

# Property rights regime and the timing of land development. Poland as CEEC.

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12-15 JULY 2023 LONDON  
29TH ANNUAL CONFERENCE OF  
THE EUROPEAN REAL ESTATE SOCIETY  
LONDON, 12.07.2023

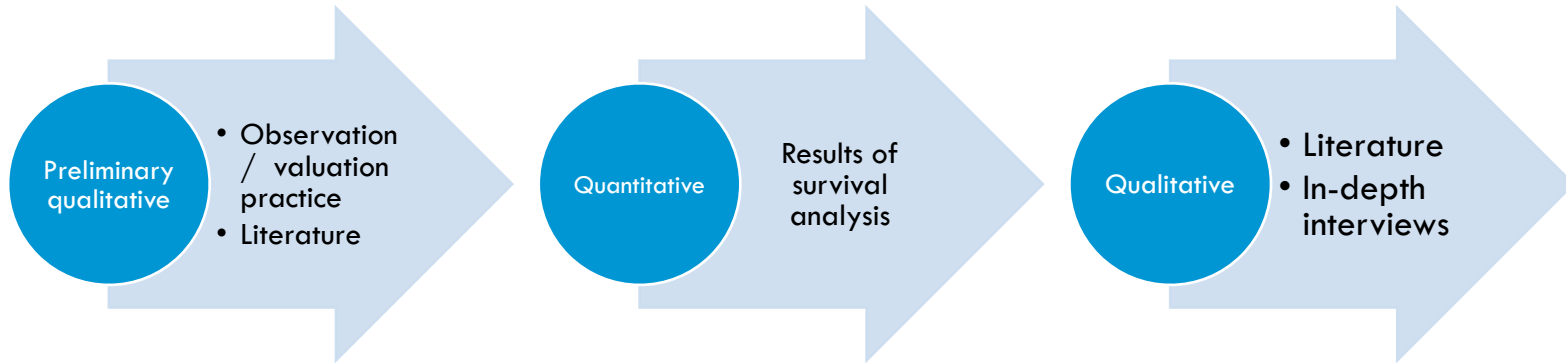


# Agenda

1. Introduction
2. Conceptual framework
3. Theoretical base
4. Uncertainties and risks arising from property rights (literature)
5. Property rights regime in Poland. Uncertainties and risks.
6. Conslusions

# 3 papers (PhD) on the timing of land development

- Triangulation: theory, methodology, and data sources
- The mixed-method approach:



1. In **quantitative part, statistical analysis** is applied in order to answer the question:
  - if there are any delays in the timing of land development and what are factors that influence this?
2. In **qualitative part, in-depth interviews** are conducted in order to answer question:
  - why land is withheld from development and what is the mechanisms by which factors influence real estate development? → emerged topic of property rights issues, some Polish specific →
3. + therefore this theoretical paper

# Property rights regime and the timing of land development – conceptual framework

- RQ: In what way could property rights issues specific to Poland affect the timing of land development?
- In order to answer this reserach question, we need to:
  - Understand relationship between institution characteristic arrangement and behaviour of developers
  - Know Polish situation and to what extend it is specific and to what extend it is different from other countries

- The intangibility of that which is exchanged in land markets (namely property rights), the high monetary value of those rights, and the great significance of land for individuals and their society, mean that institutions are particularly important for land markets (Needham & Louw, 2006, p. 76).
- Institutions reduce the uncertainties involved in human interaction (North, 1990). Those institutions in a case of land markets are formalised in legal acts, written regulations, local laws, judicial rules, contracts, or informal conventions and customs.
- Economic rules define property rights, that is the bundle of rights over the use and the income to be derived from property and the ability to alienate an asset or a resource (North, 1990, p. 47)

# Theoretical base 2: property rights & timing

- To link property rights and timing of land development we take (Miceli, Sirmans et al. 2000) that specified the model with assumptions:
  - developer makes a decision about the timing and the volume of a construction on a unit of undeveloped land (in an urban area), and maximize the present value of net land rents. Once undertaken, development is irreversible.
- the present value of net returns from the plot of land developed with capital k at time T is:
- where:  $w(t)$  - agricultural rent and  $R(k, t)$  - rent from developed land after k was spent of development at T
- The developer has to decide about the timing (T) and the volume (k) of the development
- The optimal conditions:

$$\Phi(k) = \int_0^T (w(t) - R(k, t)) e^{-\rho t} dt = 0$$

$$\Phi(T) = (w(T) - R(k, T)) + \frac{R(k, T)}{\rho} e^{-\rho T} = 0$$

- this benchmark model is then considered for situations when there is a legitimate claim of previous owner and shows developers' behaviour is different under recording and registration system of title assurance.
- in this model rent (R) is also assumed without any uncertainties and risks

# Theoretical base 3: real option

- Takes into account uncertainty and risk
- Developers wait for the right timing. Vacant land might be more valuable as a potential site for future development than it is for constructing any particular building at present time (real option concept by Titman (1985))
  - developed by McDonald and Siegel (1982), Williams (1991), Quigg (1993), Capozza and Helsley (1990), Capozza and Sick (1994) (literature review by Womack (2015), Lindsay (2022))
  - The theory was empirically tested by: Cunningham (2006, 2007), Capozza and Sick (1991), Holland, Ott and Riddiough (2000), Bulan, Mayer and Somerville (2009), Capozza and Li (2001), Chiang, So and Yeung (2006), Governstein, Kau and Munneke (2011), Somerville (2001) (literature review by Lindsay (2022))
- The option to build in the future has a value, which is greater when there is more **uncertainty** in the market. This reduces the relative attractiveness of constructing a building at the current time and raises the value of keeping alternatives open.
- Further extensions of real option concept distinguish for additional sources of uncertainties apart from market ones, namely from **regulations**: tax, zoning law (land use & density), ownership title, policy uncertainty, changes in regulations. And those regulations are not uniform but **place specific**. (Lindsay (2022))

# Uncertainties and risks arising from property rights (literature)

## QUALITY OF LEGAL SYSTEM

- quality of legal acts
- definition of property rights
- delineation of property rights

## OWNERSHIP RISK FROM PRIVATE SOURCES :

- unregulated ownership
- out-dated records

- boundary encroachment, - squatting,  
Neighbourhood rules, easements

- adverse possession and statute of limitations

**JURISPRUDENCE** – how jure takes into account local customs/rules. Public/ private prevalence

## TECHNICAL LEGAL SYSTEM:

- title systems: register and recording system
- title system errors/ omissions
- un/ clear legal standards
- title insurance

## OWNERSHIP RISK FROM GOVERNMENT SOURCES

Enforcement and defending (protecting) property rights

### EXECUTION BY STATE:

- expropriation rules
- compensation
- compulsory purchase
- pre-emption rights

## ZONING:

- Land use
- Density limitations
- Development limitations/  
prohibition

**property rights -  
bundle of rights  
over land**



# Uncertainties and risks arising from property rights (literature)

- Threat of regulatory taking (Turnbull 2005) e.g. (Innes, 1997), Development prohibition (Turnbull 2002)
- Development moratorium (Turnbull 2005)
- Density restrictions (zoning)
- Different systems of assuring land title (Miceli, Sirmans et al. 2000)
- Ownership risk arising from title mistakes, fraud, boundary encroachment, adverse possession, or squatting (Miceli, Sirmans et al. 2003)... Statue of limitations (Jou and Lee 2018)
- Title to land (Yao and Pretorius 2014, Reyman and Maier 2023)
- Development fees (Turnbull 2005) ~ tax on building

- „A property rights regime for land development is defined as an integrated system of property rights connected to land that includes civil law, public law (e.g. planning law) and other types of law (like fiscal law and contract law) that influence the property market, (Geuting, 2007). Property rights regime here is understood as a complex system of legal but also conventional rules in relation to land, which can directly or indirectly influence the land market performance” (Havel 2014, pp. 617).
- Some Polish specific elements of property rights regime come primary from historical events, such as the Second World War, communist period, and transition back to capitalist system and democracy. Secondly, from some specific legislations, organisation of property rights system, conventions, customs, and believes.

## Property rights regime in Poland. Uncertainties and risks.

Specific elements of property right regime / event	Type of institution	Present consequences / Effect on land development and timing
<b>Restitution of previous owners:</b> <ul style="list-style-type: none"> <li>- After WWII</li> <li>- After nationalisation in communist period</li> </ul>	Historical / past influence	<ul style="list-style-type: none"> <li>- Claims from previous owners or heirs</li> <li>- Poland lacks any agreement on a general administrative procedure for processing and adjudicating claims (Blacksell and Born 2002)</li> <li>- Still ongoing restitution debate</li> <li>- 'small restitution' – previous owners can regain their properties in civil and administrative courts (very high transaction costs*)</li> <li>- Uncertainty upon future restitution solutions and legislations</li> <li>- Higher risk for investors (Zaleczna &amp; Havel, 2008), e.g. city centre in Warsaw – unstable area from investor' perspective (Górczyńska, Śleszyński et al. 2018)</li> <li>- BUT also rapid development and building on questionable land in 90's (Havel, 2014)</li> </ul> <hr/> <ul style="list-style-type: none"> <li>- Farm land fragmentation (Van Dijk &amp; Kopeva, 2006)</li> <li>- For developers: additional time and costs of searching for all land co-owners, conduct the succession proceedings</li> <li>- Delay land development</li> </ul>

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Specific elements of property right regime / event	Type of institution	Present consequences / Effect on land development and timing
<p><b>Communist system residues and transformation</b></p> <p>- Perpetual usufruct right granted through enfranchisement decisions in 1989</p>	<p>Historical / past influence</p>	<ul style="list-style-type: none"> <li>- unprecise notations of the purpose of the use of the land in perpetual usufruct contracts</li> <li>- purposes of the use of land from 1989 do not abide with current landscape and zoning</li> <li>- Using land by current investors in contradiction with aim of perpetual usufruct as building permit is granted independently on type of land title -&gt; possible court cases against perpetual usufructuary</li> </ul>
<p>- Granting land to municipalities in 90' (communalisation)</p>		<ul style="list-style-type: none"> <li>- This process is not finished in some municipalities yet (Report of Council of Chambers of Commerce 2022)</li> </ul>

## Property rights regime in Poland. Uncertainties and risks.

Specific elements of property right regime / event	Type of institution	Effect on land development and timing
<b>Perpetual usufruct* granted in tenders</b>	<ul style="list-style-type: none"> <li>- Property right (title)</li> <li>- Convention (execution of right)</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- Should ensure land development in a set time</li> <li>- Annual fees for perpetual usufruct had not been regularly updated for many years. Revision after 2008 affected in enormous increase in annual payments and many lawsuits made against landowner (municipalities/state) by investors. The Constitutional Court described the updating procedure as 'hybrid and unusual' (Załączna, 2014a).</li> <li>-</li> </ul> <p><i>*Perpetual usufruct right is currently being liquidated</i></p>

## Property rights regime in Poland. Uncertainties and risks.

Specific elements of property right regime / event	Type of institution	Effect on land development and timing
<ul style="list-style-type: none"> <li>- Expropriation for public aim</li> <li>-</li> <li>-</li> <li>- Special Building Road Act (expropriation for building roads)</li> <li>-</li> <li>- 'planning expropriation'</li> </ul>	<ul style="list-style-type: none"> <li>- Law</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- Either expropriation or restriction in rights to properties</li> <li>- *research on expropriation for touristic aim in touristic counties by (Maciej J. Nowak and Kreja 2013) showed that there are no excess expropriation there</li> <li>- This legal act combines the sovereign elements of various types of administrative decisions made on the basis of the provisions of other acts, including decisions on the location of a public purpose investment, construction permits, expropriation of real estate, division of real estate, restriction of the use of real estate (Polanowski, 2020, p. 71).</li> <li>- expropriation arising from the planning process, involving the imposition in the plan of major changes in the use of real property</li> </ul>

## Property rights regime in Poland. Uncertainties and risks.

Specific elements of property right regime / event	Type of institution	Effect on land development and timing
<ul style="list-style-type: none"> <li>- Zoning system</li> <li>-</li> <li>-</li> <li>-</li> <li>- Betterment/ planning fee or compensation for gaining/losing land value due to change of provision of zoning (Spatial Planning Act)</li> </ul>	<ul style="list-style-type: none"> <li>- System</li> <li>-</li> <li>-</li> <li>-</li> <li>- Law</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- Local development plan (not obligatory for municipalities) + Land Development Decisions (administrative decision)</li> <li>-</li> <li>-</li> <li>- Additional (betterment) fee in case an investor sells land up to 5 years after changing zoning – delays land development, withholds land until fee will not apply</li> <li>- Compensation for lost value. This regulation is close to that of the United States, which more broadly emphasizes the need for compensation for planning restrictions in development and the approach from the Netherlands, emphasizing the rights of the landowner to its increased value because of the provisions of spatial plan (Śleszyński et al. (2021) after Jacobs (2008) and Muñoz-Gielen (2011)).</li> </ul>

## Property rights regime in Poland. Uncertainties and risks.

Specific elements of property right regime / event	Type of institution	Effect on land development and timing
way people give importance to update records / conduct succession proceedings, and way it is executed by officials	Customs	<ul style="list-style-type: none"> <li>- Not up-to-date land and mortgage book records</li> <li>- Claims from heirs</li> <li>- Additional time and costs but maybe not so significant to overcome it</li> </ul>
'holy ownership right'	Belief	<ul style="list-style-type: none"> <li>- treating property rights as absolute right with unlimited scope (Havel 2020)</li> <li>- Everybody Has the Right to Develop (Havel, 2020)</li> <li>- delays – with so liberal approach to property rights investors may wait and execute their best option to build</li> </ul>



- It seems that property rights regime in Poland is liberal and influenced by diverse historical and political past events.
- Not resolved past and uncertainty connected with future regulations add additional uncertainty and risk in land development process.
- There are ambivalences between stated law and covenants. Those inconsistencies between stated law and covenants might derive from quick transformation from one to the other system. As North (1990) stated: wars, revolution, conquest, and natural disasters are sources of discontinuous institutional change.
- Repeated expressions about property rights in Poland and other post-transition countries found in literature state: *fuzzy, vague, hybrid, unusual, clouded, ambiguous, unprecise, blurred*. This may also state about weak delineation of property rights (Havel 2020).

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