

COMPENSATION RIGHTS FOR REDUCTION IN PROPERTY VALUES DUE TO PLANNING DECISIONS IN SWEDEN[†]

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INTRODUCTION

In Sweden, at least twenty enactments separately address restrictions on land use in various situations; some relate to the compulsory purchase of land while others are involved solely with regulation.¹ Although these enactments have different fields of application, they share a similar structure. Each contains provisions relating to the following areas: the purposes for which land may be acquired; who may acquire it; the compensation to be paid to the landowner; and the procedures both for determining whether compulsory purchase is permissible and for deciding on compensation for the land.

This Article focuses on rules of compensation in Sweden. Section 18 of the Swedish Constitution sets forth the basic terms of compulsory purchase and restrictions on land use, protecting citizens from arbitrary land seizures and guaranteeing compensation for land-use restrictions.²

[†] The Article is based extensively on EJE SJÖDIN, THOMAS KALBRO, PETER EKBÄCK & LEIF NORELL, MARKÅTKOMST OCH ERSÄTTNING [COMPULSORY PURCHASE AND COMPENSATION] (Norstedts Juridik, 2002).

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1. See, e.g., Expropriationslagen [Expropriation Act] (Swed.); Fastighetsbildningslagen [FBL] [Real Property Formation Act] (Swed.); Ledningsrättslagen [Utility Easements Act] (Swed.); Anläggningslagen [Joint Facilities Act] (Swed.); Väglagen [Roads Act] (Swed.); Lagen om byggande av järnväg [Railway Construction Act] (Swed.); Kulturminneslagen [Cultural Monuments Act] (Swed.); Plan- och bygglagen [PBL] [Planning and Building Act] (Swed.); Miljöbalken [MB] [Environmental Code] (Swed.).

2.

The property of every citizen is protected in such a way that no one may be compelled, by means of compulsory purchase or any other such disposition, to surrender his property to the public administration or to any private person, or to tolerate restriction by the public administration of the use of land or buildings, other than when necessary to satisfy urgent public interests.

Any person who is compelled to surrender property by means of compulsory purchase or other such disposition shall be guaranteed compensation for his loss. Such compensation shall also be guaranteed to any person whose use of land or buildings is restricted by the public administration in such a way that ongoing land use in the affected part of the property is substantially impaired or injury results which is significant in relation to the value of that part

In matters of compensation, Swedish law distinguishes between three situations:

- (1) Surrender of the ownership of land (expropriation) or the transfer of partial rights, such as through an easement.
- (2) Regulations or restrictions on current land use.
- (3) Injury caused to a property by the use of an adjacent property, such as environmental disturbances.

Some general principles relating to these three situations will be outlined in the following section. The Article will then give a more detailed account of the rules of compensation, which may come into play in connection with a planning decision.

I. THE BASICS OF COMPENSATION IN SWEDEN

A. Compensation Principles: Surrender of Land

Sweden's Expropriation Act lays down the main principles of compensation for surrender of land under Swedish law.³ The basic theory of compensation is that a property owner forced to surrender land must be kept in the same economic position as if the compulsory purchase had never happened. Thus, property owners will be compensated for the damage they suffer. In this sense, compensation can be said to be based on the principle of indemnification.

The main rule is for the compensation to correspond to the property's market value. If only part of the property is affected, the compensation must equal the resulting loss of market value due to the compulsory purchase,⁴ with two exceptions. First, the effects of the compulsory

of the property concerned. Compensation shall be determined according to principles laid down in law.

Regeringsformen [RF] [Constitution] 2:18 (Swed.). This section complies with the Convention for the Protection of Human Rights and Fundamental Freedoms, which sets forth the fundamental right to property. "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law." Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 1, Mar. 20, 1952, Europ. T.S. No. 9, *available at* <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

3. 4 ch. Expropriationslagen (Svensk författningssamling [SFS] 1972:719) (Swed.). Special rules of compensation are also laid out in the Real Property Formation Act, referring to "private compulsory purchase," which requires profit-sharing between buyer and seller, i.e., a higher rate of compensation. However, those rules will not be dealt with in this Article.

4. If this compensation does not fully cover the economic injury to the property owner, compensation shall also be paid for what is termed "other damage." Compensation for "other damage" may come into question, for example, when a property owner has to relocate or close down a business conducted on the property. 4 ch. 1 § Expropriationslagen (SFS 1972:719) (Swed.).

purchase itself on the market value of the property are disregarded. Whether the compulsory purchase resulted in a positive or a negative change in the market value, for compensation purposes, the value of the property is assessed as though the compulsory purchase had never happened.⁵ However, if only a part of a property is purchased, compensation may still be given for any “injurious effect” resulting from the purchase. Second, to the extent that landowners or users may expect a future change in land-use, such “expectation values” need not be compensated if they accrued ten years before the application for the compulsory purchase permit was filed.⁶

B. Compensation Principles: Restrictions on Land-Use

Somewhat different rules apply to damage occurring without any surrender of land, for example, as a result of planning decisions. The basic principle is that only encroachment on the current land-use is taken into account.⁷ Compensation must equal the difference in market value of the property before and after the detrimental decision or action.⁸ No compensation is payable for loss of anticipated value.⁹

In most cases, the decisions of planning authorities do not generate claims of compensation. It is assumed that planning authorities, when making planning decisions, will balance public and private interests by considering the damage to a property and the effects on the property’s value.¹⁰ A plan may not be adopted or a building permit may be refused if the balancing of public and private interests shows that the plan or building permit would cause greater detriment to property owners than can be reasonably accepted out of consideration for the public interest.

Several cases from the Supreme Administrative Court (the court of last resort for planning questions) demonstrate how this balancing can play

5. However, the effect on market value must be of some significance and must be uncommon, having regard to “conditions in the locality” or to “the general occurrence of similar effects.” 4 ch. 2 § Expropriationslagen.

6. On occasion, however, the compulsory purchase involves land affected by a detailed development plan. *See* discussion *infra* Part II. In such cases, the cut-off point may not precede the date on which the plan became legally binding. 4 ch. 3 § Expropriationslagen.

7. This is also the case with restrictions in order to preserve land-use according to the Environmental Code. An in-depth discussion of the Environmental Code is outside the scope of this Article.

8. Plan- och bygglagen [PBL] [Planning and Building Act] 14:10 (Swed.).

9. In principle, any change in land-use requires a permit. Thus, the legal concept of “current land-use” comprises both actual land-use and the land-use permissible under pre-existing planning decisions and permits.

10. Plan- och bygglagen [PBL] [Planning and Building Act] 1:5 (Swed.).

out. The Court has repeatedly ascribed crucial importance to private interests. For example, a proposed detailed development plan was voided because its implementation required the demolition of housing (M 91/3343/9). In another case, the Court struck down a planning decision where the new detailed development plan increased the noise level and entailed heavier traffic (M 93/3008/9). Similarly, a detailed development plan relating to a new industrial estate was found by the Court to be potentially detrimental to the residential environment on nearby properties (M 93/3013/9).

Previous planning and building legislation¹¹ afforded no formal procedure for compensating landowners.¹² However, rules were introduced as part of a 1987 reform that entitled property owners to compensation in certain cases. These rules form the main subject of this Article.

C. Compensation for “Environmental Injuries” Caused by an Adjacent Property

Properties can suffer damage due to planning decisions even without any involvement of compulsory purchase of land or restrictions on land use. For example, roads, railways, utilities, and industrial activity in the vicinity can create noise, air pollution, vibrations, and loss of aesthetic value, which can impair a property and cause its market value to decline.

Damage to property must be primarily taken into account as part of the balance between public and private interests. In certain cases, though, a property suffers a depreciation of such magnitude that compensation must be paid to the landowner. In these extreme situations, property owners can obtain compensation directly from the party that caused the injury under the Environmental Code.

For compensation to be payable, certain criteria have to be met. First, the effect on the market value must be of some significance (a trivial effect, in other words, does not qualify for compensation). Second, the right to compensation arises only if the new land use or density is not a “common occurrence” that could be anticipated with regard to conditions

11. 4 § Byggnadslagen (SFS 1947:385).

12. See generally GÖRAN ALMGREN, PLANSKADEPROBLEMET [THE PROBLEM OF INJURIOUS PLANNING DECISIONS] (1979).

in the particular locality (such as a residential area, central urban district, or an entire urban locality) or in general.¹³

If these criteria are satisfied, compensation must be paid. However, compensation is not paid for the entire damage. Property owners are obliged to accept a certain amount of damage themselves—case law shows deductions of two to five percent of the value of the property, depending on the situation.

To summarize, in cases where adjacent land-use causes damage, property owners are entitled to compensation only if the disruptions are relatively uncommon. The most common environmental injuries faced by the courts for compensation include the effects of major traffic arteries, railways, high voltage electrical power lines, and airports, all of which cause noise and create eyesores. On the other hand, a new housing development that increases local traffic is normally considered to be a “common occurrence,” so property owners must simply put up with it.

D. Compulsory Purchase on Account of “Exceptional Detriment”

Another legal ground for compensation pertains to a situation known in some countries as “injurious affection.” In extreme cases, the compulsory purchase of only a part of a property, restrictions on land-use, and environmental injury can make it difficult for the remainder of the property to be used in the same way as before. To compensate property owners in such situations, several enactments contain provisions entitling the property owner to demand compulsory purchase of the entire property.¹⁴ This entitlement is conditional on the property suffering such a loss of value that it can be characterized as “exceptional detriment.”

Exceptional land detriment is an encroachment of great magnitude. This can mean great economic detriment, like a substantial decline in the value of the property. Additionally, exceptional land detriment can mean

13. 32 ch. 1 § Miljöbalken (SFS 1998:808). There is a link between the Environmental Code and the Expropriation Act in chapter 4, section 2. The effects of the compulsory purchase on the market value of the property are disregarded. *See supra* Part I.A. This leads to equal treatment of property owners in the event of a compulsory purchase project (the construction of a motorway, for example) that entails environmental damage great enough to be considered “uncommon.” Property owners whose land is acquired by compulsory purchase because of the motorway are compensated for environmental damage in connection with the compulsory purchase. Property owners who do not need to surrender their land may receive compensation for “environmental injury” under the Environmental Code.

14. *See, e.g.*, Expropriationslagen [Expropriation Act] (Swed.); Plan- och bygglagen [PBL] [Planning and Building Act] 14:5 (Swed.); Miljöbalken [MB] [Environmental Code] 7:11 (Swed.).

that the property had to be put to a different use.¹⁵ An example is where a property owner is forced by disruptive noise to convert residential use to office use.

*E. Compensation Claim Procedures*¹⁶

The Land Court (*fastighetsdomstolen*) is the court of first instance for deciding compensation claims under the Expropriation Act. The expropriating party bears procedural costs.¹⁷ However, if the Land Court's decision is appealed to the Court of Appeal (*hovrätten*) or finally to the Supreme Court (*Högsta domstolen*), the losing party bears procedural costs.

Compensation under the Environmental Code presents a somewhat different situation. A party claiming compensation for environmental injury must file proceedings in the Environmental Court (and later in the Appeal Court and the Supreme Court) against the party causing the damage. Here, even in the court of first instance, the losing party must bear costs. This creates a fairly high risk for a property owner suing an opponent.

II. THE SWEDISH PLANNING AND PERMIT SYSTEM

Before turning to a more in-depth discussion of compensation rights in cases of depreciation due to planning decisions, this section will provide a brief introduction to the framework of the Swedish planning system. The present legislation on planning and permits, the Planning and Building Act, came into force in 1987. Among other things, the new legislation made the planning of land and water areas a municipal responsibility.¹⁸

15. Lantmäteriets rättsfallsregister [National Land Survey record of court decisions] [Court of Appeals, Svea] 1987-06-10 ref 87:10 (HovR Swed.).

16. The special procedures applying to planning decisions are dealt with in Parts III and IV.

17. Expropriationslagen [Expropriation Act] 7:1 (Swed.).

18. Before the Planning and Building Act, municipalities adopted plans that first had to be approved by a county administrative board, which represented the State at the regional level. Under the new legislation, the county administrative board can "review" municipal decisions. For example, these boards can review decisions concerning detailed development plans and building permits if the plan or permit (1) does not satisfy a national interest; (2) regulates matters of the use of land and water areas affecting more than one municipality in a way that does not provide suitable coordination; (3) does not observe an environmental quality standard; or (4) leads to a built environment that is unsuitable with regard to the health of residents and others or the need for protection against accidents. Plan- och bygglagen [PBL] [Planning and Building Act] 12:1 (Swed.). In these cases, the government may direct the municipality to adopt, amend, or annul a detailed development plan (by issuing an injunction) within a specified time. Plan- och bygglagen [PBL] [Planning and Building Act] 12:6 (Swed.).

The planning and permit system laid down by the Act can be summarized as follows.¹⁹ First, the regional plan (*regionplan*) can be used for inter-municipal planning coordination. This type of plan is not mandatory, and only a few have actually been drawn up. Second, the comprehensive plan (*översiktsplan*), covering the whole area of the municipality concerned, indicates the main outline of land and water use as well as the development of settlement and infrastructure. This plan is merely advisory in relation to subsequent planning and decision-making. Third, the detailed development plan (*detaljplan*) is binding for subsequent permits. Fourth, development permits are granted on the basis of these plans. Under this system, property owners can qualify for compensation only as a result of decisions concerning the detailed development plan and building permits.

A. *The Detailed Development Plan*

A detailed development plan is necessary for nearly all major development projects. Detailed development plans indicate and set the limits of (1) public open spaces, such as streets, squares, and parks; (2) development districts, such as built-up areas; and (3) water areas, such as yachting marinas and open-air baths.²⁰ Furthermore, detailed development plans can define land and water use as well as the extent, positioning, design, and construction of settlement. These plans can also contain protective provisions and demolition prohibitions on buildings; this aspect of detailed development plans is especially valuable from a historical, cultural, environmental, or artistic viewpoint.²¹ In the latter cases, the property owner may be entitled to compensation.

A detailed development plan, then, allows for far-reaching regulation of land-use and development, but the extent of regulation is subject to a number of important restrictions. First, when preparing the plan, a municipality must always consider both public and private interests.²² Second, the design of a detailed development plan must give reasonable

19. There are also two other types of plans, but these have no bearing on a description of the principles of compensation. Area regulations (*områdesbestämmelser*) can be used in limited areas for legally securing the comprehensive plan or national interests. Plan- och bygglagen [PBL] [Planning and Building Act] 5:6 (Swed.).

The Property Regulation Plan (*fastighetsplanen*) makes possible a legal definition of property boundaries, easements, and joint facilities (*gemensamhetsanläggningar*) in areas with detailed development plans. *Id.* 6:3.

20. *Id.* 5:3.

21. *Id.* 5:7.

22. *Id.* 1:5.

consideration to existing buildings and property rights.²³ Third, the plan shall not be more detailed than is required with “regard to its purpose.”²⁴

Detailed development plans are “implementation-oriented” and are normally drawn up after a development initiative. A detailed development plan must have an “implementation period” (*genomförandetid*) lasting between five to fifteen years within which the plan is intended to be implemented.²⁵ This implementation time is crucial to the property owner’s entitlement to compensation.²⁶

A detailed development plan gives the municipality the right to acquire both (1) land that will be used for public open spaces of which the municipality is in charge,²⁷ and (2) land that, according to the plan, shall be used for public purposes, such as schools.²⁸ On the other hand, if a property owner so demands, the municipality is obliged to acquire this land.²⁹

B. Permits

The Planning and Building Act contains rules on three kinds of permits: building permits,³⁰ demolition permits, and site improvement permits.³¹ Compensation claims may in some cases arise if the municipality refuses to grant a permit application.³²

The Planning and Building Act expressly enumerates the measures for which a building permit is required. Sweden’s regulatory system is quite complicated, but the general rules are as follows. A building permit is

23. *Id.* 5:2.

24. *Id.* 5:7.

25. *Id.* 5:5.

26. *See infra* Part III.

27. The plan shall indicate who is to be responsible for public spaces, which normally is a municipal responsibility. Plan- och bygglagen [PBL] [Planning and Building Act] (Swed.). However, leisure home areas, roads, and green areas can be “joint facilities” managed by joint property associations according the Joint Property Management Act. In these cases, the association has the right to acquire land for public spaces in the plan. 12 § Anläggningslagen [Joint Facility Act] (Swed.).

28. Plan- och bygglagen [PBL] [Planning and Building Act] 6:17 (Swed.).

29. The same obligation is incurred by joint property associations responsible for the maintenance of the public space. *Id.*

30. Anyone intending to apply for building permission can begin by applying for “tentative approval” (*förhandsbesked*). Plan- och bygglagen [PBL] [Planning and Building Act] 8:34 (Swed.). The tentative approval procedure serves to examine the permissibility of the intended development in the place concerned. The main purpose of tentative approval is to examine the location of development outside a detailed development plan under chapter 2 of the Planning and Building Act on the basis of simpler documents than are required by building permit procedures. Tentative approval is binding for two years where processing of a building permit application is concerned. *Id.*

31. *Id.* 8:8, 8:9.

32. *Id.* 8:1. *See infra* Part IV.

needed in order to (1) erect a building, (2) make extensions to a building, (3) use or adapt buildings either wholly or partly for a purpose essentially incompatible with the building's previous purpose, or (4) make alterations to buildings, thereby providing additional dwellings or additional premises for retail, handicraft, or industry.³³ In addition, detailed development plans require an application for a building permit to repaint buildings, replace facing or roofing material, or make other alterations to buildings that "essentially change their external appearance."³⁴

1. Demolition Permits

The main principle is that a demolition permit is required for demolition of buildings or parts of buildings in areas covered by detailed development plans, if the buildings require building permits.³⁵

2. Site Improvement Permits

If the excavation and filling of a site causes a substantial change in the site's height level, a site improvement permit is required unless the measures comply with the plan or a granted building permit. The municipality may decide in a detailed development plan that a site improvement permit is also required for "felling" or planting trees.³⁶

Finally, building, demolition, and site improvement permits will cease to be valid if the work has not started within two years and been completed within five years of the date on which the permit was granted.³⁷

C. Appeals Regarding Detailed Development Plans and Permits

The procedure whereby a municipality draws up, amends, and rescinds detailed development plans is subject to formal regulations, which are designed to assure the affected parties of participation and the rule of law.³⁸ Consultations must take place during the plan's framing. A proposed plan must be exhibited to the public before its adoption by the

33. Plan- och bygglagen [PBL] [Planning and Building Act] 8:1 (Swed.).

34. *Id.* 8:3.

35. Plan- och bygglagen [PBL] [Planning and Building Act] 8:8 (Swed.). There are exceptions to this rule, due to the fact that the municipality, through a detailed development plan, can relax the obligation to apply for a building permit for some kinds of buildings. In this case the municipality may, however, decide that a demolition permit shall be required for such buildings. *Id.*

36. *Id.* 8:9.

37. Plan- och bygglagen [PBL] [Planning and Building Act] 8:33 (Swed.).

38. *Id.* 5:18–5:36.

municipality. Once a plan is adopted, “aggrieved” parties may appeal to the County Administrative Board,³⁹ and the Board’s decision can be contested in the Supreme Administrative Court.⁴⁰ However, it is important to note that landowners do not first have to submit appeals to be eligible to file compensation claims.

In the case law, “affected parties,” for the purposes of decisions concerning a detailed development plan, include only owners of property located within the planning area or directly adjoining it. A right of appeal usually exists even if the appellant’s property is separated from the planning area by a street or road. In other cases, owners of properties in the immediate neighborhood may be entitled to appeal if they are particularly affected with regard to, among other things, the nature and extent of the measure in question, the area’s natural history, and traffic conditions of the area.

Permits may be appealed by “aggrieved persons” to the County Administrative Board.⁴¹ The criteria for considering who is “affected” by permit decisions are essentially the same as for detailed development plans.⁴² The municipality’s permit decision naturally affects the applicant, who can appeal the refusal of a permit, but owners of neighboring properties can also appeal the grant of a permit.

III. COMPENSATION OCCASIONED BY THE ADOPTION, AMENDMENT, OR ANNULMENT OF DETAILED DEVELOPMENT PLANS

In considering when a municipal detailed development planning decision can entitle a property owner to compensation, we should distinguish between three situations: (1) adoption of a new detailed development plan for an area where no such plan has previously existed; (2) amendment or annulment of a plan during the implementation period; and (3) amendment or annulment of a plan after the implementation period.

39. Appeals against detailed development plans are relatively common. A survey of the Stockholm region showed about twenty to twenty-five percent of adopted plans have been appealed to the county administrative board. Magnus Olofsson & Maria Runhem, *Överklagade detaljplaner i Stockholms län* [Appeals Against Detailed Development Plans in the Stockholm Region] (2006) (MSc thesis, Real Estate Planning and Land Law Section, KTH) (on file with author).

40. Subject to certain conditions, decisions by the government can be reviewed by the Supreme Administrative Court (*Regeringsrätten*). This review is primarily a “legality assessment,” determining the legality of the government’s decision.

41. The board’s decision can be appealed to administrative courts and finally to the Supreme Administrative Court. Plan- och bygglagen [PBL] [Planning and Building Act] 13:2 (Swed.).

42. See *supra* Part II.A.

A. *Compensation Occasioned by the Adoption of a New Plan: Protective Provisions for Valuable Buildings*

Buildings that are especially valuable from a historical, cultural, environmental, or artistic viewpoint, or that form a part of a built area that is distinguished by these qualities, must not be altered.⁴³ In addition, buildings in this category can be made the subject of “protective provisions” included in detailed development plans.⁴⁴ Such provisions may, for example, contain special stipulations concerning rebuilding and maintenance, which may preclude active measures of protection. If protective provisions result in the depreciation of a property’s value, then in principle, the property owner is entitled to compensation. For compensation to be payable, however, the damage must reach a certain qualifying level. The right to compensation requires “the current land use in the affected part of the property [to be] substantially impaired.”⁴⁵ According to the history of the legislation, the property owners need only tolerate injuries that are of trivial consequence to them. It is not possible, however, to specify the floor value in percentage terms. If the value of the injured property is low, the minimal injury that the owner must tolerate can amount to ten percent of the value; on the other hand, if the property’s value is high, the minimal percentage may be lower because if the injury amounts to a large sum of money in absolute terms, it can never be regarded as trivial.

Thus, a necessary prerequisite for compensation is that the regulation causes an injury exceeding the minimal floor amount. This minimal floor is not deducted from the amount of compensation so that, where compensation rights are recognized, compensation corresponds to the entire injury.

1. *Example*

An adopted detailed plan sets protective provisions for a building of historical significance. The protective provisions require specific materials to be used for the roof and the façades. The cost of future investments and maintenance is estimated at 120,000 SEK. If the value of the property is 1,000,000 SEK, the injury is twelve percent of that value. Thus compensation will amount to 120,000 SEK.

43. Plan- och bygglagen [PBL] [Planning and Building Act] 3:12 (Swed.).

44. *Id.* 5:7.

45. *Id.* 14:8.

2. *Demolition Prohibition for Protected Buildings*

Demolition prohibitions may be included in a detailed development plan, but only for buildings that may be subjected to protective provisions, such as buildings that are especially valuable from a historical viewpoint.⁴⁶

A demolition prohibition can cause economic damage for the property owner, who is compelled to accept a less profitable investment option, such as being forced to repair or rebuild a building instead of pulling it down and constructing a new one of essentially the same size and design. A right to compensation exists if this damage is “*significant* in relation to the value of that part of the property concerned,” which the courts have interpreted to mean damage on the order of fifteen percent.⁴⁷ In this case, compensation is only paid for injuries exceeding this fifteen percent threshold.

3. *Example*

Suppose that the value of a property would be 400,000 SEK if the existing building were demolished and replaced with a new one. If the building may not be demolished, the rehabilitation cost for the existing building will exceed the cost of a new building by 200,000 SEK. The damage will thus be 200,000 SEK. The 200,000 SEK damage amounts to fifty percent of the value of the property with demolition permitted. Therefore, the property owner is entitled to compensation. The compensation payable will be 200,000 SEK less 60,000 SEK (fifteen percent of 400,000 SEK), or 140,000 SEK.

4. *Special Order by the the Municipal Building Committee Regarding Traffic Safety*

A detailed development plan may stipulate that an existing way to access a public open space (such as a street) must be altered or cancelled before a building permit can be granted. This condition may be imposed

46. *Id.* The only way to protect other buildings that ought to be preserved is by direct adjudication of the demolition issue in connection with a demolition permit application. *See infra* Part IV.B.

47. Plan- och bygglagen [PBL] [Planning and Building Act] 14:8 (Swed.) (emphasis added). The level of this compensation limit has not been specified more exactly in the legislation. Judicial interpretation of the Act’s legislative history has determined that the limit falls between ten and twenty percent of the value.

only if the building permit implies a “substantial alteration of the use of the land.”⁴⁸

Similarly, a detailed development plan may require the property to be fenced off from the street. In these situations, property owners do not receive compensation. This type of obligation does not, however, apply to properties that are already built up and for which no building permit is needed. Property owners in this situation retain their existing access.

In these situations, the Municipal Building Committee may issue an order to the property owner to erect a fence or change the location of a driveway into a street or road, if it is necessary for traffic safety.⁴⁹ A property owner incurring damage from such an order is entitled to compensation from the municipality.⁵⁰ Compensation is payable for the full amount by which the order reduces the market value of the property. Often, the amount of depreciation can be determined on the basis of the true cost of rectifying the damage. However, any benefit accruing from the measure taken shall be deducted from the assessed damage—thus, only the net damage is compensable.

B. Compensation Due to the Amendment or Annulment of a Plan During the Implementation Period

Detailed development plans have an implementation period of five to fifteen years. During this period, a property owner who submits a request for a building permit that is in accordance with the plan will assuredly have the request granted.

Yet, under certain conditions, a plan may be amended or annulled during the implementation period against the wishes of a property owner, such as when unforeseen matters of great public importance arise after the plan is prepared.⁵¹ This is a hard condition to meet, and in practice, it is extremely uncommon to consider plan amendments during the implementation period.

If a detailed development plan must nevertheless be altered or annulled before the implementation period has expired, the property owner is entitled to compensation from the municipality for the damage incurred due to a reduction or loss of development rights.⁵² Compensation is also

48. *Id.* 5:8.

49. *Id.* 10:17. The Building Committee may also direct an injunction to the owner to remove buildings, if the buildings can be moved without difficulty or are of little value. *Id.*

50. *Id.* 14:3.

51. *Id.* 5:11.

52. *Id.* 14:5.

paid when a public open space in the plan is changed or eliminated within the implementation period, and this causes the value of the particular property to depreciate. One example is when a plan is amended where the original designation of a park is converted to development, and as a result, the value of an adjoining property is reduced.

In the cases discussed above, there is a right to compensation for the reduction of the property's market value. That reduction must be determined as the difference between the value of the property under the detailed plan and its value after the plan's amendment or annulment.⁵³ There is also a right for other economic damages, like planning costs and other direct expenditures that are direct consequences of the planning decision.

C. Compensation Due to the Amendment or Annulment of a Plan after the Implementation Period

The expiration of the implementation period for the detailed development plan does not mean that the plan ceases to be legally binding. The plan continues to apply unless it is altered or annulled. In practice, the vast majority of plans remain unaltered after the implementation period. However, when the period has expired, the plan may be amended or annulled without regard to the rights derived from the plan. Thus, development rights may be reduced or removed entirely without the property owner being able to demand compensation. If owners have not made full use of their development rights within the implementation period, no compensation is paid. A planning decision, however, can never prevent property owners from using their property in accordance with the existing land-use.⁵⁴

An amendment to a detailed development plan is considered a new plan. If the amended plan includes protective provisions or demolition prohibitions for buildings of special value, compensation must be paid in accordance with the rules described in Part III.A above. The same applies if the amended plan prompts the Municipal Building Committee to issue an order that obliges the landowner to cancel or alter existing access to a

53. Plan- och bygglagen [PBL] [Planning and Building Act] 14:4 (Swed.). When calculating damages, however, any "benefit" that the property owner may derive from the planning decision must be taken into consideration. *Id.* 14:10.

54. If land-use is "nonconforming," the municipality has to expropriate the land whenever the municipality wants to change the land-use.

street or for other reasons. In addition, if a street for public transportation is altered, a property owner may be entitled to compensation.

1. Alteration of Municipal Streets and Roads

If, as a result of a new plan, an area intended for public transportation under a detailed development plan is used for other purposes or is altered with regard to street level, a property owner may have a right to compensation from the agency responsible for maintaining the road.⁵⁵ The municipality is normally the body responsible for public infrastructure where alterations of this kind are concerned.⁵⁶

Compensation must match the reduction of the market value of the property (plus any other damages). Often, the change in street level forces the property owner to make direct expenditures, such as the alteration of a garage driveway. In cases of this kind, the depreciation in market value often can be determined on the basis of a direct-cost assessment. If the new road connection also results in a rise in market value, such a benefit must be deducted from the amount of payable compensation.

When the height of a street is altered, this can subject adjoining properties to increased noise or pollution emissions. When the increased nuisance is a direct consequence of the height change, this damage must be compensated in accordance with the rules that have been described. But if the increased disruption is instead due to, for example, a change in traffic not directly connected with the height of the street, the environmental damage must be assessed with reference to the provisions of the Environmental Code.

2. Land Acquisition

After the implementation period, a municipality in charge of public services has a right to expropriate land at market value if that land has not been developed in substantial conformity with the plan.⁵⁷ Municipalities sometimes use this power as a basis to negotiate with landowners to acquire, for example, plots of land for schools or daycare. In these cases, if the property owner has already paid charges or fees for public infrastructure or streets, the municipality is obliged to repay these costs.⁵⁸

55. *Id.* 14:4.

56. *Id.* 6:26. In some detailed development plans, the National Roads Authorities or Joint Property Management Associations are responsible for the road maintenance.

57. Plan- och bygglagen [PBL] [Planning and Building Act] 6:24 (Swed.).

58. *Id.* 14:7.

IV. COMPENSATION FOR REFUSALS TO GRANT PERMITS

As mentioned before, planning authorities are expected to balance public and private interests when making planning decisions. For an area covered by a detailed development plan, an application for a building permit will be approved only if: (1) the proposed construction complies with the plan; (2) buildings on the property unit (and the property unit itself) comply with the plan; and (3) the proposed measure meets the requirements for the layout and design of the building.⁵⁹ However, if the proposed development would cause only “minor deviations” from the detailed development plan, the municipality is authorized to issue the permit, despite the minor deviation.⁶⁰

When an area is not covered by a detailed development plan, applications for building permits will be granted if the proposed development (1) meets the requirements of location, layout, and design in the Act, and (2) does not require the prior approval of a detailed development plan.⁶¹ As mentioned in Part I.B, the general rule is that compensation will not be payable if permission to build or demolish a building is refused. However, under some special cases, the right to compensation exists. These special cases are described below.

A. The Special Case of Replacement of Demolished Buildings

In practice, there are three situations in which a building permit for the replacement of a demolished or destroyed building is refused. The first situation occurs when the demolished building was situated in an area that was only covered by a comprehensive plan that was not legally binding. In addition, the area in which the demolished building was located has to be an area where building development is no longer considered suitable, such as an area of value for the natural environment. The second situation occurs when the building does not conform to the detailed development plan that applies to the area. The third situation occurs when the detailed

59. *Id.* 8:11.

60. The limits on “minor deviations” are discussed in the legislative history of the legislation. *See* Proposition [Prop.] 1985/86:1 Ny plan- och bygglag [government bill] (Swed.); Proposition [Prop.] 1989/90:37 [Olovlig kontorisering] [government bill] (Swed.). Examples of minor deviations include a building being positioned a meter inside land excluded from building development, or the area or height of the building being exceeded for reasons of structural engineering to achieve a better layout. Generally, the amount of discretion that planning bodies have to authorize “minor deviations” is quite narrow.

61. Plan- och bygglagen [PBL] [Planning and Building Act] 8:12 (Swed.).

development plan is amended after the implementation period, and the building will then no longer comply with the new plan.⁶²

If a municipality refuses to grant a building permit, the landowner can claim compensation if the landowner applied for the permit within five years of the time when the original building was demolished.⁶³ The damage to be assessed is the reduction in the market value of the property caused by the municipality's refusal to grant permission to rebuild. This pertains only to the decline in the value of the land, whereas the value of the destroyed building will have to be covered by insurance. Thus, the land value for the building is compared to the value of, for example, the remaining development rights in a plan.

In cases where an old building is destroyed by fire or some other accident, full compensation is payable regardless of the magnitude of the damage. On the other hand, if the building is demolished by the property owner, compensation will be payable only if the damage is "significant in relation to the value of that part of the property concerned."⁶⁴

B. Refusal to Grant a Demolition Permit

An application for a demolition permit shall be granted unless the building or a part of the building (1) is covered by a demolition prohibition in a detailed development plan, (2) is required for the housing supply, or (3) ought to be preserved because of the historical, cultural, environmental or aesthetic qualities of the building (or the built environment).⁶⁵ Demolition prohibitions in detailed development plans may apply only to buildings that, because of historical, cultural, environmental, or aesthetic reasons, cannot be altered in a way that would affect their character.⁶⁶ Other buildings which ought to be preserved can thus be protected only by adjudication of the demolition issue in direct connection with a demolition permit application, as referred to above.

A typical instance where a demolition permit may conceivably be refused and compensation awarded occurs when there is a valuable building within a detailed development plan, the implementation period has expired, and the plan is about to be annulled or amended (but a refusal to grant a demolition permit can also refer to buildings outside a detailed

62. *Id.* 8:11.

63. *Id.* 14:8.

64. *See supra* Part III.A. This generally means damage of fifteen percent of the value of the property, and compensation is paid only for damage exceeding the limit.

65. Plan- och bygglagen [PBL] [Planning and Building Act] 8:16 (Swed.).

66. *Id.* 3:12.

development plan). Here again, the right of compensation is founded on the right of re-erecting a building for essentially the same purpose and of essentially the same size. Thus it makes no difference if the current detailed development plan grants additional development rights or for that matter, less extensive rights. However, if a demolition prohibition were adopted during the planning implementation period, and the plan permitted more lucrative land-use than the current building, compensation must be determined with reference to the land-use permitted in the plan.

The rules of compensation for a demolition prohibition and the refusal of a demolition permit are the same. Compensation will be payable if the damage is significant (fifteen percent of the property value), and compensation is paid only for damage exceeding the limit.⁶⁷

C. Refusal to Grant A Site Improvement Permit

An application for a site improvement permit shall be granted if the proposed measure does not (1) contravene a detailed development plan,⁶⁸ (2) prevent or obstruct the future use of the site for building, or (3) disrupt the environment.⁶⁹ Similar to compensation in the context of protective provisions in detailed development plans, the right to compensation in this situation applies only if the current land use in the affected part of the property is “substantially impaired,” where the level of depreciation exceeds a threshold of about ten percent of the value. If this threshold is passed, compensation may be paid for all of the damage.⁷⁰

V. COMPENSATION CLAIM PROCEDURES

The Land Court decides disputes between municipalities and landowners over compensation.⁷¹ Compensation claims must be made within two years of the date when the detailed development plan, or the permit decision, comes into force. However, claims may be made at a later date if the damage could not reasonably have been foreseen within the

67. *Id.* 14:8. *See supra* Part III.A.

68. However, a site improvement permit may be granted for measures involving minor deviations from a detailed development plan, if the deviations are compatible with the purpose of the plan.

69. Plan- och bygglagen [Planning and Building Act] 8:18 (Swed.).

70. *See supra* Part III.

71. The Land Court decision can be appealed to the Court of Appeal (*hovrätten*) and finally to the Supreme Court (*Högsta domstolen*).

specified period.⁷² The municipality will bear the costs of court proceedings.

In principle, then, it is possible for a property owner to claim compensation two years after a planning decision has been made. This makes it hard for municipalities to estimate the likely economic consequences of planning decisions. To alleviate this problem, before adopting a detailed development plan that imposes protective conditions or demolition prohibitions, a municipality may order property owners who may incur damages to give notice of their compensation claims within two months.⁷³ This helps to reduce uncertainty before the plan is adopted. A property owner who does not claim compensation at this juncture will have no remedy later on.

Finally, one should note distinctions between the statutory rules of compensation and their practical implementation. One purpose of the compensatory provisions is to lay down rules of conduct for negotiations between “buyer” and “seller” to pave the way to voluntary agreements.⁷⁴ In practice, it is extremely uncommon for the parties not to reach an agreement about compensation for both expropriation and planning decisions.⁷⁵ In over ninety-five percent of all cases where compulsory purchase is applicable, the parties arrive at an agreement regarding compensation.

These “voluntary” agreements presumably cost more to the municipalities than the statutory rules prescribe, otherwise selling property owners would not likely enter into such agreements. Moreover, there is an incentive for purchaser authorities to agree to higher price levels for the sake of lower transaction costs, including lower legal expenses and higher

72. Plan- och bygglagen [PBL] [Planning and Building Act] 15:4 (Swed.).

73. *Id.* 5:28A.

74. Thus, the legislation poses a “negotiation requirement.” Expropriationslagen [Expropriation Act] 2:12 (Swed.). Compulsory purchase is not permissible if “the purpose ought suitably to be provided for in another way or the inconvenience entailed by the compulsory purchase from a public and private point of view outweighs the advantages which can be derived from it.” *Id.*

75. The Swedish Road Administration (*Vägverket*) and the Swedish Rail Administration (*Banverket*) reach agreements in ninety-nine percent of cases where land needs to be acquired. See Josefina Idbrant & Camilla Klarin, *Markförvärv för allmänna vägar: Överens-kommelser överklaganden* [Land Acquisition for National Roads: Agreements and Appeals] (2005) (MSc-thesis, Section of Real Estate Planning and Land Law, Department of Infrastructure, Royal Institute of Technology, Stockholm); Sara Ringbom & Elin Trägårdh, *Markförvärv för järnvägar: Överens-kommelser överklaganden* [Land Acquisition for Railroads: Agreements and Appeals] (2005) (MSc-thesis, Section of Real Estate Planning and Land Law, Department of Infrastructure, Royal Institute of Technology, Stockholm); LEIF NORELL, *ERSÄTTNING FÖR INTRÄNG PÅ JORDBRUKSFÄSTIGHETER* [COMPULSORY PURCHASE COMPENSATION FOR AGRICULTURAL PROPERTIES] (2001).

community good will.⁷⁶ Consequently, there are very few Appeal Court and Supreme Court cases. The official statute book commentary and legal synopsis for the Planning and Building Act does not contain a single item of case law precedent for planning-based compensation.⁷⁷

VI. CONCLUSION

This Article has explored how the Swedish Planning and Building Act sets out several situations in which landowners may claim compensation. Table 1 summarizes the compensation system, highlighting the similarities and differences among the various compensable situations.

76. It is expensive for the authorities if they fail to reach agreements with property owners. Except from the compensation itself, authorities have to pay the owners' legal advisors and valutors (court costs). Furthermore there are "political costs" or "bad will costs" (the local newspapers may stand up for the "little person" who is fighting the authorities). In most cases, the external cost exceeds the compensation itself; this costs certainly exceeds the extra amount of money authorities have to pay to get an agreement. Thus, if we are not talking about, for example, expropriation for the purpose of extending a national airport (where the compensation may be very high), it is rational, from an economic point of view, to give the property owner an extra bonus. It is a win-win situation.

77. LARS UNO DIDÓN, LARS MAGNUSSON, OLLE MILLGÅRD & STEFAN MOLANDER, PLAN- OCH BYGGLAGEN [THE PLANNING AND BUILDING ACT] (1987).

TABLE 1
SUMMARY OF SWEDISH COMPENSATION SYSTEM

Ground for Compensation	“Qualification Threshold” for Compensation	Full or Partial Compensation
<i>Provisions in a Detailed Development Plan</i>		
Protective provisions for valuable buildings	Current land use is substantially impaired	Full compensation
Demolition prohibition for valuable buildings	Significant injury	Compensation for injury exceeding the threshold
Order to alter access ways to public open space	None	Full compensation
Alteration of public open space	None	Full compensation
Down-zoning during the implementation period	None	Full compensation
Down-zoning after the implementation period		No compensation
<i>Refusal to Grant a Permit</i>		
Building permit for replacement of a building destroyed by accident	None	Full compensation
Building permit for replacement of a demolished building	Significant injury	Compensation for injury exceeding the threshold
Demolition permit	Significant injury	Compensation for injury exceeding the threshold
Site improvement permit	Current land use is substantially impaired	Full compensation

Note: The various legal grounds for compensation are listed in the left column. The two major groups of causes are (1) restrictions imposed by a new or amended detailed development plan, and (2) refusals to grant building permits. There are several subtypes in each legal ground. The second column lists the different “qualification thresholds” that apply to each of the subcategories of compensation grounds. The third column indicates whether, in view of the threshold, compensation is payable for the full extent of the injury or only for the amount of injury beyond a specific threshold. The criteria for such thresholds differ as well.

Thus, there are various “qualification limits” and differences as to whether compensation is payable for all damages or only for damages that exceed certain limits. The necessity of these differences has been questioned by some commentators.⁷⁸ The rules are not altogether clear, which impedes implementation of the law. It is worth mentioning that the Government’s final proposal on these different rules of compensation to Parliament in 1986 was unsupported by the outcome of the preceding inquiry in Parliament.⁷⁹ The Supreme Court Council on Legislation advocated for a uniform threshold limit that would be set at a moderate level of ten percent.⁸⁰

In December 2005, the Government appointed a commission to carry out a general review of the statutory rules of compensation.⁸¹ The commission will present its considerations in the end of 2007. Whether this will lead to any change in the rules of compensation discussed in this Article remains to be seen.⁸²

78. GERHARD LARSSON, SAMORDNING AV ERSÄTTNINGSGREGLER VID MARKINLÖSEN OCH FASTIGHETSSKADA [COORDINATION OF COMPENSATION RULES] (2003); Report 4:93 from the Section of Real Estate Planning and Land Law, Department of Infrastructure, Royal Institute of Technology, Stockholm (on file with author).

79. Statens Offentliga Utredningar [SOU] 1979:66 Ny plan- och bygglag [government report series] (Swed.). In Sweden, all new major acts must be discussed or commented on in a parliamentary “subcommittee” and the Court Council.

80. Proposition [Prop.] 1985/86:1 Ny plan- och bygglag [government bill] (Swed.). The Council submitted:

The Commission (SOU 1979:66 p.575) has found a reasonable balance between public and private interests to be that the individual should, without being entitled to compensation, tolerate economic injury approximately equal to ten per cent of the value of the property, or part of the property, in the event of the kind of encroachment in question. The Commission argues that minor changes in value can often be hard to prove, yet at the same time the Commission states that its proposal is not intended to imply any change in current practice. The Council for its part finds that a qualification threshold of ten per cent in the injury situations concerned cannot be considered incompatible with what has been considered acceptable in previous legislation and case law.

Id.

81. Direktiv 2005:147.

82. One issue that the commission will consider is whether the privatization of infrastructure (electrical powerlines and telecommunication networks) legitimate higher compensation. We will have to wait and see if the commission will examine compensation issues involving planning decisions.