



Land betterment capture revisited: A methodology for territorial plans



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ABSTRACT

The main goal of this article consists in the proposal of a developer obligations' instrument aimed at capturing land betterments that result from planning decisions and from the implementation of territorial plans, re-assigning them to public infrastructure, equipment and social purposes. It consists in charging for extra development rights beyond average municipal urban built-up areas. It is founded on a research and consultancy work for the Portuguese Territory Department (a governmental organism) within the scope of the revision of the Land Planning Act and complementary legislation, namely the new Juridical Regime of Urbanization and Edification, and the new Juridical Regime of Territorial Management Instruments. Thus herein are presented the assumptions, methodology, outcomes and conclusions of this work.

It is applied – as a case study – to the Detail Plan of Avenue Pope John XXIII, in Fátima (in the Municipality of Ourém, Portugal), but its application is generalizable to other municipalities, and it potentially strengthens their financial status.

Considering the current widespread crisis, and taking advantage from the experience of homologous value capture instruments in other countries, the proposed instrument is intended to contribute to strengthen municipal finance. It faces more clearly and objectively the funding of territorial planning and urban development. It further aims at developing understandable, quantifiable and user-friendly decision-support instruments, and at reassigning the betterments engendered by public planning decisions on behalf of communities.

This concept and methodology supports the consolidation of the objectives of the new Portuguese Land and Planning Act. It indeed fosters the integration of territorial policies, strengthens effectiveness in plan execution, supports the economic and financial sustainability of urban development operations, and promotes equity as well as social and territorial cohesion.

1. Introduction

All the legislation concerning land, territorial ordering and urban development was recently reviewed in Portugal. Thus the legislation currently enforced consists in the Portuguese Land and Planning Act (Law n°31/2014), the juridical regime of Territorial Management Instruments (Decree Law n°80/2015), the juridical regime of Urbanization and Edification (Decree law n°136/2014), and the new Cadastral Law. This revision is intended to surmount some drawbacks and inconsistencies that resulted from the application of the previous legislation. It conveys a new paradigm in land planning and management that stresses the relevance of the economic and financial sustainability of urban interventions. So they should only be approved if the incomes they are expected to engender surpass respective charges, according to a technical justification presented in proper urban plans.

The goals pursued in this new legislation consist in: improving the

flexibility of urban plans, endowing municipalities with new planning instruments, securing the economic and financial feasibility of land use changes, controlling urban speculation and sharp rises in real estate prices, explaining betterment generation, defining and designing parameters for betterment reassignment on behalf of communities, and setting a municipal fund for urban and environmental sustainability (through collection of betterment values).

Within this scope, the current article proposes a new developer obligations' fiscal instrument of land policy that fits the new Land and Planning Act, and presents the methodology for its computation. It proposes the partial recapture of the betterment arising from land use regulation that involves concrete building capacities higher than the municipal abstract average building capacity (computed from the parameters settled in Municipal Master Plans, Urban Development Plans, Detail Plans, parcelling out procedures, or other enforced territorial management instruments).¹ This instrument is innovative in the

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¹ Whenever the licensed building capacity/m² surpasses the average municipal building capacity/m², a 20% tax will focus upon this difference. On the contrary, if the building capacity/m² is lower than the average building capacity/m², the 20% tax will revert of behalf of the owner (windfalls or wipeouts) (Alterman, 2011; Hagman and Misczynski, 1978).

computation of average building capacities – called floor area ratio by some authors (Furtado and Bacellar, 2016). It is applied, as a case study, to the Detail Plan of Avenue Pope John XXIII, in Fátima (Legal warning n° 15622/2009), Portugal.

2. Theoretical framework

Increases in land and property prices may result from its original productivity, owners' improvements, or broad changes such as population or local economic growth (Hong and Brubaker, 2010; Ingram and Hong, 2012; Walters, 2012a, 2012b). However, these values are most strongly shaped by infrastructure investments, provision of public services, and/or land planning and regulation (Alterman 2011, 2012; Ingram and Hong, 2012; Walters, 2012a, 2012b), namely licenses for certain land uses, or occupation densities (Smolka and Amborski, 2003).

Impacts of public investments, public services, or public land use on surrounding private land has been assessed both scientifically and empirically throughout last years (Ayoubu, 2007; Bhatta and Drennan, 2003; Weber et al., 2003; Canning and Pedroni, 2008; Carroll, 2008; Haughwout, 2002; Mikelbank, 2004; Moreno and Lopez-Bazo, 2007; Siethoff and Kockelman, 2002; Smith and Gihring, 2006; Taylor and Brown, 2006; Walters, 2011, 2012a, 2012b).

However, land unearned increments are hard to compute, and even controversial, especially when land betterment precedes public action (Walters, 2012a), or result from land use regulation (Booth, 2003, 2012; Walters, 2012a).

Many authors stand up for land value capture (LVC) (George, 1962; Ingram and Hong, 2007; Netzer, 1998; Rebelo, 2009, 2012; Smolka and Amborski, 2007; Smolka and Furtado, 2003). These authors argue that part of betterments that result from land use regulation or from public investments, irrespective of owners' efforts, should be captured and reassigned on behalf of communities. They propose to use the collected income in urban infrastructure, public services, or even social housing (Alterman 2012; Brown and Smolka, 1997; England, 2007; Feinstein, 2012; Ingram and Hong, 2007; Lefebvre, 1991; Murphy, 2013; Netzer, 1998; Rebelo, 2014c, 2014d, 2014e, 2014g; Smolka and Amborski, 2003; United Nations, 1976; Walters, 2011, 2012a, 2012b). The Lincoln Institute of Land Policy (Smolka and Furtado, 2001), the International Academic Association on Planning, Law and Property Rights, the Global Land Tool Network (GNTL) and the UN_Habitat (Walters, 2011) have been working hard on this issues (Hendricks and Tonkin, 2010; Smolka and Amborski, 2003; Walters, 2012a, 2012b).

Land value capture instruments (Alterman 2011; Smolka and Amborski, 2007) may be classified in macro, direct or indirect instruments. Macro instruments consist either in land nationalization; substitution of private property by long-term public leaseholds (Bourassa and Hong, 2003; Hall, 1976); land banking (Atmer, 1987; Bourassa and Hong, 2003; Hall, 1976; Laanly and Renard, 1990; Strong, 1979) or land readjustment (Davy, 2007; Doebele, 1982; Needham and Hong, 2007). Indirect instruments are aimed at capturing unearned increments in order to fund specific public services. Direct instruments seek to capture rises in real property values, based on the rationale that landowners should share with the overall community the wealth generated by general economic or community conditions, public infrastructure, or land use plans or development decisions (Alterman, 2010; Skaburskis and Qadeer, 1992).

Value capture instruments are useful for many different reasons (Brown and Smolka, 1997; Walters, 2012a). They are economically efficient (Alexander et al., 2009; Netzer, 1998; Rebelo, 2009, 2012, 2014a, 2014b; Smolka and Amborski, 2007; Webb, 2013) and don't distort the real economy (Feinstein, 2012; Ko and Rosenblatt, 2013; Webb, 2013; Walters, 2011). They are further equitable (Ingram and Hong, 2012), useful to complement public funding, also benefit private partners (DGOTDU, 2011; Ingram and Hong, 2012; Ko and Rosenblatt, 2013), and tend to lower land prices and exert a more tight control over

speculation (Alexander et al., 2009; Ingram and Hong, 2012; Rebelo, 2009, 2012, 2014a, 2014b; Webb, 2013; Walters, 2012a). They endow municipalities with financial means to support public services, infrastructure, equipment, and affordable housing (Alterman 2012; Rebelo, 2014f; Walters, 2012a) through the transference of part of their burden to developers, in return for the assignment of additional urban development rights, quick licence approval, or slacked regulation (Alterman, 2011). Besides, they don't increase building costs (Hong, 1998; Smolka and Amborski, 2003), harm citizens less than direct taxes (Alterman, 2012), and are easily taxable (Walters, 2011; Webb, 2013).

Many European countries stand up for the principle that urban development shouldn't bring about charges for municipalities. Its beneficiaries should support its burden instead, through agreements where charges and benefits of municipalities and private developers are settled (Cardoso et al., 2011). In the current scenario of public finance shortcomings, local decision makers in the United States of America and Europe have increasingly resorted to land value capture instruments to deal with decreasing incomes from traditional funding (Alterman, 1988; Altschuler and Gomez-Ibanez, 1993; Callies and Suarez, 2005; Ingram and Hong, 2012; Ko and Rosenblatt, 2013; Nelson et al., 2008; Rosenberg, 2006; Walters, 2012b).

Town property values depend on their location, dimension and licensed use, and the latter, by its turn, depends on public planning decisions and on territorial plans. Interventions to capture land betterment include fiscal devices, land use (namely re-zonings, assignment of additional building rights, or slacking in land use regulation), or through local improvements.

As far as betterment from land use regulation is concerned, Alterman (2010) carried out an extensive analysis of value capture instruments on many OECD countries (Australia, Austria, Canada, Finland, France, Greece, Germany, Israel, the Netherlands, Poland, Sweden, United Kingdom, and United States of America), covering many different geographic, legal, linguistic and cultural backgrounds. From these countries, the most experienced in land use regulation design and implementation (namely in land value capture) are the United Kingdom, Israel and Poland. The former, however, is the one with a soundest historical evolution that have long been concerned with financial sustainability (Table 1). The Spanish and the British experience in betterment capture is rather relevant, as these countries have largely influenced other outside countries (Alterman, 1982, 2011; Barker, 2004; Calavita and Mallach, 2009, among others).²

Worldwide legislation is profuse in developer obligations in order to recover, at least, part of the betterment values that accrue from public works, infrastructure, land use changes or land use intensities, through value capture. Such is the case of the United States of America – Vermont and Pennsylvania states (Daniels et al., 1986; Gihring, 1999), Taiwan (Lam and Tsui, 1998), Hong Kong, and Singapore (Hui et al., 2004). The levied taxes, contributions, exactions, or regulations are a setback for zoning, assignment of (additional) building rights, or slackness in existing land use regulations (through which developers share their profits with the state or with the municipalities). These include “betterment levies” in the United Kingdom, in the United States of America, and in Latin American countries, “community infrastructure levies”³; in the United Kingdom, “spatial development contributions” in

² Barrett et al., 1979; Calavita et al., 2010; Capalbo, 2006; Crook et al., 2012; Denyer-Green, 1998; Dutch Government Administration; Feinstein, 2012; Federal Law 10257/2001; Furtado and Bacellar, 2016; German Law Archive; Gielen, 2008; Grant, 1999; Ingram and Hong, 2012; <http://www.legislation.gov.uk>; Lichfield and Darin-Drabkin, 1980; McAuslan, 1980; Ministère de l'Aménagement du Territoire, de la Ruralité et des Collectivités Territoriales; Morelli, 2007; Peterson, 2009; Rebelo, 2009; Tichelar, 2003; Williams and Hallett, 1988)

³ The “Community Infrastructure Levies”, which are collected on new building plans, are aimed at funding infrastructure construction or reinforcement that lack other funding means, thus ensuring its economic feasibility (<http://www.legislation.gov.uk>).

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