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The Dutch Urban Ground Lease In a nutshell & the Amsterdam case

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Dutch urban ground lease

In a nutshell & the Amsterdam case



Agenda

- Introduction
- Leasehold for housing
- Leasehold debate in Amsterdam
- Conclusions

Some history

- 'Erfpacht' in Roman-Dutch Law
 - Dominium utile
- Act on Ground Lease 1824
 - Limited real right for maximum 99 years
- Civil Code 1838
 - No limitation in time: open ended ground lease possible
- Civil Code 1992
 - Debate in parliament on draft Book 5, Title 7 Civil Code: 'land delivery for housing by municipalities'

Typology

- Urban ground lease: housing
- Agricultural ground lease: farming
- Industrial & commercial ground lease: e.g. Port of Rotterdam
- Green ground lease: housing & agriculture in nature areas
- Private ground lease: housing, land held by private investors



Ground lease in Civil Code

- One general set of rules
- Allows a lot of freedom to parties (in fact lessor)
- Drafted with government as lessor in mind
 - Only a few rules are written in favour of the lessee

Main characteristic

- A limited proprietary right that entitles the lessee to hold and use land that is owned by someone else (the lessor)
 - The right to use the lessors' property as if he was the owner: the land, including the buildings
 - Against payment in money (lumpsum or periodically)
 - Lessee cannot change the use (e.g. housing) without permission of the owner

Time

- Limited in time (e.g. 75 years)
 - No minimum
- Open-ended
- Continuous ground lease
 - the lessor reserves the right to unilaterally change the terms and conditions after a certain period of time

(Un)popularity of urban ground lease

- Introduction in 1896
- Tool for municipal land policy: control of land use
 - Esp. important at the time when public law tools to implement spatial planning were unknown in the Netherlands
- Way to facilitate affordable housing
- The community benefits from the increase of the land value, and not the individual land owner
- Way to capture the 'surplus value' of the land, if more intensive land use is allowed
- 'Cashcow'
- Citizens prefer ownership

Tool during the financial crisis (1/2)

- 2013-2016: 1 out of 10 newly constructed houses on ground lease
 - 28.000 houses



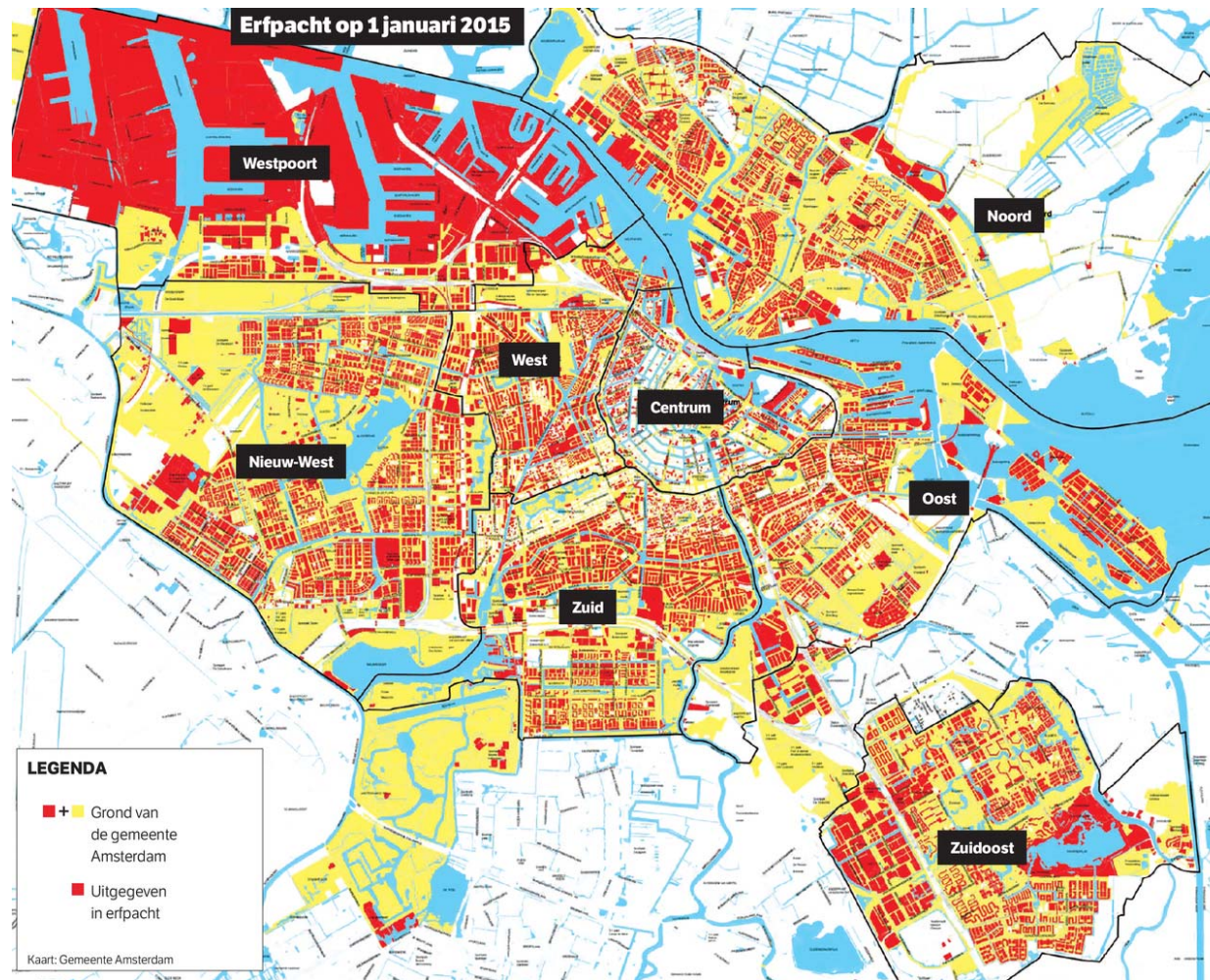
The screenshot shows the NRC.nl website interface. At the top left is the logo 'nrc.nl' with a red arrow and a green 'Abonnementen' button. To the right are links for 'Digitale editie', 'Webwinkel', and 'Carrière'. Below these are navigation tabs for 'Binnenland', 'Buitenland', 'Economie', 'Cultuur', 'Sport', 'Opinie', 'Wetenschap', 'Tech & Media', and 'Meer'. The main headline is 'Goes is wel blij met erfpacht' in large black font. Below it is the sub-headline 'Erfpacht' in red. The text of the article reads: 'Een nieuw erfpachtstelsel zorgt in Amsterdam voor ophef. Het middel is niet populair. Rotterdam schafte de erfpacht zelfs af. Maar de laatste jaren zijn er toch weer gemeenten die het invoeren.' At the bottom left of the article is the author 'Tim Wagemakers' and the date '25 april 2017'.

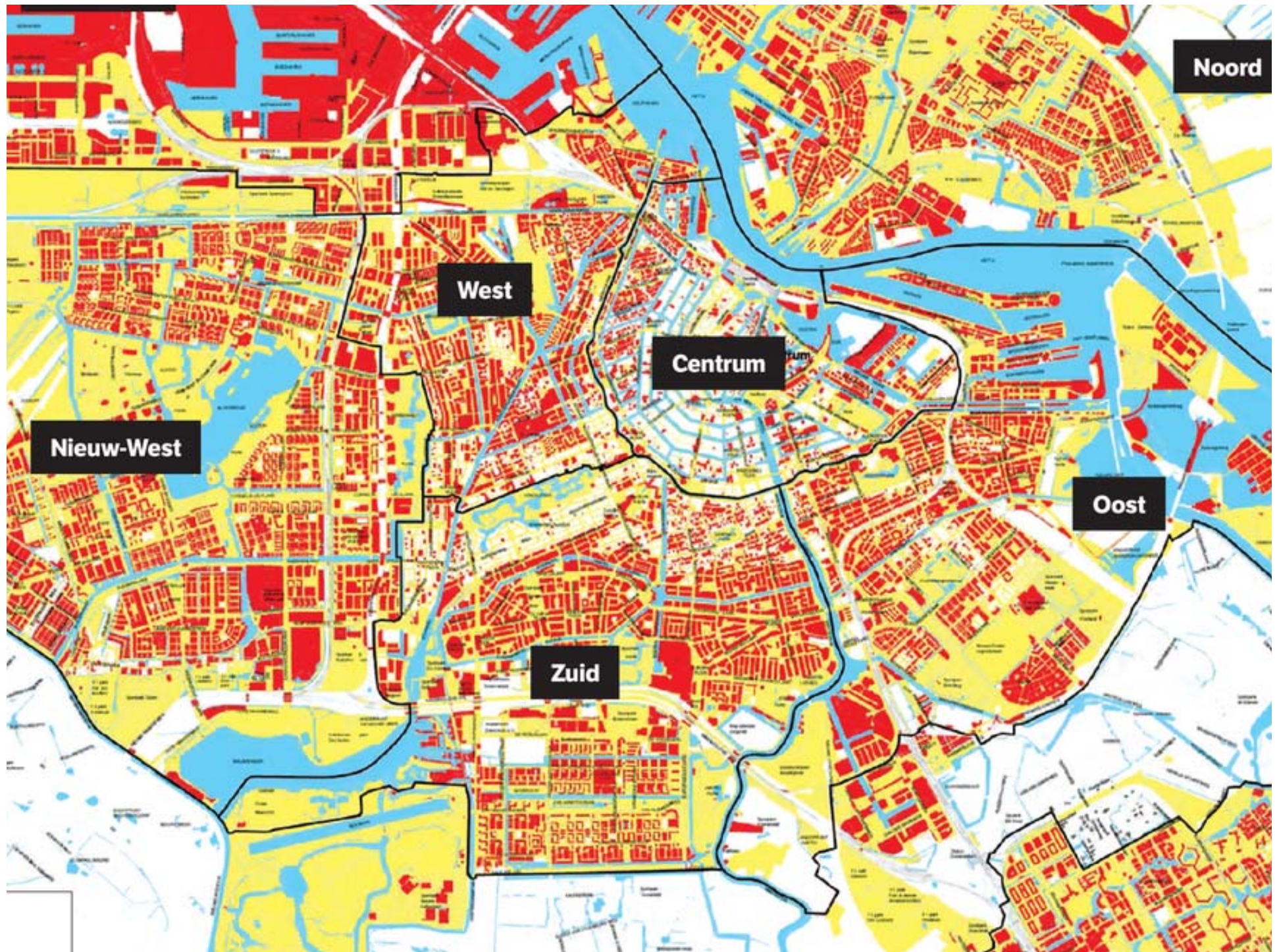
Tool during the financial crisis (1/2)

- Large redevelopment projects, e.g. Calypso and Market Hall in Rotterdam



The Amsterdam Case





Elections: promise to abolish ground lease

vr 18 apr 2014, 05:30 | [lees voor](#)

Eindelijk einde erfpacht

door Ruben Koops

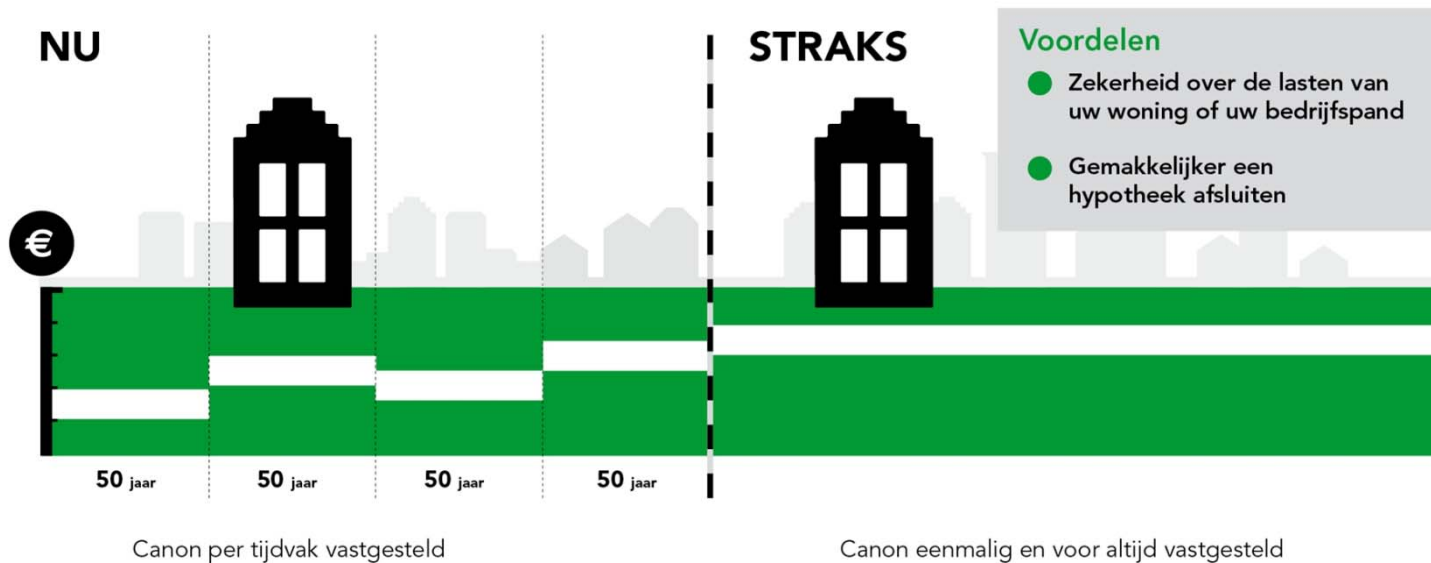
AMSTERDAM - 118 jaar hebben Amsterdamse huiseigenaren pacht moeten betalen aan de gemeente maar de feodale belasting op grond verdwijnt eindelijk. D66 en GroenLinks hebben afgesproken om te stoppen met het heffen van erfpacht en in 2015 mogen Amsterdammers via een referendum bepalen of woningeigenaren het recht krijgen de grond onder hun huis te kopen.

Deze historische afspraak is de basis van de hervormingsagenda waarover D66 en GroenLinks de afgelopen twee weken hebben onderhandeld. Na de paasdagen wordt bekeken welke derde partij zich het beste kan vinden in de afspraken, waarna de nieuwe coalitie compleet is.

In 1896 voerde de hoofdstad het erfpachtsysteem in voor alle wijken die vanaf dat moment werden gebouwd. De grond bleef in gemeentehanden, alleen de huizen werden verkocht. Hierdoor ontvangt het stadsbestuur jaarlijks om en nabij de 100 miljoen euro huur of pacht voor het gebruik van die grond door huiseigenaren, bedrijven en woningcorporaties. 80 procent van de grond in Amsterdam is in gemeentebezit.

From 'continuous' to 'open ended'

Nooit meer een canonherziening *



* Tenzij u het gebruik verandert.

Grondwaardebepaling bij **wonen**

 *** BSQ**
De Buurtstraatquote (BSQ) is het percentage van de WOZ-waarde dat de locatiewaarde bepaalt.

Marktwaarde
=
WOZ-waarde


WOZ-WAARDE


BUURTSTRAATQUOTE * ×

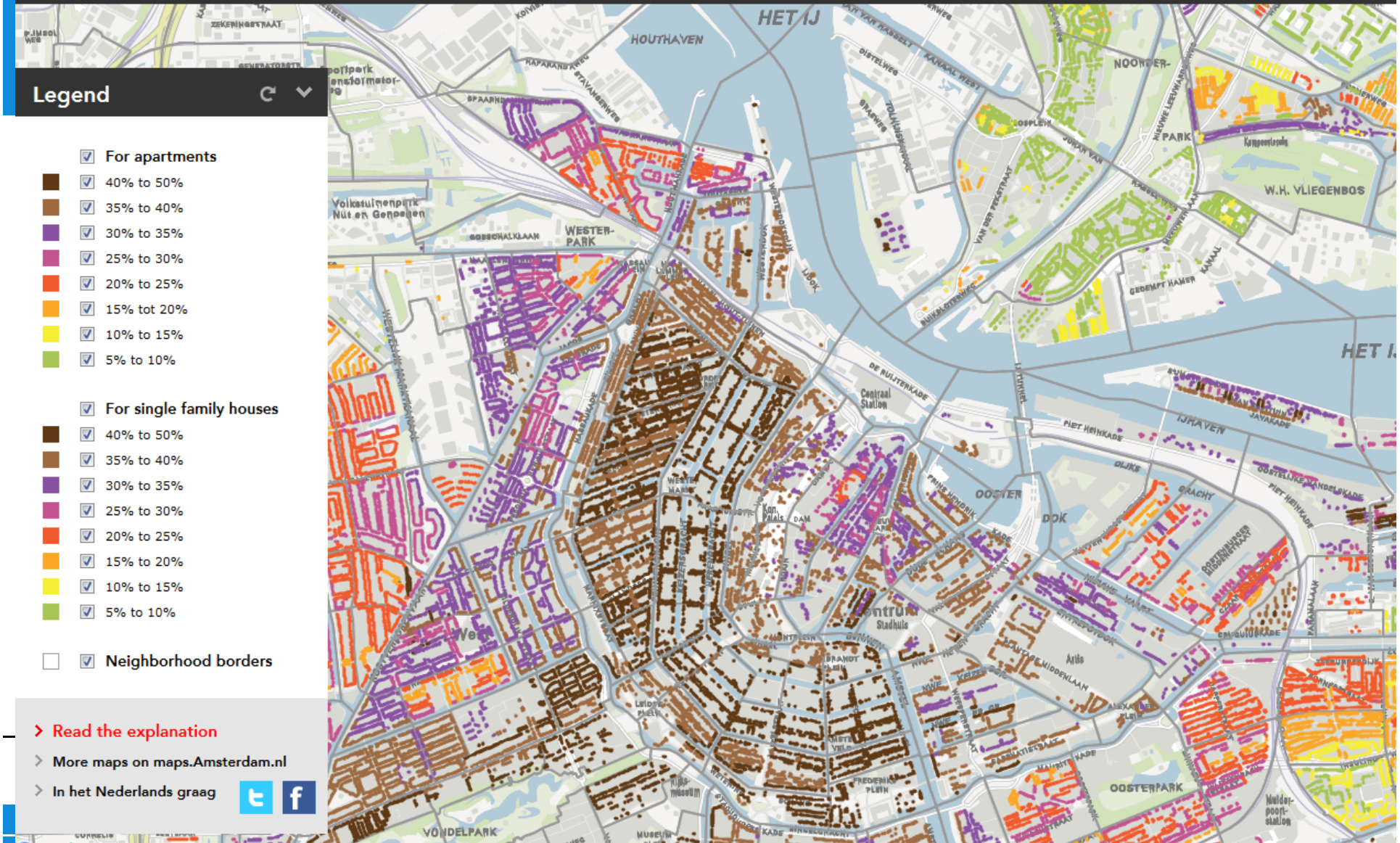
GRONDWAARDE

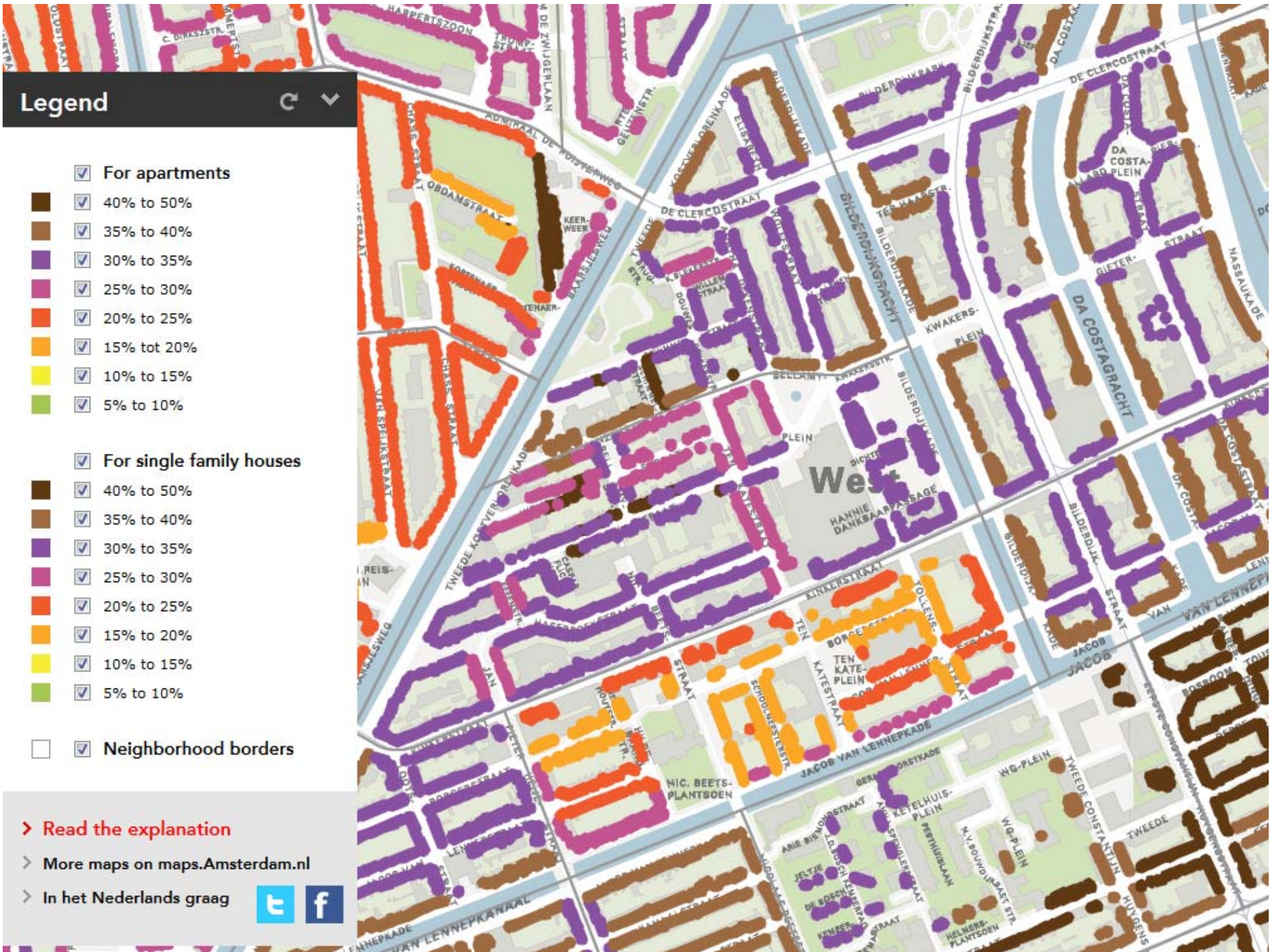
-10% =


ERFPACHTGRONDWAARDE



Neighbourhood street quote: Which percentage of the WOZ value defines the ground value?





Legend

For apartments

- 40% to 50%
- 35% to 40%
- 30% to 35%
- 25% to 30%
- 20% to 25%
- 15% tot 20%
- 10% to 15%
- 5% to 10%

For single family houses

- 40% to 50%
- 35% to 40%
- 30% to 35%
- 25% to 30%
- 20% to 25%
- 15% to 20%
- 10% to 15%
- 5% to 10%

Neighborhood borders

> [Read the explanation](#)

> [More maps on maps.Amsterdam.nl](#)

> [In het Nederlands graag](#)





Erfpachters 020

@erfpacht_SEBA

Following

KOMT ALLEN !!! STOP ERFPACHT PLAN
AMSTERDAM zaterdag 20 mei 14:00 uur
Stopera. NEEM BUREN EN VRIENDEN MEE
!!! Retweet

 Translate from Dutch

Erfpacht Plan Gemeente =

- X Niet Veilig**
- X Onduidelijk**
- X Te Duur**





Court cases

- New terms after period: unfair? (directive 93/13/ EEG, on unfair terms in consumer contracts)
- Supreme Court (29 April 2016): directive only applicable on ground leases established after 31st December 1994



In the meanwhile in Amsterdam

↳ Erfpachtpartij heeft geretweet

P

Het Parool ✓ @parool · 7 sep.

'Amsterdam niet te koop!' In de Kinkerbuurt wordt geprotesteerd tegen gentrificatie en toerisme



Protest in de Kinkerbuurt: 'Amsterdam niet te koop!'

In de Kinkerbuurt is donderdagavond geprotesteerd tegen gentrificatie en woningnood in West.



Erfpachtpartij

25 juli · 🌐

In Verenigd Koninkrijk maatregelen om erfpachters beter te beschermen. Nu Nederland nog.



Crackdown on unfair leasehold practices - GOV.UK

Radical new proposals to cut out unfair abuses of leasehold announced.

GOV.UK



Conclusions

- Still a valuable tool for government and citizen
- However ground lease is misunderstood by citizen
 - In the current housing market limited space to negotiate
- Need for protection of citizen
 - Current regulation in Civil Code leaves too much freedom for lessor