^\text{131}\) The method was launched in a report by the National Land Survey in 1978\(^\text{132}\) and it was also proposed that the method should be codified by statute.\(^\text{133}\) The method was advocated on the grounds, for example, that it is primarily the successor who “creates” the benefit, so that it is reasonable for the property with which the possibility of benefit is most immediately associated and for which the change in value is therefore greatest to obtain a larger share of the benefit. Of course, there are also arguments against the principle, e.g. that the vacating party – whose participation, after all, is a *sine qua non* of benefit arising in the first place – receives a very minor share of the benefit when there is a big difference between the changes in value. There may also be cause to take into account the results of the experiments described earlier, suggesting that in negotiations the vacating party should receive a larger share of the benefit than normally follows from apportionment according to change in value.

- **Equal sharing**

Equal sharing is a direct method of profit-sharing, the more detailed implications of which would not seem to require any further explanation.\(^\text{134}\)

Equal sharing can mean both advantage and costs being shared equally or – and this is the usual arrangement – the successor paying the cadastral (settlement) costs and the benefit being shared equally after that.

\(^{131}\) The principle has been applied in a number of appeal court decisions but has never been examined by the Supreme Court. See, e.g. Lantmäteriets rättsfallsregister V76:1, V76:5, V82:27 V90:11, V00:6 and V04:5.


\(^{134}\) The principle has been applied in a number of appeal court decisions but has never been examined by the Supreme Court. See, e.g., Lantmäteriets rättsfallsregister V90:3, V92:7, V92:10, V97:7 and V98:14.
• “Heaped compensation”
This methodology comes close to the wording of Chap. 5, Section 10 a of FBL. The depreciation of the vacating property is determined with sufficient accuracy (Chap. 5, Section 10 a (1) of FBL, compared with Chap. 4 of ExL). Reasonable allowance is then made for the value to the successor, by setting the compensation at an amount exceeding the depreciation. This methodology can be viewed as either direct or indirect profit-sharing, depending on how carefully appreciation is determined.\footnote{135 See, e.g., Lantmäteriets rättsfallsregister V96:1, V00:1, V01:2 and V04:2.}

This methodology is particularly common in connection with facility procedures but is also applied to reallotment.

• Parcel valuation
This term denotes the indirect valuation methodology used for land consolidation and means that the value of each parcel affected is determined according to a standard model.

• Partition
Profit-sharing can also be effected by means of partition. The working approach applied is if anything classifiable as an indirect method.

3.4 Partition
Partitioning of a property is a special situation in which elements of coercion may occur and in which compensation has to be determined. Partition means that a property owned jointly by two or more parties having certain quota parts is divided up between them into special lots delimited on the ground and forming new property units.

Partition cannot be taken beyond the point of setting out lots for the co-owners so requesting. Where other co-owners are concerned, co-ownership of the residual property continues.\footnote{136 Chap. 11, Section 1 of FBL.}

Land claimer
In order for partition to proceed against the wishes of a co-owner, Chap. 1, Section 4 of FBL lays down the same safeguards against value changes as Chap. 5, Section 8 of FBL for reallocation. Thus the grading value of each lot may not significantly fall short of the co-owner’s share of the grading value of the value of the partitioned property unit or exceed that share to such an extent as to cause considerable inconvenience to the co-owner.

In practice, fairly large grading value deviations have been permitted in connection with partition. One reason given for this is that the alternative to partition is for the property to be sold under the provisions of the Co-ownership

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\footnote{135 See, e.g., Lantmäteriets rättsfallsregister V96:1, V00:1, V01:2 and V04:2.}
\footnote{136 Chap. 11, Section 1 of FBL.}
Act (1904:48), which can often be an inferior solution for the co-owners concerned. There is no Supreme Court case law, but the issue has been addressed by the appeal courts in a number of cases.\textsuperscript{137} The case mentioned show up to 30 per cent adjustments of the grading value to have been accepted.

**Compensation**

Chap. 11, Section 8 of FBL lays down that the provisions of Chap. 5 of FBL concerning compensation between interested parties in connection with reallocation are also to apply in connection with partitioning. Compensation refers to the difference between what a co-owner surrenders, i.e. a share in the market value of the undivided property, and what he receives, i.e. the market value of the lot awarded to him. If a common lot is laid out, this again will, at the subsequent stage of things, pose the issue of a share in the market value.

Since the total value of the lots laid out often exceeds the value of the undivided property unit for partition, benefit normally also occurs with partition. Normally this benefit should be apportioned between the co-owners commensurately with their respective shares in the property unit partitioned. Apportionment of this kind results if the cash value of each lot conforms entirely to its value after partitioning, i.e. the value of the lot to the successor, whereupon equalisation between the co-owners is effected on the basis of their participatory shares.\textsuperscript{138}

### 3.5 FBL and co-ordination with municipal planning and decision-making

In order for property formation measures to be permissible, certain suitability provisos have to be satisfied. These provisos, set forth in Chap. 3 of FBL, are an expression of society’s insistence on appropriate land use and property formation.

**General suitability provisos**

Property units must be formed in such a way as to be suitable in terms of location and extent.\textsuperscript{139} For example, it may be unsuitable for housing properties to be formed near an environmentally hazardous operation or, because of the noise problem, close to an airport. The proper size of the property depends on the purpose it is intended to serve. Understandably, the requirements for agricultural properties are not the same as for detached houses.

\textsuperscript{137} Lantmäteriets rättsfallsregister 88:5, 90:21 (= V90:10), 95:12, 98:21 (= V98:18).

\textsuperscript{138} In the partitioning of an exclusive property, it may happen in exceptional cases that the market value declines as a result of partitioning. There is no statutory safeguard against this kind of depreciation. Even in a case of this kind, the compensation should be determined according to the market value of the lots formed, and the loss will consequently be apportioned commensurately with participatory shares.

\textsuperscript{139} Chap. 3, Section 1 of FBL.
One general guideline for housing purposes is that properties are not to exceed the area which can normally be used as a building plot.\textsuperscript{140} Housing properties must have access to roads. At least it must be possible to resolve the road issue through, say, the creation of an easement or the formation of a joint facility. Similarly, it must be possible for the property to be given acceptable water supply and sewerage arrangements. This can be done by connecting the property to the municipal water supply and sewerage networks or by means of a joint facility. The water and sewerage issue can also be resolved by means of internal facilities on the property, e.g. a well and soil infiltration of wastewater.\textsuperscript{141}

\textit{Areas within a detailed development plan}

Within areas covered by a \textit{detailed development plan}, property formation may not take place contrary to the plans, except for minor deviations which are not contrary to the purpose of the plans.\textsuperscript{142} This means among other things that property boundaries must conform to the boundaries between areas for building sites and a public place in the detailed development plan. If the detailed development plan contains provisions concerning plot size, those provisions are to apply.\textsuperscript{143}

\textit{Areas not included in a detailed development plan}

In areas \textit{not included in a detailed development plan}, property formation is not permitted if it impedes the appropriate use, occasions unsuitable building development or \textit{frustrates suitable planning} of the area.\textsuperscript{144} This means that property formation may not take place if the municipality intends drawing up a detailed development plan or if work on such a plan is in progress. In cases of this kind, a decision on property formation must be deferred pending completion of the plan.

Property formation for new or existing settlement outside a detailed development plan requires the consent of the municipality.\textsuperscript{145} In cases of this kind, then, the municipality can “veto” property formation.

In certain cases the formation of a housing property, for example, requires the property to arrange a new exit onto a \textit{public highway} or make use of an existing road exit. In order for property formation to be permissible, “substantial

\textsuperscript{141} Chap. 3, Section 1 a and b provides special conditions on the formation of three-dimensional property units and ownership apartments respectively, but those provisions are not touched upon more closely here.
\textsuperscript{142} Chap. 3, Section 2 of FBL.
\textsuperscript{143} How property division etc. can be regulated in detailed development plans emerge from Chap. 4, Section 18 of PBL.
\textsuperscript{144} Chap. 3, Section 3 of FBL.
\textsuperscript{145} Chap. 4, Section 25 a of FBL.
“inconvenience” must not be caused to traffic on the road. This provision exists for the sake of traffic safety and for the purpose of avoiding dangerous exits.\(^{146}\)

Property formation may not take place if contrary to the purpose of nature conservancy regulations.\(^ {147}\) In shoreline protection areas, for example, housing properties may not be formed if this frustrates the purpose of the shoreline protection provisions.

Special provisos for agriculture and forestry

Special suitability provisos concerning agriculture, forestry and fisheries are contained in Chap. 3, Sections 5-8, but they are of minor interest for land development purposes.

Summary

As has already been made clear, assessment of the suitability of property formation must comply with municipal plans and decisions. Consequently, the suitability provisos of FBL play a minor role in connection with property formation for settlement in general and land development in particular. So the suitability provisos in Chap. 3 of FBL are of limited importance as independent instruments governing land use and urban development.

3.6 Procedure – cadastral procedure

Property formation is handled by the cadastral authority\(^ {148}\) (LM) by means of a procedure (föråttning). The authority consists of a cadastral surveyor (assisted if necessary by two trustees).\(^ {149}\)

Property formation is decided through a property formation order, with a map and description showing changes to the division into property units.\(^ {150}\) When compensation is payable in connection with reallocation, a compensation order also has to be made. A special order may also be made indicating when possession of the land may be taken.\(^ {151}\)

\(^{146}\) Chap. 3, Section 4 of FBL. Note too that a private road may not join up with a public highway, or an existing junction altered, without permission from the Swedish Transport Administration, cf. Section 39 of the Roads Act (VigL).

\(^{147}\) Chap. 3, Section 2 of FBL. Neither may property formation take place if contrary to the consideration for archaeological remains and heritage sites under the Heritage Conservation Act.

\(^{148}\) There is one State cadastral authority (Lantmäteriet) and 38 municipal cadastral authorities in the larger municipalities (KLM). If a municipal cadastral authority is to conduct a procedure in which the municipality itself is an interested party, the municipality or another interested party may ask for the procedure to be conducted by the State cadastral authority instead (Chap. 4, Section 7 a of FBL). This can happen, for example, when the municipality wants to acquire land for public places in a detailed development plan.

\(^{149}\) See Chap. 4 of FBL.

\(^{150}\) See Chap. 4, Sections 25 and 28 of FBL.

\(^{151}\) If no order is made, possession is taken when the procedure is completed, i.e. when the property formation has been entered in the Real Property Register.
The cadastral authority’s decision can be appealed in the land and environment court and then to the land and environment court of appeal (Svea Court of Appeal).152

Reallotment as a means of implementation under PBL
As mentioned earlier, FBL makes it possible for land to be transmitted, e.g. for public places, etc. The purpose of these provisions is for reallotment to be extensively used as an alternative to compulsory purchase under PBL.153 And regardless of whether the FBL or the PBL provisions are to apply, the rules of compensation remain the same.

In practice, reallotment and the cadastral procedure have come to be the absolutely paramount method of implementing land transmissions in detailed development plans.154

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152 See Chap. 15 of FBL. As mentioned previously, the Supreme Court can also try the case, if it is a matter of principle.
153 Chap. 6, Section 17 of PBL. If the parties disagree concerning the procedure to be employed, use shall be made of the procedure first initiated.
154 The same goes for the transmission of land in railway plans under LBJ.
4 Land acquisition and compensation for various purposes

As mentioned in section 1.1, land acquisitions in the development process can be divided into two categories – land acquisitions before and after the detailed development plan respectively.

The Expropriation Act is the legislation applying to compulsory land acquisitions before the detailed development plan is drawn up.

Acquisitions for the implementation of planning are concerned with adapting property unit boundaries to detailed development plans (or working plans for public highways or railway plans in connection with railway construction). In these cases there are several special enactments which apply in various situations. The rest of this chapter will be devoted to describing that legislation and the purposes for which it can be used. The account will be structured as follows.

### Roads/railways
- National, public highways
- Railways, tramways
- Public places, municipal mandatorship
- Public traffic facilities on areas for building sites
- Municipal roads not covered by a detailed development plan
- Public places under private management
- Private roads in areas for building sites
- Private roads not included in a detailed development plan
- A road for a property unit

### Utilities
- Public utilities
- Private, joint utilities
- Utilities for one property unit

### Other facilities on “precinct land”

### Land for building development
- Undeveloped building land/precinct land
- Undeveloped building land for public development
- Undeveloped building land for private development
- Undeveloped building land, after the planning implementation period

### Land for agriculture and forestry
4.1 Roads

There are three main types of roads with regard to who is responsible for the roads – the State, the municipality or private property owners.

4.1.1 National, public highways

Land for public highways is normally requisitioned under the Roads Act (1971:948, VägL) by the road authority, the Swedish Transport Administration, being granted right of disposal for an indefinite period over the land for a road, right of way.\footnote{Sections 30-32 of VägL. If the road ceases to be a public highway the right of way will lapse and the property owner will recover the land.}

Compensation for the grant of right of way has to be determined by the rules of the Expropriation Act, i.e. the compensation must correspond to the market value of the property or the reduction in its market value with an increment of 25 per cent (plus possible compensation for enterprise-related damage and other compensation).\footnote{Section 55 of VägL.}

A public highway, however, may not always be requisitioned with right of way. If the road is plotted in a detailed development plan as a public place under municipal mandatorship, the municipality has to acquire the land freehold (see next section).\footnote{See Section 33 of VägL, Chap. 6, Section 13 of PBL and Chap. 14, Section 14 of PBL.}

The municipality then has to transmit the land to the Swedish Transport Administration in return for payment.\footnote{Sections 7 and 70 of VägL.}

A third variant is for the public highway to be located in a public place under private management, e.g. if a detailed development plan for a rural area provides for most of the roads to be managed by a joint property association but the planning area is traversed by a public highway. In this case, however, the main rule applies, i.e. the Swedish Transport Administration (normally) acquires the land with right of way.\footnote{Chap. 14, Section 16 of PBL, however, provides a possibility to acquire land/space with “ownership, user right or other special right”.}

Railway

Land acquisition and compensation provisions relating to railways are contained in the Railway Construction Act, where the route to be taken by a railway is defined in a railway plan. The railway plan, which corresponds to the work plan for public highways, is legally binding and when the plan is adopted, land needed for the railway may be acquired.

Railways however, have no counterpart to right of way. Instead the procedure here is more like that applying to streets and other public places in a detailed development plan under PBL, i.e. the railway plan confers a right to
Compulsory purchase of the land needed\textsuperscript{160}. Compulsory purchase issues of this kind are tried by the land and environment court. Just as in the case of a public place in a detailed development plan, though, land acquisition can also be accomplished through a cadastral procedure by authority of FBL, which in practice is normally what happens.

Compensation has to be determined according to the basic rules of ExL.\textsuperscript{161}

\subsection*{4.1.2 Public places under municipal mandatorship}

Land which in the detailed development plan is designated for public places under municipal mandatorship can be purchased by the municipality.\textsuperscript{162} The municipality is \textit{obliged} to purchase the land on the owner so requesting.\textsuperscript{163}

Compensation for public places is to be determined by a special provision of the Expropriation Act.

\textbf{Chap. 4, Section 3 a.} Expropriation money for land or other space which, according to a detailed development plan, is intended for a public space shall be determined according to the planning conditions prevailing immediately before the land or space was indicated as a public space.

Accordingly, reference must be made to the land as used immediately \textit{before} the current detailed development plan. Thus, the use to be made of the property under the new plan is to be disregarded.

There is, however, one exception to this provision, in that the county administrative board can ordain that a landowner is to surrender land \textit{without compensation}, conditional on the arrangement being \textit{fair (equitable)}, having regard to the benefit the landowner derives from the detailed development plan.\textsuperscript{164}

Similar provisions were also included in the earlier legislation (Sections 70 and 113 of the Building Act and Chap. 6, Section 19 of PBL), which made appointment conditional on the plan covering an “area in the hands of one owner” and on the owner being able to sell “several plots” (Government Bill Prop. 1947:131, p. 248).

The “equity” of the provision was tested in a detailed development plan for about 60 properties, several of which were required to surrender land for a street. For certain of them, an order was made for the surrender of land \textit{without} compensation, while compensation was paid for the surrender of land from other properties. This, however, was found to result in an unfair distribution of compensation and street costs, and the order was

\begin{footnotesize}
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\textsuperscript{160} Chap. 4, Section 1 of LBJ. Under Chap. 4, Section 2 of LBJ the mandator of the railway is obliged to purchase the land on the property owner so requesting.

\textsuperscript{161} Chap. 4, Section 5 of LBJ.

\textsuperscript{162} Chap. 6, Section 13 of PBL. For the municipal purchase of public places reference is made to ExL, see Chap. 6, Section 17 of PBL.

\textsuperscript{163} Chap. 14, Section 14 of PBL.

\textsuperscript{164} Chap. 6, Section 4-5 of PBL.
\end{footnotesize}
quashed by the Supreme Administrative Court (see RÅ 1994 ref. 54). From this it seems fair to conclude that an order pursuant to Chap. 6, Section 5 of PBL can only be resorted to in development areas with one or a few “big” developers.

One special instance concerns compensation for land which is a public highway but is to be converted into a public place in a detailed development plan with municipal mandatorship. Also in this case no compensation is payable at all.165

Procedure for compulsory purchase under PBL
Compulsory purchase under PBL follows essentially the same procedure as expropriation under the Expropriation Act166, except that permission to acquire the land is granted in the detailed development plan instead of a special expropriation permit being granted by the Government.

However, as mentioned earlier, land for public places etc. is usually transmitted by means of reallocation under the Real Property Formation Act (see section 3.2).

4.1.3 Public traffic facilities on areas for building sites
Areas for building sites (“precinct land”) in a detailed development plan can be reserved for pedestrian and cycle traffic (x area), vehicular traffic (z area) and a road traffic tunnel (t area) which must be accessible to the general public.167

Land for these purposes is usually secured by creating easements through reallocation under FBL. The purposes are enumerated in Chap. 14, Section 18 of PBL, which means that the grant of an easement is an “expropriation case” in FBL. Compensation thus has to be determined according to the rules of the Expropriation Act.168

Contrary to the rules which apply concerning public places, compensation is determined on the basis of the use of the property in the new detailed development plan. In principle, compensation for the grant of an easement must correspond to the difference between the value of the property as encumbered by the easement and the value it would probably have had if the land had not been earmarked for traffic purposes in the plan (plus an increment of 25 per cent).

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165 Chap. 4, Section 1 (3) ExL. The background to this provision is as follows. When land is used for a public highway, this is done with public road right and the landowner is, in principle, compensated according to the same rules as if the land had been acquired freehold. When the land subsequently becomes a public place the municipality must acquire it freehold and the grant of public road right will lapse. If the landowner were then to receive compensation from the municipality for surrendering the land, this would mean compensation being paid twice over for the same damage, which for obvious reasons has not been considered reasonable.

166 Chap. 15, Section 1 of PBL.

167 Chap. 4, Section 6 of PBL.

168 Chap. 5, Section 10 a of FBL.
4.1.4 Municipal roads not covered by a detailed development plan

There are municipal roads which are neither public highways (under the Roads Act) nor public places (under PBL), e.g. traffic routes linking planning areas together or linking planning areas with public highways.

The construction, management and funding of these roads are not subject to special legislation, nor is the acquisition of land for them. Land for roads of this kind therefore has to be requisitioned under the faculties conferred by the Expropriation Act, primarily expropriation for built-up areas or traffic and communication purposes.

4.1.5 Public places under private management

When the municipality is to be the mandator of public places in a detailed development plan, the land can be acquired by compulsory purchase under the rules of the Planning and Building Act.\(^{169}\) When a group of property owners is to be mandator, e.g. for roads and green areas in secondary-home developments, it is instead the rules of AL concerning joint facilities that apply when land is to be requisitioned.\(^{170}\) The property owners – the joint facility association – are also duty bound to purchase the land on the landowner so requesting.\(^{171}\)

In the matter of compensation, AL makes reference to the rules of compensation in FBL.\(^{172}\) In the latter, public places under private mandatoship are regarded as “cases for expropriation”.\(^{173}\) From a compensation viewpoint, then, there is no difference between private and municipal mandatoship of public places (cf. section 4.1.2, above).\(^{174}\)

Possession of the land is usually taken after the facility order has acquired force of law, but the cadastral authority can also make an order for advance possession, i.e. taking of possession before the facility order has acquired force of law.\(^{175}\) In the case of joint facilities foreseen in a property regulation plan, an advance possession order is in principle always possible.\(^{176}\)

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\(^{169}\) Chap. 6, Section 13 of PBL.

\(^{170}\) Section 12 of AL.

\(^{171}\) Chap. 14, Section 15 of PBL.

\(^{172}\) Section 13 of AL.

\(^{173}\) Since public places under private mandatoship are enumerated in Chap. 14, Section 15 of PBL.

\(^{174}\) Compensation, then, must correspond to the value of the land with the property being used as it was before the detailed development plan (Chap. 4, Section 3 a of ExL). Even with private mandatoship, however, the county administrative board may order a landowner to surrender the land without compensation (according to Chap. 6, Section 3 and 5 of PBL). This may, for example, come into question when secondary-home developments are being undertaken by a developer who originally owned all the land within the development area/the detailed development plan area.

\(^{175}\) Section 27 a of AL.

\(^{176}\) According to the provisions in Chap. 4, Section 18 of PBL.
4.1.6 Private roads in areas for building sites

Roads in areas for building sites can be exit roads for two or more properties in the middle of a precinct (panhandle roads) or detached housing precinct service roads, which in functional terms resemble roads in public places within a detailed development plan.

When property owners are to be jointly responsible for the roads, the Joint Facilities Act applies, i.e. a joint facility has to be established. The AL rules of compensation, as we saw earlier, make reference to FBL. Joint facilities for traffic purposes within areas for building development are, compensation-wise, to be treated as “expropriation cases”. Thus compensation has to be determined in accordance with the compensation rules of the Expropriation Act.

There is, however, a difference in matters of compensation between roads in areas for building development and roads constituting public places. In the latter case one has to be guided by the value of the property before the current detailed development plan came into being. For roads in areas for building sites, on the other hand, the reduction in value of the property has to be set according to the current plan.

This difference can be instanced as follows. Suppose a property is originally used for forestry. As a result of detailed development planning it acquires building rights for a number of plots on “precinct land” – an area for building sites. In addition, the property is to be used partly as a road in a public place and partly as a road on “precinct land”.

Compensation for the public place has to be determined according to the use of the property for forestry, i.e. the question is then how much its value as a forestry property is reduced by the surrender of land for the public place? In many cases there should be expectations of changed land use on the property. The compensation shall all the same be based on the value of the property as undeveloped land.

As regards the surrender of land for a road on “precinct land”, a different question has to be answered, namely: how much is the value of the property reduced by undeveloped building land having to be surrendered for roads? According to case law, each square meter of the precinct land should have the same value, regardless of for what the land should be used. It means that the compensation should correspond to an average value of undeveloped building land (NJA 1956, p. 603), see also section 4.4.

4.1.7 Private roads not covered by a detailed development plan

Roads outside the scope of a detailed development plan which are to be constructed and managed by property owners come under the Joint Facilities

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177 Section 12 of AL.
178 Section 13 of AL.
179 Chap. 14, Section 8 of PBL and Chap. 5, Section 10 a of FBL.
180 As per Chap. 4, Section 3 a of ExL.
Act. Roads not planned for are uncommon in developing contexts, but can occur, for example, when an area planned for secondary-home development needs a service road from the planned area to, say, a public highway.

Grants of land and compensation are governed by AL, which makes provision to the compensation rules of FBL. Here, in contrast to roads within the scope of a detailed development plan, the acquisition of land for a road is not an expropriation case, and so the Real Property Formation Act rules of profit-sharing must apply.  

4.1.8 Road for one property unit
The Joint Facilities Act applies mainly to joint facilities, i.e. facilities common to a number of properties, but it also includes certain special rules, one of them being that right of way can be created for one property.  

Compensation has to be determined according to the FBL rules on apportionment of benefit between the person acquiring the right of way and the person surrendering the land or the right.

4.2 Utilities
Utilities are of two kinds. Firstly, there are “public” utilities managed by the State, a municipality or other authorities which serve a large number of properties. Examples of this are municipal water supply networks, high-voltage power line networks and utilities governed by the telecommunication companies.

“Private” utilities, secondly, are managed by property owners and serve smaller areas. These can be instanced with water and sewerage mains shared by a number of properties in one planning area.

This division into public and private utilities affects both the grant of land for the utilities and the compensation to be paid for it.

4.2.1 Public utilities
Under certain conditions, land can be granted with a utility easement for an indefinite period. Provisions on this subject are contained in the Utility

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181 Sections 12 and 13 of AL.  
182 As “expropriation cases” are only regarded roads within a detailed development plan (see Chap. 14, Sections 14-18 of PBL), nor is there any expropriation purpose in Chap. 2, Section 1-11 of ExL that makes it possible to use expropriation for this type of roads.  
183 Chap. 5, Section 10 a of FBL.  
184 Section 49 of AL. An alternative possibility is for an easement to be created under the Real Property Formation Act, but this would have to be done in conjunction with another real property formation measure (see Chap. 7, Section 2 of FBL).  
185 Chap. 5, Section 10 a of FBL. This is valid for the granting of a new road. For an existing road, “wear and tear compensation” will be paid.
Easements Act (1973:1144, LL), which applies to utilities of the following kinds:\(^\text{186}\)

- a telecommunications line included in a telecommunications system for public use or some other public low-voltage line,
- a high-voltage power line for which a concession is required,
- a water or sewerage main forming part of a public water supply and sewerage system etc.,
- a district heat, oil, gas or other utility catering to a public need.

One general precondition for the grant of a utility easement is that there should be no other appropriate means available to the end in question. For example, a utility easement may not be granted if the utility can be made a joint facility under AL. Furthermore, the benefits of the utility must, from a public viewpoint, outweigh the inconveniences.\(^\text{187}\)

Land can be reserved in a detailed development plan for underground and overhead utilities. In the plan these are usually marked as \textit{u} and \textit{l} areas respectively. In certain cases the grant of a utility easement must be preceded by a concessionary assessment. This applies, for example, to high-voltage power transmission lines, which require Government approval.

Compensation for the grant of a utility easement has to be determined by the compensation rules of the Expropriation Act.\(^\text{188}\) The compensation, then, must correspond to the difference in the value of the property \textit{with} a utility easement and \textit{without} the grant of it (with an increment of 25 per cent).

\textbf{Utility easement procedure}

A utility easement is granted through a procedure conducted by the cadastral authority, whose \textit{utility easement order} can be appealed in the land and environment court, and further to the land and environment court of appeal (and, finally, under certain conditions, to the Supreme Court).\(^\text{189}\)

The cadastral authority can also make an \textit{advance possession} order for the land, enabling possession to be taken before the utility easement has acquired force of law.\(^\text{190}\) Advance possession orders are in principle always possible for utilities shown in a detailed development.

\textbf{Laying of utilities on municipal street land}

In urban areas, utilities are to a very great extent laid on municipal street land, i.e. in public places under municipal mandatorship. LL is applicable also in these cases.

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\(^{186}\) Section 2 of LL.

\(^{187}\) Section 6 of LL.

\(^{188}\) Section 13 of LL.

\(^{189}\) Section 29 of LL, referring to the Real Property Formation Act.

\(^{190}\) Section 25 a of LL.
However, the Swedish Association of Local Authorities and Regions (SKL) recommends a right of user agreement for a limited period rather than a utility easement, especially when there are many utilities requiring co-ordination of their owners’ works and when future social changes can be foreseen which will necessitate relocation of the utilities.

4.2.2 Private utilities
For private utilities which will be used by one or more property owners there are two options.

For utilities which will be serving two or more properties, a joint facility is formed under the Joint Facilities Act (AL). Compensation in this case is to be computed as “profit-sharing”. Space for utilities serving the needs of one property can be provided by means of an FBL easement. Here again, compensation has to be computed as profit-sharing.

4.3 Other joint facilities on “precinct land”
In addition to roads and utilities, other joint facilities may need to be constructed on “precinct land”, to be shared by several properties, e.g. garaging, play spaces or neighbourhood premises.

In case of this kind, land/space for the facilities can be acquired by authority of the Joint Facilities Act. Compensation for these “building land facilities” must be determined in accordance with the profit-sharing rules of FBL.

4.4 Land for building development (undeveloped land, råmark)
Råmark (literally, “raw land”) is land to which no detailed development plan applies and the value of which hinges on expectations concerning a change in land use – mainly for building development.

If no agreement can be reached, expropriation is the principal means of acquiring “raw land”. Thus compensation is decided according to the provisions of ExL.

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192 See Section 12 and 13 of AL and Chap. 5, Section 10 a of FBL.
193 Chap. 7 of FBL and Chap. 5, Section 10 a of FBL.
194 In the case of just one property needing to use another in some respect, the easement rules of Chap. 7 of FBL apply. Compensation must then be determined as benefit appropriation under Chap. 5, Section 10 a of FBL.
195 Section 12 of AL.
196 Chap. 5, Section 10 a of FBL.
4.5 Undeveloped building land

PBL separates two different types of precinct land, or undeveloped building land, for development – land for respectively public and private building.\(^{197}\) In both cases there are rules on compulsory purchase of land.

4.5.1 Undeveloped building land for public development

Land for public building can be reserved e.g. for schools, day nurseries, sports and recreation facilities, and so on. The municipality is entitled to purchase such areas from the property owner, but this is conditional among other things on the owner himself being unable to build for the purpose intended.\(^{198}\)

Compensation is to be determined according to the rules of the Expropriation Act.\(^{199}\) The value of the property, or the reduction in value, is then to be assessed according to the way in which it would probably have been used if the land had not been used for public building.\(^{200}\) If the building development planned is of a non-commercial nature, e.g. a school or day nursery, the value can as a rule be determined with reference to the use of the adjoining “precinct land” (e.g. housing). When the land is to be used commercially, e.g. for a harbour, compensation must be determined according to the commercial use. Note, however, that compensation must never fall short of the value of the land before the detailed development plan, i.e. the value of the property according to the current land use. In addition, in both cases an increment of 25 per cent shall be made.

For land to be used for public buildings, the county administrative board may order the surrender of the land without compensation.\(^{201}\) This, however, is subject to such an arrangement being equitable, considering the benefit which the property owner derives from the detailed development plan. In principle, this means that such an order can only come into question for public buildings creating a direct value to the property owner, e.g. a day nursery in larger developments (though hardly a public library serving a larger part of or all of the municipality).

4.5.2 Undeveloped building land for private development

It is not uncommon in the course of planning for the planned division into new plots to deviate from the original division into property units (cf. the figure in section 3.2 illustrating land transmission). This can also be instanced with an excerpt from the property regulation plan presented below.

\(^{197}\) The legal definition of building land for public development is in fact “land for other than private building”; see Chap. 6, Section 13 of PBL.

\(^{198}\) Chap. 6, Section 13 of PBL.

\(^{199}\) From Chap. 6, Section 17 of PBL it is clear that purchase under Section 13 shall be made according to the provisions of ExL.


\(^{201}\) Chap. 6, Section 4 and 5 of PBL.
The property regulation plan indicates that a new plot (24) is to be formed with a total size of 1,083 m$^2$. This new plot affects two properties, comprising as it does of 896 m$^2$ of property unit 10:200 and 187 m$^2$ of property unit 10:199. So the existing, X’d-over boundary between the properties will disappear.

In the current plan, property 10:200 is affected by other changes in the division into property units to the southwest – two areas comprising 247 and 66 m$^2$ respectively. But for the sake of clarity we can disregard those other changes.

If a planned plot in a property regulation plan has more than one owner, Chap. 8, Section 4 of FBL applies. That requirement is met in the above example, where the new plot (24) belongs both to the owner of 10:199 and to the owner of 10:200.

In such cases the owner of the area of greatest value within the new plot is entitled to purchase the other parts. In our example it would seem obvious that the 896 m$^2$ belonging to property unit 10:200 are worth more than the 187 m$^2$ pertaining to 10:199. The owner of 10:200 is thus entitled to purchase 187 m$^2$ from 10:199. In less open-and-shut cases where the different parts of the plot are undeveloped and of roughly the same size, the same value must be assigned to every square metre of the new plot. Thus the area of the different parts of the plot decides who is entitled to purchase the other parts of the plot.\textsuperscript{202}

If so, compensation must take the form of profit-sharing between the parties respectively acquiring and surrendering land.\textsuperscript{203} The main rule for this

\textsuperscript{202} In the very unlikely eventuality of two parts of a plot being exactly the same size, the owner first applying for a cadastral procedure is entitled to purchase the other parts of the plot.

\textsuperscript{203} Chap. 5, Section 10 a of FBL.
apportionment of benefit is as follows. Firstly, compensation has to be determined from the value of the new plot according to the plan. And, as mentioned already, the same value must be assigned to every single square metre of the new plot, regardless of where within the plot the land is situated. And so the compensation due to the party surrendering land will equal the average value per m\(^2\) of the new plot multiplied by the area of the land transmitted. The main rule, commonly known as the average value principle, has established in a decision by the Supreme Court.\(^{204}\)

4.5.3 Compulsory purchase of undeveloped building land after the planning implementation period

In certain situations a property owner may not have carried out measures presumed in the plan. If so, the purpose of the municipal right of compulsory purchase after the implementation period is to enable the municipality to implement the plan. One basic precondition for compulsory purchase, however, is that the municipality must be the mandator of public places in the plan.

The ability of the municipality to purchase “precinct land” refers to two cases. The first is when property units have not been adapted to the detailed development plan, i.e. the municipality is entitled to purchase property units or parts of property units which according to the property regulation plan are to form a new plot.\(^ {205} \) The second case concerns land which has not been developed mainly in agreement with the detailed development plan, e.g. a residential property which has remained undeveloped in the plan.\(^ {206} \)

In both cases compensation has to be determined according to the rules of the Expropriation Act.

4.6 Land for agriculture and forestry

Readjustment of agricultural and forestry properties is possible to the extent provided for in FBL. In the normal instance, the acreage of such properties can be altered by something like 5 or 10 per cent without any supporting agreement, provided the readjustment leads to a more appropriate division into property units and higher market values. Beyond this there are certain other conditions which have to be met; for example, the land to be transmitted must not have been built on.

\(^{204}\) NJA 1956, p. 603. In certain exceptional situations, however, compensation based on the average value principle is not feasible. The more detailed procedure for dealing with these exceptional situations has been defined by the Supreme Court in the so-called Lagnö case (NJA 1989, p. 431). The average value principle and its exceptions are expounded in greater depth in Kalbro & Sjödin (2006) and Sjödin et al. (2007).

\(^{205}\) Chap. 6, Section 14 of PBL.

\(^{206}\) Chap. 6, Section 15 of PBL. Compulsory purchase may not take place, however, if there is a valid building permit for the property after the implementation period. This can happen, because a building permit only lapse if the measure has not been started within two years and concluded within five years of the period being granted (Chap. 9, Section 43 of PBL).
If a change of division into property units is especially important from a public viewpoint, as can be the case in connection with land consolidation affecting a large area, certain compulsory purchase provisions apply which override the normal rules of protection.

As regards compensation for land transmitted to an agricultural property, and similarly, compensation for the creation of easements and joint property units, the allocation of benefit has to be effected on the merits of each individual case, starting with the basic principle mentioned earlier, namely that the apportionment of benefit must resemble a voluntary agreement. The same applies, mutatis mutandis, to the grant of land for a joint facility under AL, e.g. a village road or a forest road.
5 Disposition constraints and environmental damage

In addition to provisions on land acquisition or acquisition of title to space, the Planning and Building Act and the Environmental Code contain rules on compensation for “disposition constraints” concerning real property, i.e. damage incurred by the owner because the property can no longer be used as it was previously, due for example to detailed regulations in the detailed development plan, nature conservancy prescriptions or environmental disruptions caused by another property.

5.1 Planning and Building Act

In most instances property owners have to acquiesce, without compensation, in detailed development planning provisions or refusal of permit applications. However, the question of compensation may arise in a number of cases, briefly touched on below.

Compensation when the detailed development plan is amended or cancelled

When a detailed development plan is amended or cancelled, the property owner, in two cases, is entitled to compensation for the damage that the plan amendment/cancellation entails. The compensation must then correspond to the reduction in market value, plus 25 per cent, which the alteration or cancellation of the plan entails.\(^{207}\) When calculating the reduction in value, values due to expectations of changed land use should be disregarded.

Detailed development plan amendment or cancellation during the implementation period\(^{208}\)

The municipality may amend or cancel a detailed development plan during the planning implementation period, but amendment during the implementation period against a property owner’s wishes requires the occurrence of new conditions of great general importance which could not have been foreseen at the time of planning.\(^{209}\)

Changed use or height of street/road\(^{210}\)

The purpose or level of a street or road for “public traffic” can be altered through a detailed development plan amendment. If damage results, e.g. if an exit from a property must be moved and/or rebuilt, the property owner is entitled to compensation.\(^{211}\)

\(^{207}\) Chap. 14, Section 23 and 24 of PBL.
\(^{208}\) Chap. 14, Section 9 of PBL.
\(^{209}\) Chap. 4, Section 39 of PBL.
\(^{210}\) Chap. 14, Section 8 of PBL and the compensation rules in Section 23 and 24.
\(^{211}\) Chap. 14, Section 4 of PBL. The provision on compensation is in Chap. 14, Section 10 PBL. For compensation purposes, any anticipation values affecting the market value are to be
Compensation for non-demolition and protection provisions in a detailed development plan

The compensation is, in principle, calculated according to the rules for amendment/cancellation of a detailed development plan. However, there is one important difference. The property owner might have to tolerate certain damage without compensation being paid, i.e. there is a “qualification threshold” for the compensation.

Non-demolition order for settlement of historic interest

A detailed development plan may include a non-demolition order for settlement of historic interest, etc.

Compensation is conditional on the damage being significant in relation to the value of the part of the property affected. If, however, the damage is of such magnitude as to qualify for compensation, this shall only be paid for the proportion of damage exceeding “the qualification threshold”. Thus the property owner has to tolerate a certain amount of damage.

Protection provisions for settlement of historic interest

A detailed development plan can be made to include a protection order concerning the alteration, maintenance etc. of buildings of historic or other interest.

In order for compensation to be payable, the current use of the land must be considerably impeded within the part of the property affected. Unlike the preceding case, once the qualification threshold for compensation is exceeded the damage is to be made good in its entirety.

Compensation for refusal of building, demolition or excavation and grading permit

Compensation can be paid in some cases if the property owner is refused permit for a measure.

disregarded.

212 Chap. 14, Section 23 and 24 of PBL.
213 Chap. 14, Section 7 of PBL.
214 Chap. 4, Section 16 (1), point 3 of PBL.
215 Chap. 14, Section 7 (2) of PBL. One construction of the travaux préparatoires is that “significant damage” comes between 10 and 20 per cent of the value of the property affected, see Sjödin et al. (2007).
216 Chap. 14, Section 24 (3) of PBL.
217 Chap. 14, Section 10 of PBL.
218 Chap. 4, Section 16 (1), point 2 of PBL.
219 Property owners need only acquiesce in “trivial damage” and a 10 per cent reduction in value has been considered the highest limit acceptable. See Sjödin et al. (2007).
220 Chap. 14, Section 10 of PBL.
Refusal of building permit

If a building permit for re-erecting a demolished building or a building accidentally destroyed is refused, compensation is payable on condition of building permission being applied for within five years of the building’s demolition or destruction.

If the original building was destroyed by fire or some other accident, compensation must be paid regardless of the extent of the damage. If on the other hand the property owner has demolished the building himself, the damage must be significant in order for compensation to be payable. Furthermore, compensation is only payable for the portion of damage exceeding the compensation qualification threshold.

Refusal of demolition permit

A demolition permit shall be refused for a building which should be preserved due to its historic, environmental or artistic interest.

The same rules of compensation apply here as for the inclusion of a non-demolition order in a detailed development plan. Compensation, accordingly, is conditional on the damage being significant, in relation to the part of the property affected. And compensation is only payable for the portion of the damage exceeding the compensation qualification threshold.

Refusal of excavation and grading permit

Refusal of an excavation and grading permit because it would impede the use of the area concerned for building development or would cause inconvenience to defence installations, etc. qualifies for compensation if the current land use is considerably impeded in the part of the property affected. If the qualification threshold is attained, compensation is payable for the entire damage.

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221 Chap. 14, Section 5 of PBL. If building permit is refused and the property owner previously paid costs for streets, the municipality is obliged to pay back these costs. See Chap. 14, Section 4 of PBL.

222 Note that entitlement to compensation refers to the damage eliminating the possibility of re-erecting a building with the same use and of the same size. Thus from the compensation viewpoint it makes no difference if a current detailed development plan permits another mode of use.

223 Chap. 14, Section 5 (2) of PBL.

224 Chap. 14, Section 24 (3) of PBL.

225 Chap. 14, Section 7 of PBL.

226 Chap. 9, Section 34 of PBL.

227 Chap. 14, Section 7 and 24 (3) of PBL.

228 Chap. 14, Section 6 of PBL.

229 Chap. 9, Section 35 of PBL.

230 It can be concluded from Chap. 14, Section 24 (3) of PBL that deduction from the compensation shall not be made.
**Purchase if outstanding detriment**

If some of the disposition constraints mentioned above entails “outstanding detriment” to the use of the property, the owner can demand that the property be purchased by the municipality.  

Purchase can be considered if (1) a detailed development plan is amended or cancelled during the planning implementation period, (2) the detailed development plan contains provisions on refusal of demolition and (3) building permit, demolition permit and excavation and grading permit is refused due to the reasons mentioned above.

**Compensation for injunction to alter an exit etc.**

The municipality may order a property owner to demolish a building, facility or device or to alter an exit for reasons of traffic safety. If this entails damage, the property owner is entitled to compensation for the damage which the measure entails (without qualification thresholds and deduction from the compensation).

**5.2 The Environmental Code**

The Environmental Code (1998:808, MB) contains rules concerning compensation in connection with prescriptions and prohibitions and compensation for environmental damage caused to a property by the use of another property, e.g. through air pollution or noise from an industrial operation.

The first mentioned type of provisions will be dealt with very briefly, since they have little bearing on urban development. Somewhat more attention will instead be devoted to the rules on compensation for environmental damage.

**Compensation in connection with rules and prohibitions**

The Environmental Code expressly enumerates the rules, injunctions and prohibitions which can give cause for compensation, due to land being requisitioned or the current use of land on the property being significantly impeded.

- Rules concerning measures and restrictions with respect to national parks.
- Rules concerning measures and restrictions within nature reserves and culture reserves.

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231 Chap. 14, Section 13 of PBL.
232 Chap. 11, Section 22 and 23 of PBL. For industries that have been closed down the owner can also be ordered to put up a fence if needed to prevent accidents, see Chap. 11, Section 24 of PBL.
233 Chap. 14, Section 3, 23 and 24 of PBL.
234 Chap. 31, Section 4 of MB.
235 Land for national parks has to be State-owned, and accordingly the compensation provision refers to rights-holders, mainly in reindeer husbandry.
• Prohibitions or exemption refusals in habitat protection areas.
• Rules concerning measures and restrictions within water protection areas.
• Protection orders for Natura 2000 sites.
• Injunctions or prohibitions with respect to what are termed consultation areas. 236

Compensation is conditional on current land use being significantly impeded. Just as in the corresponding rules of PBL is compensation payable for the entire damage when the qualification threshold has been reached. 237

Compensation for environmental damage

When in addition to the actual acquisition of land, an expropriation enterprise impacts on the market value of the property, compensation is payable for enterprise-related damage (see section 2.2). In the event of a property whose land is unaffected by the expropriation also suffering adverse effects from the enterprise, the rules of the Expropriation Act do not, however, apply. In order for properties to be treated equally, regardless of whether they surrender land or not, rules of compensation for environmental damage are contained in the Environmental Code.

This point can be exemplified with the construction of a motorway. Certain land, of course, has to be requisitioned for the road itself, but in addition the motorway causes disturbance to nearby properties, e.g. in the form of traffic noise.

In the case of properties surrendering land for the road, damage resulting both from the surrender of land and from the noise will be dealt with under the Expropriation Act, which is to say that the effects of noise will be allowed for through the rules concerning enterprise-related damage. 238 The Expropriation Act is not applicable to properties which do not surrender any land for the motorway, and the noise disturbance inflicted on these properties will accordingly be dealt with under MB.

Indemnification is payable for personal injury, material damage and pecuniary loss caused by an activity on the property in its surroundings. 239 Roads, railways and industrial production, for example, can cause disturbance to other properties through air or soil pollution, noise, vibrations or suchlike disruptive influences. 240 This last mentioned category includes, for example, aesthetic

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236 As per Chap. 12, Section 6 of MB.
237 Chap. 31, Section 8 of MB. If the current use of the property is outstandingly inconvenienced, the property owner is entitled to demand compulsory purchase of the property. Chap. 31 of MB also deals with compensation claims which can arise in connection with certain investigations, fence-opening injunctions and rules of compensation in connection with water operations, see Chap. 31, Section 10, 11 and 16-30 of MB.
238 Chap. 4, Section 2 of ExL.
239 Chap. 32, Section 1 of MB.
240 Chap. 31, Section 3 of MB.
disturbances such as defacement of the landscape and “mental immissions” (e.g. the unease which can be experienced by residents living close to an explosives factory).

In order for compensation to be payable, the damage must be of some significance, considerable. Whether the reduction in value is to be considered significant depends on the amount involved and on how the amount relates to the total market value of the property.

In order for compensation to be payable, the damage must also have been caused by a disturbance of a kind which cannot “reasonably be tolerated”, having regard to conditions in the locality or the universal occurrence of the disturbance in question. A disturbance is locally common, for example, when a factory is sited in a locality where a similar kind of industry exists already. “Locality” can, depending on the situation, mean a residential area, central areas of a conurbation, an entire conurbation or an area affected by the construction of a utility in the countryside. Examination of universal occurrence means judging whether the disturbance is common in communities or districts of the same kind as the locality concerned. Finally, when applying the criterion of local and universal occurrence an equity assessment has to be made.

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241 Chap. 32, Section 1 of MB. Unless the damage has been caused by criminal activity, in which case strict liability applies irrespective of the magnitude of damage.

242 Decisions by courts of higher instance (the Supreme Court/appeal courts) show value reductions equalling two to three per cent of the value of the property undamaged to have been judged considerable. In absolute figures, damage amounting to some SEK 4,000 at the present-day level of prices has been judged significant. See Sjödin et al. (2007), p. 237.

243 Chap. 32, Section 1 of MB; cf. Chap. 4, Section 2 of ExL.

244 The locality concept, however, should not be too narrowly construed; see Sjödin et al. (2007, pp. 237-38).

245 The Dalarö and Ålberga cases in the Supreme Court indicate that the role played by this assessment of equity or fairness should be a relatively independent one. See NJA 1999, p. 385 and NJA 2003, p. 619.
6 Summary
As has now been shown, the rules governing land acquisition and compensation are relatively extensive, and not altogether straightforward.

The following table shows, with reference to different purposes, the legislation applicable to acquisition of the land and the principle of compensation applying - compensation for damage only or compensation amounting to profit-sharing. To these rules must be added provisions, described in the previous section, on disposal constraints and environmental damage.

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