

Strategic planning and urban development
in New York City, Paris and Sao Paulo: 2001 – 2012

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ABSTRACT

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This study examines the paradigm shift in urban planning towards a strategic spatial approach by investigating the effects of new strategic plans and policies on large-scale urban development projects (UDP's). Specifically, it compares the impacts of new planning legislation and strategic local plans introduced in New York, Paris and Sao Paulo on three UDP's in each city by evaluating the impacts on the development programs, implementation process and public benefits delivered from 2001 to 2012. The study provides an overview of the literature on strategic spatial planning theory and practice, comparative planning systems and large-scale urban public/ private developments to describe the overarching 'spatial turn' in planning and establish how different planning cultures influence plan-making and what the consequences are for public/ private development, focusing on the mechanisms of flexibility provided by strategic plans to address the planning and financing requirements of UDP's. It argues that despite of the formal differences found between systems as legal constructs, there is a need to investigate if these consequences occur and how they are produced. It then presents the case studies of the Special Hudson Yards District in New York City, the '*Zone d'Aménagement Concerté Clichy-Batignolles*' in Paris and the '*Operacao Urbana Agua Branca*' in Sao Paulo, focusing on the reform of the local statutes, planning process and implementation using quantitative and qualitative data collected through planning documents, press articles, interviews, observation of public meetings and field research. Each case study is representative of a different planning model where each project was developed after a revision of the local planning statutes and introduction of a new strategic city plan. The study finds that despite the formal differences between strategic plans, UDP's cause planning systems to converge towards a similar intermediate model where policy determination becomes bidirectional and final development programs are determined by both strategic plans and site-specific considerations. The variations found between projects are instead determined by the broader development models present in each case which determine the implementation capacity of cities and ability to capitalize public resources to capture part of the resulting increment in land values and deliver public benefits. The study concludes with proposed implications for planning research and suggestions of policy formulations aimed at improving the 'public return' generated by UDP's.

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LIST OF ABBREVIATIONS

AIU: Áreas de Intervenção Urbana
APA: American Planning Association
APUR: Atelier Parisien d'Urbanisme
CEPAC: Certificados Adicionais do Direito de Construção
CNLU: Comissão Normativa de Legislação Urbanística
COGEP: Cordenadoria Geral de Planejamento
CPTM: Companhia Paulista de Trens Metropolitanos
CUH: Code de l'Urbanisme et de l'Habitat
DPU: Diretoria de Projectos Urbanos
EMU: Empresa Municipal de Urbanização de São Paulo
EQR: Environmental Quality Review
EPPJP: Etablissement Public du Palais de Justice de Paris
FAR: Floor-to-Area Ratio
FEAB: Fundo Especial da Operação Urbana Água Branca
FGEIS: First Generic Environmental Impact Statement
HYDC: Hudson Yards Development Corporation
HYIC: Hudson Yards Infrastructure Corporation
HYFD: Hudson Yards Financing District
GTI: Grupo de Trabalho Intersecretarial
IAB: Instituto dos Arquitetos do Brasil
ICIP: Industrial and Commercial Incentives Program
IPTU: Imposto sobre a propriedade predial e territorial urbana
LEED: Leadership in Energy and Environmental Design
LIRR: Long Island Rail Road

LPUOS: Lei de Parcelamento de Parcelamento, Uso e Ocupação do Solo

LZ: Lei de Zoneamento

MTA: Metropolitan Transportation Authority

NPCC: New York City Panel on Climate Change

NYDCP: New York City Department of City Planning

NYCEDC: New York City Economic Development Corporation.

NYCZR: New York City Zoning Resolution

NYCIDA: New York City Industrial Development Agency

OI: Operacao Interligada

OU: Operacao Urbana

PADD: Projet d'Amenagement de Developpement Durable

PAZ: Plan d'Amenagement de Zone

PDE: Plano Director Estratégico do Município de São Paulo

PDUIF: Plan de déplacements urbains d'Île-de-France

PDDI: Plano Diretor de Desenvolvimento Integrado

PILOT: Payment in-lieu of Taxes

PITU: Plano Integrado de Transportes Urbanos 2020

PLU: Plan Local d'Urbanisme

POS: Plans d'Occupation des Sols

PREVI:Fundo previdenciario dos funcionarios do Banco do Brasil

RER: Réseau Express Régional

RPA: Regional Plan Association

RFF: Réseau Ferré de France

RFFSA: Rede Ferroviária Federal Sociedade Anônima

SCOT: Schema de Coherence Territorial

SCPEA: Standard Enabling City Planning Act

SD: Schema Directeur

SDAU: Schéma Directeur d'Aménagement et d'Urbanisme de la Région Parisienne

SDRIF: Schema Directeur Ile-de France

SEM: Societe d'Economie Mixte

SEMAVIP: Société d'économie mixte de la Ville de Paris

SEMPA: Secretaria Municipal de Planejamento

SHYD: Special Hudson Yards District

SNCF: Société Nationale des Chemins de fer français

SRU: Solidarité et au Renouvellement Urbains

SZEA: Standard State Zoning Enabling Act

SZD: Special Zoning District

TELESP: Telecomunicações de São Paulo S.A.

UDP: Urban Development Project

ULURP: Uniform Land-use Review Procedure

UTEP: Uniform Tax Exemption Policy

TB: Theatre Bonus

ZAC: Zone d'Amenagement Concerte

ZE: Zonas Especiais

ZUG: Zone Urbaine Generale

ZUP: Zone a Urbaniser en Priorite

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DEDICATION

This dissertation is dedicated to those who build and redevelop our cities. City building is an art, not a science. It is their efforts and their love for better development that make the art of city building. Using words from Jane Jacobs, it is composed of movement and change, and although it is life, not art, we may fancifully call it the art form of city building and liken it to the dance — not to a simple-minded precision dance, but to an intricate ballet in which the individual dancers and ensembles - the urbanists - all have distinctive parts which miraculously reinforce each other and compose an orderly whole.

CHAPTER 1 : INTRODUCTION

'Whatever the status quo is, it is wrong and there must be a better solution'
Ken Auletta¹

1.1 OVERVIEW

The first decade of the 21st century witnessed the return of large-scale urban redevelopment projects (UDP's) as cities around the world engaged with the private sector in the development of large-scale sites located in central urban areas. As in the previous decades, the justification for the projects was the development and strengthening of urban economies by tightening the links to emerging global networks and regaining international visibility. The provision of the urban infrastructure and amenities required by emerging sectors and international businesses was considered by public agencies and the private sector as a crucial factor to enhance the competitive advantages of cities (Orueta & Fainstein, 2008).

The new UDP's were planned, developed and financed in new planning systems introduced in the earlier part of the decade. The reforms were influenced by a shift in planning policy towards strategic planning which focused on strategies that could lead to transit-oriented development and sustainable use of urban infrastructure (Salet, 2008). Most importantly, the reforms aimed at increasing the ability of cities to 'capture' a higher share of the increment in land values generated by the rezoning and public investment, as public officials increasingly recognized that such projects could be important contributors of the city's ability to generate

¹ Auletta, K. 2010. Googled: The end of the World as we Know it. NY: Penguin.

revenues, finance infrastructure improvements and provide other public benefits such as open space amenities, cultural facilities, schools and affordable housing particularly in contexts of constrained fiscal conditions and public ownership of land (Sagalyn, 2007).

This dissertation investigates three aspects of these large-scale UDP's (1) the revised role of the local strategic plan, (2) new instruments of plan implementation, and (3) the planning and financing incentives used to deliver public benefits through public value 'capture'. In most cases involving large urban redevelopment projects, these aspects are approached via special zoning districts created by planning legislation enabled by strategic plans. The dissertation evaluates three urban redevelopment projects, one each in New York, Paris and Sao Paulo covering the years from 2001 to 2012 focusing on the role of the strategic plan in creating special districts for each project.

In all cases, each city enacted a new strategic local plan in the earlier part of the decade with similar goals towards urban development. Each case articulates a different relationship to the local zoning resolution, the instruments of planning implementation and financing incentives to implement the projects and extract public benefits. The objective is to compare the effects of the strategic plans on the planning process and actual projects built by evaluating its impact on the development programs, implementation process and public benefits. The research used quantitative and qualitative data collected through planning documents, press articles, interviews and field research to develop each case.

1.2 CONTEXT AND PROBLEM DEFINITION

Urban development projects often have planning and financing requirements that cannot be addressed through existing zoning controls. For example, the uses and bulks permitted in the selected sites might be obsolete or non-existent. Some sites may include high percentages of public land not zoned for private uses or be located outside the jurisdiction of local governments. Existing uses may include industrial and manufacturing facilities which need to be removed and their owners compensated or there may be a complex ownership structure scattered amongst public, semi-public and private entities some even outside the local jurisdiction.

In addition, large-scale urban development projects often require a level of investment in new public infrastructure, transportation facilities and open space amenities that public agencies lack the capacity to finance and implement through local capital budgets. Furthermore, the completion of projects can be subject to time pressures that cannot be addressed through statutory administrative procedures, and, in most cases, circumstances often change during the planning process due to shifts in public policy and needs of private investors. These factors often require the creation of specific policy tools and administrative structures while relegating formal planning procedures to a secondary and subordinated role (Moulaert, Rodriguez, & Swyngedouw, 2003).

The use of specific planning tools to enable large-scale urban development projects is typically justified by the site's unique circumstances which require overcoming some of the broader limitations of existing zoning (Kayden & Haar, 1990). This entails the tailoring of

standard zoning regulations to development programs while increasing the detail of the urban design controls and defining specific programs of public works and investments which ‘as-of-right’ zoning is not able to provide. The goal is to create a specific regulatory framework that attracts the private investment required to enable the development and financing of required upfront infrastructure.

The creation of specific tools to enable UDP’s require the flexibility to exempt the new projects from statutory norms and modify them as necessary throughout the development process. For example, density ratios may be increased beyond what is typically allowed, or a combination of uses not usually permitted may become possible. Also, regulatory approvals may be ‘fast-tracked’ and exempt from statutory procedures such as required environmental impact studies to meet the time pressure to which projects are typically subject. Flexibility is also required to incorporate specific incentive programs and implementation mechanisms in the new zoning controls so that cities are able to monetize public lands and secure alternative forms of financing able to fund the required upfront investments without compromising local capital budgets (Booth, 1996).

The use of specific planning tools to develop large-scale urban projects became prevalent in the 1980’s and 1990’s. Between the 1950’s and the 1970’s, public and private development projects were in general meant to be located and implemented according to terms outlined in comprehensive city plans implemented through city-wide zoning resolutions. Plans aimed at identifying both short and long-term policy while offering a precise definition of land-uses with

regulations attached to them. The intention was to provide a continuum from the strategic policies to the eventual planning decision on specific development sites.

The spatial plan was the crucial element as it guided and directed periodic changes to existing zoning to reflect public policy (Healey P. , 2007). In regulating development, the intention was to allow strategies for specific locations to be seen as coherent wholes, and also for the relationships between any one location and others to be thought out beforehand. Therefore, land-use regulations and planning strategies were defined through a formal system of plans at different levels of government in which plans at the higher levels were administratively binding on the lower-tier plans. Local plans had to comply with or at least not conflict with regional plans (Newman & Thornley, 1996).

The spatial plan was to function as a tool for various branches of government to coordinate their relevant policies. Thus, it not only regulated development, but also guided and integrated proactive government policies. The public sector itself was often a major factor in the land and property development process and facilitated development in line with strategic objectives. It acted as a 'provider' of a coordinated stable framework for the making of development investment decisions and of serviced land and development. As such, it was expected to undertake, manage and regulate development in line with a generalized and unitary concept of 'the public interest' (Healey P. , 2003).

From the late 1960s a series of societal and technical shifts, along with powerful critiques of the assumptions underlying the modern planning ideals, put these statist hierarchical

arrangements under pressure. The shifts started with the collapse of the “Long Capitalist Boom” as the demand for mass-produced goods began to be punctuated by sudden economic shocks. As the ‘Breton Woods’ agreement broke down, international financial transactions grew exponentially, triggering a huge expansion of world trade. At the same time, changes in communication technologies allowed for world-wide information availability and decentralization of production. These events led to major transformations in international relations between business and government. As international capital and information mobility became enhanced, the nature of economic regulation changed, as nation-states became important as economic regulators.

The transformations led to profound political shifts. ‘Keynesian’ welfare states that were so central to applying the modern ideal in Western nations were experiencing deep fiscal crisis and became increasingly discredited as they seemed unable to control the parallel growth of unemployment, inflation and interest rates. This context allowed for conservative interests in the United Kingdom and in the United States, to promote political reforms that sought to dismantle much of the welfare state’s institutions and regulatory regimes through the ideological trilogy of competition, deregulation and privatization. The new hegemony was against most forms of spatial regulation, including land-use, environmental policy and economic development.

The deregulation of national economic planning and an increased entrepreneurial attitude of governments became the trend as labor market flexibility, territorial competitiveness and place-specific assets became the key factors in attracting inward investment and promoting economic growth and competitiveness. This led to the emergence of localities as the privileged level of

intervention through strategies of political-economic restructuring that used space as its privileged instrument. To reposition cities in the new map of competitive landscape, governments attempted to make the built environment more flexible and responsive to the investment criteria of the real estate industry.

These pressures encouraged a shift away from plans as guiding frameworks. As public agencies became more interested in enabling development rather than providing it and in stimulating development rather than regulating it; the locus for determining whether developments could go ahead moved from the plan to the project. A negotiated practice developed around projects linked to local economic development objectives. Planning strategies began to be regarded as pragmatic attempts to address perceived local problems rather than utopian or visionary frameworks for re-engineering metropolitan regions. Planning objectives shifted to the economic development function to the detriment of comprehensive planning.

The new project-led practice was legitimated by a range of arguments used by critics of existing plans. Land-use regulation was considered to distort land markets and raise the transaction costs of development through bureaucratization of urban economies. Such 'diseconomies' reduced employment growth and stifled the ability of land markets to satisfy consumers' need for housing and transport. Plans were said to be outdated as their strategies were no longer relevant given major changes in local economies; as they failed to consider new values and concerns. They embodied statist 'command and control' models of regulation rather than market-relevant facilitation, when the need was for a proactive stance towards development.

Instead, it was argued that the public good should not be achieved through the comprehensive supply of urban space to promote changes in the physical environment, but through inclusion of the private sector in the process of achieving competitiveness. Instead of comprehensiveness and reduction of negative externalities, social benefits should be obtained from economic development. From the deterministic and abstract rational model that dominated previous decades, where a pictured end state was to be achieved through the determination of land use and the propositions of public investment; practice increasingly began to emphasize short-term accomplishments aimed at achieving the marketability of urban space. There was a shift from universal to spatially targeted and place-focused approaches.

Particularly in the United States, United Kingdom, and later Continental Europe legal adjustments and administrative reorganizations were carried out to create greater flexibility to private sector demands, thereby fragmenting the planning process and ‘blurring’ public-private boundaries. The most visible result of this shift was the implementation of large-scale urban development projects in major cities in Western Europe and the United States, including the redevelopment of ‘Canary Wharf’ in London.; ‘Times Square’ and ‘Battery Park City’ in New York City, and ‘Inner Harbor’, in Baltimore. Continental Europe was quick to catch-up, with the transformation of central Frankfurt probably being the most emblematic example of this trend. By the late 1990’s, most major European cities were being re-positioned on the cartographic map of competitive globalization through the implementation of large urban redevelopment projects (Moulaert, Rodriguez, & Swyngedouw, 2003).

As the urban development paradigm shifted, planning evolved as well. City-wide strategic plans and zoning resolutions were increasingly replaced by autonomous special zoning districts and independent design guidelines. This was the case in New York City for example, where special zoning districts were introduced with the 1961 Zoning Resolution with goal of addressing the inability of the previous resolution, enacted in 1916, to take into account individual requests for variances and modifications to existent zoning controls (Meck, 1996). In Paris, special districts (ZAC - Zones d'aménagement concerté) by a new national law enacted in 1967 which replaced the previous priority development areas. Their adoption allowed most of the zoning controls and infrastructure requirements inside the new districts to be exempted from the existing zoning resolution. In Sao Paulo, special zoning districts (OU – 'Operacoes Urbanas') were first introduced in the 1985 strategic plan. Based on the French and American experiences, OU's were regarded as innovative instruments to promote growth and extract public benefits from redevelopment in a context of constrained fiscal conditions (Nakano, 2007).

Some authors (Sagalyn, 2007) argued that the new project-based approach increased the potential for diverse responses (more developers and designers) and project flexibility (small design increments, no rigid master plan). It also augmented competition (smaller parcels meant that smaller developers could participate) and often reduced up-front infrastructure costs by allowing construction in phases. Other authors (Orueta & Fainstein, 2008) argued that such approaches also introduced new diverse problems, highlighting the negative consequences that could arise without a strategic planning capability. Projects competed and undermined each other's viability. Landowners and developers whose projects were not favored or 'fast-tracked'

could complain of unfair treatment by the state. Also, 'ad hoc' approaches generated uncertainty in property markets. Regulations without territorial strategy might lose sight of the adverse consequences of the cumulative impact of separate regulatory decisions on place quality. While projects provided alternative ways to generate revenues and extract public benefits, all too often, the trade-off would result in excessive densities and under-assessment of public amenities.

Furthermore, the implementation of projects originated in the establishment of new administrative structures with policy-making powers, competencies and responsibilities. In the name of greater flexibility and efficiency, these quasi-private and highly autonomous organizations competed with and often superseded local and regional authorities as managers of urban redevelopment. As a result, urban governance became increasingly fragmented and privatized, raising questions of accountability and representation. As Hall (2002) puts it, the new planning policies became separated from the mainstream planning process: mainstream planning dealt with codified incremental change, large-scale urban development was about entrepreneurial response to new development opportunities, and therefore had to avoid rigidity. Overall, Fainstein (2001) argues that these public policies ultimately meant a taxpayer investment not in the jobs and economic growth that were intended, but in the property industry itself.

More recently, there has been a re-emphasis on the need for strategic planning and a demand for more, rather than less regulation of economic activity. This shift has been encouraged by the experience with 'strategy-less' planning now seen as counterproductive. The growing complexity, the increasing concern about rapid and apparently random development, the problems of fragmentation, a renewed emphasis on the quality of the built environment, the

growing strength of the environmental movements; all served to expand the agenda. From the 1990's, these forces increasingly put pressure on public agencies to refocus on comprehensive public policies for urban and regional development. In response, more strategic approaches, frameworks and perspectives have gradually made their way into policy statements and legislative reform at different government levels in Western Europe and America.

The emphasis of new approaches has converged around the common themes of 'strategic spatial planning' and 'place quality' with the objective of articulating to more coherent and coordinated spatial frameworks for land-use regulation and urban development. The new approaches have been defined not only in contrast with the experience with 'strategy-less' planning of the 1980's and 1990's, but also with the 'comprehensive-rational' model that dominated the previous decades. Rather than top-down or bottom-up, the new planning approaches have been described as democratic, de-centered, flexible and citizen-driven, allowing for a broad and diverse involvement in the process, and for considering power structures, uncertainties and competing values. Instead of relying exclusively on specific projects or providing all-encompassing universal frameworks, they focus on a limited number of strategic key-issues through a pragmatic view of the available resources and opportunities (Beauregard R. , 2005)

This put pressure on statutory spatial systems to change. In the last decade, public agencies in different countries have responded through legislative reform and policy statements at different administrative levels, gradually bringing the new emphasis on 'strategic' planning to the forefront (Salet, 2008). One of the main examples of the new focus on 'strategic' planning was

the reforms to the national housing and planning law ('Code de l'urbanisme et de l'habitat') implemented at the end of 2000 in France through the enactment of a new statute (Loi SRU - 'Loi 2000-1208') which presented a broad restructuring of the local instruments of planning. The new instruments emphasized the prospective character of planning and expanded the range of topics covered beyond land-use with the objective of advancing social policy and promoting sustainable development. In Brazil, a new national planning law 'City Statute' ('Estatuto da Cidade'), was also enacted in 2001. Subject to a long period of discussion, it marked a turning point in Brazilian land policy by acknowledging the 'social function' of property and institutionalizing several instruments to implement planning policy including special zoning districts ('OU - Operações Urbanas Consorciadas'). The Sao Paulo strategic plan enacted in 2002 was one the first strategic plans in Brazil to be published according to the requirements of the new national law. In New York City, the Bloomberg administration published in 2007 a strategic plan 'PlanNYC' drawing on previous planning studies commissioned to forecast the city's future land use demands. It represented the first effort to produce an integrated policy statement for the city since the John Lindsay mayoralty of the 1970's.

At the same time, the last decade has also witnessed a return of large-scale development projects in major Western European and American cities. After a hiatus during the 1990s brought on by the real-estate bust early in the decade, public agencies in major cities engaged with the private sector in developing large urban sites located in central areas (Fainstein & Orueta, 2008). Together these projects formed a 'third' wave of public-private partnerships initiated by

developers seeking public-sector involvement posing new challenges to public officials and regulatory systems (Sagalyn, 2007)

As in previous decades, the justification for the new projects was the development and strengthening of urban economies. Enhancing the competitive advantage of the cities continued to be largely dependent on improving and adapting the built environment to the demands and requirements of emerging sectors and firms. Responding to the wider forces outlined above, the cities choosing to engage in such efforts adopted new planning policies and regulations and redefined the role of public agencies to implement them. Continuities and similarities between the new projects and their predecessors were inevitable given their intrinsic character and scale. However, a key differentiating factor was the new planning frameworks in which they were planned and developed, particularly the new strategic plans to regulate and enable the development of large-scale urban projects and increase the provision of public benefits.

1.2 AIMS AND RESEARCH QUESTIONS

The research compares the impacts of new planning legislation and strategic local plans introduced in New York, Paris and Sao Paulo on three large scale urban projects developed in each city from 2001 to 2012. Each city enacted a new strategic local plan in the earlier part of the decade which modified how UDP's were planned and introduced new mechanisms to implement them. The objective of this study is to understand whether the new strategic plans and all the regulations attached to them (1) rezoned the sites based on the guidelines provided by local plans; (2) facilitated or hindered implementation; and (3) delivered public benefits. If these mechanisms hinder implementation, then public benefits could be lost. But, even if they facilitate

implementation; they might still not generate large public benefits. The study focuses particularly on whether the impact of the new strategic plans varies by the form that they take.

The case studies selected used a different model of special zoning district differentiated by three key variables: (1) articulation with local land-use plans; (2) instruments of plan implementation and; (3) planning and financing incentives. Each model was a product of new planning legislation enacted between 2001 and 2005 that significantly changed special zoning districts in São Paulo and Paris. Amongst the several changes to existing planning regulations, new legislation had been introduced with the objective of promoting greater integration between development programs elaborated for special zoning districts and local zoning resolutions. The purpose is to compare how the three variables (1) role of local land use guidelines; (2) instruments of plan implementation and; (3) planning and financing incentives differed between the cases and how this impacted: (1) variation in planning controls; (2) implementation and (3) public benefits.

1.3 THE RELEVANCE FOR PLANNING PRACTICE AND RESEARCH

The proposed research contributes to the understanding of strategic planning and urban development at several levels. First, it illustrates how regulations and control of urban development have evolved in the past decade in different regions. An understanding of changing role of urban planning and the corresponding evolution of public instruments of development control can inform public officials, investors and communities of the changing directions of spatial regulation and control of urban development.

Second, through the examination of each case and comparative analysis, the research illustrates how public agencies in different regions are engaging with ‘strategic’ spatial planning and its actual impact on the urban development process. This will contribute to an understanding of how different contexts influence the way the new concepts are interpreted and how they translate into different planning approaches. Continuities and similarities are inevitable but nevertheless, an examination of the nature and impact of the shift in public policy towards ‘strategic planning’ on urban development can contribute to current theoretical debates on the nature of the new approaches while illustrating how such tools are used in practice and the impact to achieve policy goals and extracting public benefits.

Third, the research aims to contribute to the academic literature on planning and property development (e.g. Moulaert et al, 2003; Sagalyn, 2007; Orueta & Fainstein, 2008). Urban development projects are a product of and embody processes that operate in and over a variety of scales, from the local to the global. The study can provide insights into the mechanisms of global-local integration and address ongoing debates about the changing nature of the state and interplay between levels of governance in the face of deepening globalization. Furthermore, studying how new urban policies are being adopted and implemented in different institutional contexts will allow us to examine in practice different planning systems while defining the practical meaning of ‘strategic spatial planning’.

The following chapter 2 introduces the relevant research and conceptual frameworks via three main urban themes: (1) public/ private development; (2) comparative planning systems and: (3) strategic planning theory. Chapter 3 describes the research methodology and the case selection strategy. Chapters 4, 5, and 6 present the data collected through in-depth research of three case studies of large scale urban redevelopment projects in New York City, United States

(Special Hudson Yards District); Paris, France (Zone d'Aménagement Concerté Clichy-Batignolles) and Sao Paulo (Operacao Urbana Agua Branca). The first section of each chapter introduces the case. The second section of each chapter provides a discussion of the legal-administrative background and planning framework for each case and the third sections presents the data from the research into each case. Chapter 7 compares and discusses the planning process of each case. It focuses on how local land-use guidelines, instruments of plan implementation and planning and financing incentives varied among the cases and impacted the variation in zoning controls, provision of public benefits, implementation. Chapter 8 summarizes the main findings of the research, discusses the outcomes, proposes conclusions and suggests implications for planning practice and research.

CHAPTER 2 : LITERATURE REVIEW

2.1 OVERVIEW

The study of the interplay between strategic planning and urban development is contingent upon different academic literatures and ongoing debates. Urban studies have a long tradition of analyzing the societal and political significance of strategic urban projects and investigating their impacts and outcomes. This chapter reviews three main areas of the relevant literature. The first section reviews the literature on strategic spatial planning and planning theory and the state of the current debates and practices. The second section describes the literature on comparative planning systems, focusing on plan-led and development-led systems and the underlying legal and political systems. The third section reviews the literature on public-private development and large-scale urban projects through three analytical frameworks. The last section summarizes the key issues and questions raised.

2.2 STRATEGIC SPATIAL PLANNING AND PLANNING THEORY

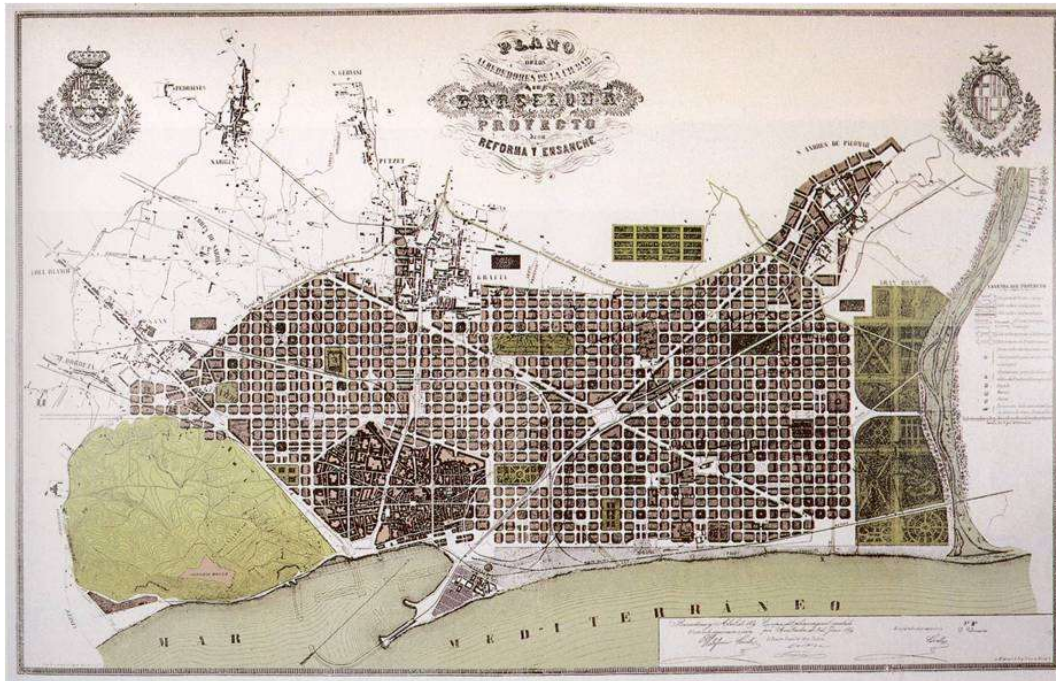
Although cities have been planned for as long as they have existed, modern planning as it evolved in the last century in Western Europe and North America is rooted on common ideals derived out of the ‘Enlightenment’ period and its belief on scientific knowledge, empirical enquiry and acting in the world in order to improve it (Giddens, 1996). This climate of thought and the marriage of science and individual freedom to industry and commerce made possible the ‘Industrial Revolution’. The gross social inequalities, systematic exclusions, environmental pollution and periodic collapse in market processes that came with the advances in wealth generation and uneven spread of benefits led to a growing awareness of the necessity of planning the trajectory of the future (Healey, 2007). This led to the crystallization of planning movements in all Western European and North American countries sharing a revulsion at the chaotic unhealthy character of the industrial city as well as a common rationale of imposing efficiency, order and beauty through the imposition of reason.

The modern planning practices in Western Europe and North America are characterized by an initial formative period (late 1800s – ca1910) in which planning ideas arise out of a multiplicity of technical, social and aesthetic origins intimately linked to a broader reform movement, which sought to redress the ills of unconstrained capitalism while mediating the intramural friction among capitalists that had resulted in a city inefficiently organized for production and reproduction. In these initial years, its pioneers did not yet identify themselves as planners. Also, planning practices were not fully grounded within public policy, nor constituted a coherent body. Rather planning practices constituted a mix of improvements to public buildings

and spaces; sanitary and housing reform; legislation on town extensions and street lines; and calls for social reform through the reorganization of the built environment (Hall, 2002).

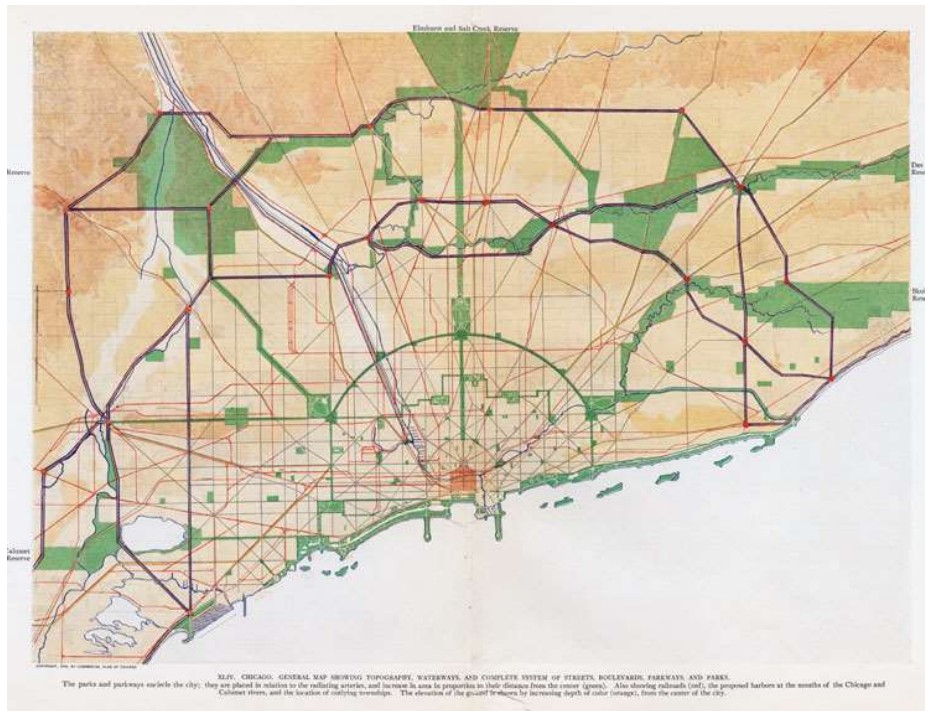
Notable examples in Continental Europe include the remodeling of Napoleon III's Paris by George-Eugene Haussman (1853-1870); Ildefons Cerda y Sunyer plan for Barcelona's 'Eixample' beyond the former city walls in 1859 together with his 'Teoria General de la Urbanizacion' (1967); and German innovations in legislation on town extensions (1874), street lines (1875), planning theory (Baumeister, 1876) and the introduction of zoning in Frankfurt in 1891 (Ward, 2004). In the United Kingdom, the most influential evolutions at the time include the health and housing reforms of 1885, the house-building programs of the London County Council and the highly influential notion of the 'Garden City' introduced by Ebenezer Howard in 1898 with the publication of 'Tomorrow: A Peaceful Path to Real Reform'.

Figure 1. Plan of the Eixample development in Barcelona (1859), by Ildefons Cerdà. Source: Archives of the Kingdom of Aragon, Barcelona/Ministerio de Cultura



In the United States, modern planning emerges out of the American ‘Progressive Era’ led by the ‘City Beautiful’ movement and progressive political reformers (Teaford, 1985). These advocated a disparate set of urban policies, hoping to impose order and control on the American city, by eliminating the graft, corruption and simple incompetence that characterized American government. The ‘City Beautiful’ movement emanated from various factors: (1) the sanitary and housing reforms implemented in previous years, (2) the widespread concern for parks and the success of the APOAA (e.g. Central Park) in which Frederick Law Olmsted was a major figure; (3) and the World’s Columbian Exposition in Chicago, 1893 following a plan by Daniel H. Burnham (figure 2, below).

Figure 2. Plan of Chicago, plate XLIV. General Map. Source: Chicago History Museum, 1893.



The success of the plan, led to the appointment of the MacMillan committee, headed by Daniel Burnham, in what was the first group in America to be identified as experts in city planning and given the status of professional city planning consultants. Among their accomplishments was the ‘Macmillan Plan’ for the capital followed by several others, as well as the creation of official town planning boards in various cities.

This initial formative period is followed by a period of increasing institutionalization as a form of state intervention, professionalization, and self-recognition of planning, together with the rise of regional and federal planning efforts (ca 1910-45) (Krueckeberg, 1983). As part of the modernist project, planners were now supposed to redress the ills of unconstrained capitalism from within local and state governments. Assuming a belief in the efficacy of human action,

modernization and progress were to be achieved through the provision of scientific and objective utilitarian understanding in which the planners role was to 'act as experts who could utilize the laws of development to provide societal guidance' (Beauregard R. , 1989) .

As Hall (2002) writes the job of the planner was to make plans at various levels of governments, to develop codes to enforce those plans and then to enforce those codes in what was then labeled comprehensive land-use planning. The plan making process consisted in a very direct single-shot approach: survey on the demographic, social, economic and physical conditions of the urban structure object of the plan, followed by analysis and immediately by design. Depending on legal traditions and nature of the state, plan implementation was to be achieved through different degrees of state intervention which relied on an increasingly complex set of public and private instruments including private covenants, zoning ordinances and respective variances, building permits, subdivisions, land readjustment projects and TDR's (Ward, 2004).

In Continental Europe, notable pre-war modernist practices included the introduction of land readjustment projects in 1902 in order to ensure that layout of the new districts was not constrained by the small peasant strips that were typical of Frankfurt. Other planning innovations included important moves towards regional planning in Berlin and the Ruhr and the proposal of the 'Cite Industrielle' by the French architect Tony Garnier.

The new problems posed by physical destruction and population displacements brought about by the war together with the Great Depression, the rise of totalitarianism and lost peace together with the rise of the United States to political, economic and cultural dominance

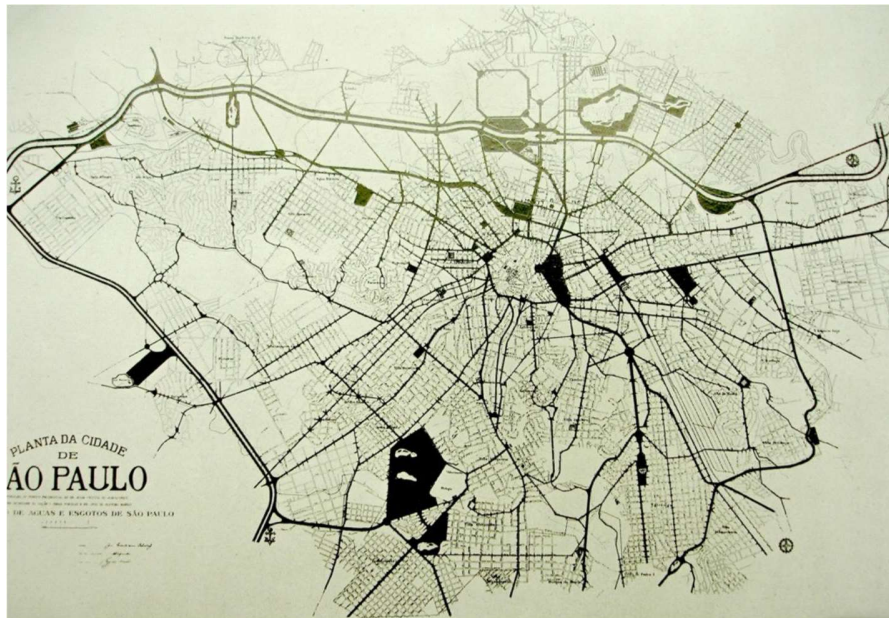
In the United Kingdom, the implementation of Garden Cities (e.g. Letchworth, Hampstead), the regional concepts of Patrick Abercrombie, the Greater London plan of 1944 and the formalization of the distinct development-led British spatial planning system with the Town and Country Planning Act also in 1944 were the most notable British contributions to modernist planning (Cullingworth & Nadin, 2006).

In the United States, the institutionalization of the profession and modernist approach to planning during this period was reflected in the adoption of the SZA (1922) and SCZA (1928), following the earlier adoption of comprehensive zoning codes in various American cities and the inevitable constitutional tests. As virtually all states acted on the suggested enabling acts, it signaled a major shift away from governmental alteration of urban form through public works, towards a highly conservative legal and administrative control of private development (Cullingworth, 1997). It thus institutionalized planning and zoning as the sole means by which land-use policy at the local level was to be determined. Other American examples of a modernist practice include the implementation of Garden Cities (e.g. Forest Hills, Radburn), the regional planning efforts of RPAA and the infrastructure provision and large urban renewal schemes as exemplified by the works of Robert Moses in New York City from 1930 (Caro, 2015).

The American and European experiences with city plans was particularly influential in the planning of capital cities throughout Latin America. In Sao Paulo for example, its first comprehensive city plan, known as the 'Avenidas Plan' of 1930 by local city planner Francisco Prestes Maia drew on the ideas of European planners Joseph Stubbens and Eugene Henard while also making explicit references to the Chicago plan as well as the Philadelphia's Comprehensive

Plan Commission. The Avenidas plan attempted to structure the future growth of the city through a radial system of new avenues and public parks (figure 4, below).

Figure 4. Plano das Avenida, Prestes Maia. 1930. Source: Fonte: Benedito Lima de Toledo, 1996, p. 160.



These early plans dealt almost exclusively with public buildings, parks and streets, proposing no changes to or control of private property, as control of private development lacked clear widespread state and federal Supreme Court support during this time. Furthermore, the early boards, created to sponsor the creation of a city plan, lacked funds, authority and a clear role, which strongly limited their ability to sponsor, execute and finance public construction.

From the 1950's the modernist planning approach in the United States and the United Kingdom, increasingly was pushed even further by what was labeled the 'Systems Revolution' (Hall, 2002). Uniting spatial interaction models with an engineering-computer based approach, it produced a paradigm shift in the profession. Instead of the old master-plan or blueprint approach

which assumed that the objectives were fixed from the start, the new concept was planning as process whereby programs were adapted during their implementation as and when incoming information required such changes. And this planning process was independent of the thing that was planned. Decision making and implementation in planning now involved a constantly recycled series of logical steps: goal setting, forecasting of change in the outside world, assessment of chains of consequences of alternative courses of action, appraisal of costs and benefits as a basis for action strategies and continuous monitoring.

Until the 1950's it can be argued that planning education and research closely followed the rational comprehensive model that dominated professional practice:

'Since planning degrees and departments stemmed off from professional needs, often through spin-offs from related professions like architecture and engineering, they were from the start heavily suffused with the professional style of these design-based professions. The job of the planners was to make plans, to develop codes to enforce these plans, and then to enforce those codes; relevant planning knowledge was what was needed for that job; planning education existed to convey that knowledge together with the necessary design skills. Planners acquired a synthetic ability not through abstract thinking, but by doing real jobs (...) Planning was not based on any consistent body of theory (...) although there was some theory in planning, there was no theory of planning' (Hall, 2002: 355).

As the reference publication of the American Institute of Planning 'The Content of Professional Curricula in Planning' published in 1948 stated, planning education was aimed at giving future professionals 'exceptional preparation for the planning of unified development communities (...) through determination of the comprehensive arrangement of land-uses, land occupancy, systems of public services and utilities and the regulation and programming thereof' (cited in Violich, 2007: 9).

From the late 1960s a series of societal and technical shifts, along with powerful critiques of the assumptions underlying the modern planning ideals led to a transformation of its logics and a convergence in spatial planning systems and practices. This context allowed for neo-liberal interests, which had come to power for example in Britain (Thatcher Government) and in the U.S. (Reagan Government) to take advantage of the sense of crisis to promote radical political reform programs that sought to dismantle much of the Welfare State's institutions and regulatory regimes through the ideological trilogy of competition, deregulation and privatization (Harvey, 2005).

Based on conservatism liberalism and even forms of corporatism, the new hegemony was profoundly hostile to all forms of spatial regulation, including urban and regional planning, environmental policy and economic development policies. As Gleeson & Low (2000) point out, the broad intellectual case against urban planning rested essentially on the propositions that planning both distorted land markets and raises the transaction costs of development through bureaucratization of the urban economy. It was argued that these diseconomies reduce employment growth and also stifle the ability of the land market to satisfy consumers' needs for housing and transport (Klosterman, 1985).

As a response to these changes, the deregulation of national economic planning and an increase of entrepreneurial attitudes of governments at national and city level became a world-wide trend as labor market flexibility, territorial competitiveness and place-specific locational assets became the key factors in attracting inward investment and promoting economic growth and competitiveness, The priority given to economic objectives led to the emergence of localities

as the privileged level of capitalist regulation through strategies of political-economic restructuring that used space instead of people as its privileged instrument (Brenner & Theodore, 2002).

To reposition cities in the new map of competitive landscape, states had to find ways of making the built environment more flexible and responsive to the investment criteria of real estate capital. Particularly in the United States, United Kingdom, and later Continental Europe, legal adjustments and administrative reorganizations were carried out in order to create greater flexibility to private sector demands, thus originating new public urban policies (Newman & Thornley, 1996).

From the late 50's, the political center and left also produced an attack on the systems or rational model paradigm in planning. From the center, it was argued that in America comprehensiveness was not attainable and decisions were in fact a consequence of a pluralist political structure (Altshuler & Luberoff, 2003) . But instead of addressing the redesign of the framework within which development took place, they choose to work within its constrains, signaling a profound shift in planning theory from a emphasis in analysis to an emphasis on communication (Beauregard R. , 1989)

Thus, it was argued that a more exploratory political process was more appropriate, labeled disjointed incrementalism or muddling through (Lindblom, 1959). At the same time, the Left fueled by the civil rights movement and the war on poverty, the protests against the Vietnam War and the campus free-speech movement called for a more politically involved planning, incorporating strategies for the political and legal advocacy of the needs of disadvantaged groups

(Davidoff, 1965) and for greater involvement of citizens in the planning process with the underlying assumption being that planning was a political activity that clothed their service to middle- and upper- class interests in scientific garb and political neutrality (Beauregard R. , 1989).

Thirdly, from the 1970 a series of Marxist studies appeared attempting to complement Marx disinterest with questions of spatial location (e.g. Lefebvre, 1974; Harvey, 1982; Castells, 1989; Massey, 1984). From their perspective, the capitalist city was the result of capital in pursuit of profit, and because capitalism has crisis tendency, capital calls upon the state, as its agent, to assist it by remedying disorganization in commodity production, and by aiding the reproduction of the labor-force. In this sense, Marxists viewed planning as serving primarily the interests of capital at the expenses of the rest of the society as an historically-specific and socially-necessary response to the self-disorganizing tendencies of privatized capitalist social and property relations as these appear in urban space. Thus, they deprived professional planners of their professional expertise, by rejecting the application of scientific methods to public policy making as merely legitimizing and maintaining existing social and economic relations (Klosterman, 1985).

Fourthly from the 1980's a new critique was formulated 'the communicative turn' (e.g. Forrester, 1999; Innes, 1990; (Healey P. , 1992), based on the theory of communicative rationality of Jurgen Habermas, American pragmatism and post-modern theory. In attempting at providing a guide for planners, the communicative argued that instead of bringing stakeholders to a planning content, the role of the planner was to act as a negotiator and intermediary among

stakeholders, providing information and leading the process or reaching a consensus where no group's interest dominates, independently of the context and outcome (Fainstein S. , 2005).

As Peter Hall (2002) argues, these views shared a belief that the planner not only did not have much power, but also did not deserve to have it, resulting in a paradigm shift in the rationale of the profession. One particular influential example at the time was the implementation of 'equity planning' by Krumholtz and team in Cleveland from 1969 to 1979 (Krumholz, 1982).

From this period, planners increasingly saw themselves as:

'barefoot doctors, helping the poor down the streets of the inner city, working for either a politically acceptable local authority (...) or community organizations battling against a politically objectionable one.' If in 1955 the planners job was usually 'at the drawing board, producing a diagram of desired land-use', in 1965, 'he was analyzing computer output of traffic patterns' in 1975 he was 'talking late into the night with community groups, in the attempt to organize against hostile forces in the world outside" (Hall, 2002).

Ultimately, as the gap between theory and practice widened and planning initiatives were increasingly reduced to promoting economic development through privately-led property development, the neo-liberal dominance in public policy and the influential leftist critique of the 60's and 70's on urban renewal made practitioners increasingly lose the visionary rationale that was at the core of their profession in favor of an 'untheoretical, unreflective, pragmatic style of planning'. Commonly labeled 'New Proceduralism', the new practices emphasized organization efficiency, standardization and commodification of planning to the detriment of the 'vision thing'. Planning is no longer a political and professional activity; it is rampant technocracy, shared between the public and private sector'. (Almendiger, 2009).

As a result, from the mid-70's to the mid-90's planning went through a 'paradigmatic crisis'. The fact was that planning, as an academic discipline, had theorized about its own role to such an extent that it was denying its own claim to legitimacy while it had been useful to distinguish the planning process as something separate from what is planned, this had meant a neglect of substantive theory, pushing to the periphery of the whole subject' (Hall, 2002: 367). In the United States he concludes that in the middle of the 90's the professional field of planning is by many indications facing a severe paradigmatic crisis, shaken by the discrediting of its underlying intellectual rationale as well as by disappointment from repeated instances of practical impotence and failure, and threatened with impending decline or even possible dissolution. Beauregard (1991) summarized the situation as follows:

'Overall then the modernist planning project has disintegrated but not disappeared. Practice has lost its neutral mediative position, forsaken its clear object of the city, abandoned its critical distance and further suppressed reformist and democratic tendencies. Yet, practitioners still cling to a modernist sensibility and search for ways to impose expertise on democracy and to integrate their many specialties around a grand vision such as the master plan (...) Theory of the other hand, has undergone centrifugal disintegration without a corresponding refocusing of knowledge around social theories and broadening of the planning debate. Neither does one find a theoretical commitment to more than a pragmatic political agenda'

Increasingly, the profession lost its ability to concretely influence planning education because it could no longer maintain a consensus regarding what planning was substantively all about. Large government programs, faculty and limited student influence made schools resolutely go in their own way in pursuit of the grand notions of planning theory and 'applied science' and began a process of accommodation to the academic environment in which they had to survive without the guidance and support of a strong professional reference group. The effective reference group for planning educators became instead the community of other academicians, and this was

reinforced by the creation of new organization such as the Associate Collegiate School of Planning and other more specialized academic interest association.

As result of these external devices, both the profession and the schools were 'sidetracked' for expansion into different kinds of activities and domains of practice as well as by the changing notions of comprehensiveness that justified a universal discipline focused on abstract process rather than substance. While the profession lost its prospective component and retreated into a bureaucratic regulatory process (Tewdwr-Jones, 1999), planning programs broaden the scope of subjects studied, from physical planning and land-use towards a generalist understanding of the field concerned with the social and physical organization of society from the local neighborhood to global communities.

These changes of content and curriculum in planning programs provoked an increasing separation of planning education from architecture, engineering and urban design (which acquired an autonomous status within graduate schools) towards the social sciences, reflected in the subjects taught, background of students and faculty and sometimes even transfer of entire planning programs from architecture schools to graduate schools of public policy.

More recently, there has been a re-emphasis on the need for 'strategic' planning and a demand for more, rather than less regulation of economic activity. This shift has been encouraged by the experience with 'strategy-less' planning is now seen to have been counterproductive. The growing complexity, the increasing concern about rapid and apparently random development, the problems of fragmentation, a renewed emphasis on the quality of the

built environment, the growing strength of the environmental movements²; all served to expand the agenda. From the 1990's, these forces increasingly put pressure on public agencies to refocus on the comprehensiveness of public policies for urban and regional development. In response, more strategic approaches, frameworks and perspectives for cities, regions, and states have become fashionable since the end of the millennium and have gradually made their way into policy statements and legislative reform at different government levels in Western Europe and America.

In the United States the shift has its origins in the criticisms made by the 'New Urbanism' movement and the American Planning Association 'Growing Smart' project to the legislative framework within planning takes place and the negative effects it has had on land development patterns in the United States. While originated in different settings and starting with somewhat different, the evolution of both movements has been in the direction of arriving at a common critique of the limitations of planning statutes. Together these movements highlighted flaws in planning statutes including focusing of the process rather than substance of policies, making plans optional and excluding elected officials from the process; allowing for the systemic issuing of variances; and confusing zoning with comprehensive plans.

Both movements have had a significant impact on planning legislation and professional practice in the United States. New developments following 'New Urbanism' principles have been built throughout the country with high levels of acceptance. Regarding the impact of the

² (e.g. Brundtland Report, 1987; Rio de Janeiro Earth Summit, 1992)

'Growing Smart' project, the APA reported in 2002 that 12 of the 50 states had implemented moderate to substantial comprehensive planning reforms, another 10 were attempting to strengthen existing laws, and almost one third were pursuing their first major statewide planning reforms (Meck S. , 2002).

Also, the impact of both movements in the profession had a major influence on planning research and education. Not only has there been a significant amount of research and publications on both movements (Downs A. , 2005) but increasingly calls have been made for a paradigmatic shift in planning education and research (Talen, 2004). Together these criticisms have argued that the implementation of the changes advocated by the 'Growing Smart' and the 'New urbanism' movements require skills from planners that planning programs do not seem to provide and types of research that the current focus on the social sciences undermines. Therefore, proposals have been made with the objective of moving planning education and research again towards the physical sciences and the built environment.

The emphasis of new approaches has converged around the common themes of strategic spatial planning and place quality. While the motivations for engaging with processes of strategic spatial planning have varied, the objectives have typically been to articulate more coherent and coordinated spatial frameworks for land-use regulation and urban development. This change shift of focus in planning put pressure in statutory spatial systems to change. In the last decade, public agencies in different countries have responded through legislative reform and policy statements at different administrative levels, gradually bringing the new emphasis on strategic planning to the forefront of public policy towards urban development (Salet, 2008).

The new approaches have been defined not only in contrast with the experience with strategy-less planning of the 80's and 90's, but also with the comprehensive-rational model that dominated the previous decades . Rather than top-down or bottom-up, the new planning approaches have been described as democratic, de-centered, flexible and citizen-driven, allowing for a broad and diverse involvement in the process, and for taking into account power structures, uncertainties and competing values (Beauregard, 2005). Instead of relying exclusively on specific projects or providing all-encompassing universal frameworks, they focus on a limited number of strategic key-issues through a pragmatic view of the resources and opportunities available. Concepts, tools and procedures can vary depending on different contexts as the emphasis is intended to be as much on the process, institutional design and mobilization as on the development of plans.

In the literature little agreement exists regarding values, approach and processes. Strategic spatial planning is not a single concept, procedure or tool, but rather a set of each that must be tailored carefully to whatever situation is at hand. Thus, it is as much about process, institutional design, and mobilization as about the development of substantive theories (Albrechts L. , 2004). Still, as a normative definition, it refers to a public sector led socio-spatial process through which a vision, actions, and means for implementation are produced that shape and frame what a place is and may become (Albrechts L. , 2006). Newman and Thornley (2005) adopt a more modest stance, arguing that it refers to a city-wide spatial policy with priorities established and implications for geographical areas within the city. As such, strategic can be used to mean a higher level of administration, a more general or abstract level of policy or a framework. It

implies selectivity, a focus on that which really makes a difference to the fortunes of an area over time (Healey, 2004).

Focusing on planning practices, Salet and Falludi (2000). identify three approaches to strategic spatial planning, including an institutional approach that aims at legitimizing and implementing plans; a communicative approach that favors framing and building connections between public and private organizations; and a sociocratic tendency, focused on the inclusion of society and emergent citizenship. The key change in strategy-making processes is to realize that the planning process is sped up by getting stakeholders involved at the start of the planning process, with the learning developed around the formulation of a strategy being more readily disseminated and translated into other arenas (Healey, 2001). John Friedman (2004) argues that, given the varied and uncertain processes of formulation of plans and limited results, the emphasis should be moved away from 'plans' to planning studies that focus on ways of dealing with critical urban policy and management issues under strategic scenarios.

2.3 COMPARATIVE PLANNING SYSTEMS

Planning systems can be considered the product of overlapping elements which combine the regulatory framework within which development takes place (Healey P. , 2007). Elements that are particularly relevant to the way development is regulated include the legal system defining national rules, the decision processes that regulate land uses and the administrative procedures that determine the operation of specialized organizations and the bureaucracy in general (Breuillard, Stephenson, & Sadoux, 2007). Each element is influenced and embedded in the historical context, socio-economic, political and cultural patterns of each respective state (Friedman, 2004).

Therefore, significant variances exist between development systems across national and sub-national jurisdictions.

The legal system and the context in which it operates are relevant to development systems because their legitimacy is gained through the embodiment in the legislation and regulations that form part of the legal apparatus of a country. The nature and style of this legal apparatus can vary from country to country and therefore generate different approaches to development and land-use regulation as well as variations in national legal and constitutional structures and administrative and professional cultures (Newman & Thornley, 1996).

When discussing the influence of legal systems on planning approaches a basic distinction is often made in the planning literature between national development systems influenced by the ‘Napoleonic legal’ family (inspired by Roman or civil law) and the ‘Anglo-American’ legal family (influenced by common law). Both legal styles are contrasted in terms of the tendency of legal systems within the Napoleonic legal family (e.g. France) of thinking about matters in advance and preparing a complete set of rules based upon a codification of abstract principles as opposed to the systems based on the tradition of common law (e.g. England, United States) built decision by decision, where the legal mode of thinking is to empirically consider the relationships between parties and their rights and duties, emphasizing past experience and good governance (David & Brierley, 1985).

Zweigert et al (1998) argue that the legal framework provided by common law produces an approach to planning embodying a conflictual style of administration in which the two sides, the local authority and the applicant are competing to win, often giving courts a significant role in

planning matters. On the contrary, in legal systems influenced by Roman law, there is a tendency to prepare a national code of planning regulations and create a hierarchy of spatial plans based on zoning approaches. In these systems, the spatial plan is the crucial element, as it allows adding an extra dimension of deliberateness to spatial policies. In providing ground for regulating development, the spatial plan not only enables policies for specific locations to be seen as coherent wholes but also relationships between any one location and others be thought out beforehand. Implied is that the space is one of the common facets of all or most government policies, and the spatial plan is a framework for integrating them (2003).

As such the spatial becomes a crucial tool for various branches of government to coordinate their relevant policies, which must fit with the plan. Thus, it not only regulates development, but also guides and integrates proactive and reactive government policies. This means that besides local governments; regional and national governments also create spatial plans setting out the broader framework into which local plans fit (Newman & Thornley, 2005).

Zweigert et al (1998) address the historical reasons for the differences between these legal families. The authors point out that the ‘Napoleonic’ legal family (also referred to as ‘Civil’ or ‘Roman’) has its origins in the abolition of feudalism and liberalization of the land market in France heralded by the Declaration of rights in 1789 and the coming into force of the Civil Code in 1804. The Code was introduced to improve public administration and provided the model for all codes of private law within this legal family. The tendency was to think about matters in advance and prepare a complete system of rules based upon the codification of abstract principles. These principles were founded on the creed of the Enlightenment and the law of reason that social

life can be put into a rational order if only the rules of law are restructured according to a comprehensive plan (Zweigert, 1998, p. 88).

In contrast, common law evolved directly from feudalism which still marks the understanding of property relations. Booth (2007) argues while the practice of law in the 12th century was similar in both sides of the channel, the salient difference was that whereas the French Kingdom had no unified system of law or of courts of law, in England Henry II was able to establish a single system of royal courts which established their precedence over the manorial courts at the local level. This early modernization and unification of a judicial system that applied to the whole kingdom is at the root of the divergence of the English from the continental European judicial and legal systems.

From the beginning common law was procedural, governed by precedent and rooted in practice. Lawyers were trained through a system of apprenticeship to practitioners in direct contrast to the continent where, in the absence of a unified national legal system, law became a university discipline whose thinkers established general principles. Juries had to give reasons based on the facts before them and in doing so began to lay the foundation for a body of law that went beyond procedures and remedies (Booth, 2007, p. 128).

Over time, common law evolved into a legal tradition marked by its pragmatism and its reliance on case law and precedent. Within common law, the 'rule of law' is not conceived as a body of rules but as a set of principles that have been derived from the search for solutions to disputes. Within this tradition, judges have been given considerable discretion to make law, albeit heavily constrained by the recourse to precedent. This stand in contrast with the academic tradition

of continental Europe which sought to establish principles based on Roman law that could then be converted into rules (Booth, 2007, p. 128).

The different origins of the legal systems had a profound impact in the way property rights and land law were conceived and evolved. Booth (2002) makes a distinction between 'lineal' systems of property found within the Anglo-American legal family and 'allodial' systems of property found within the 'Napoleonic' legal family. Within 'lineal' systems of property (e.g. British and American property law) the key concepts are those of tenure, the right to benefit from the land for the time being, as against absolute ownership, and the estate, which was a way of giving concrete existence to the nature and interest that one person might have in the parcel of land in question (Galey et al, 2007).

The feudal basis of the common law system had significant consequences that influenced the way development was controlled. One was that given the contingent nature of tenure, courts increasingly tended to solve complex cases of conflicting rights by protecting the individual who had tenure of a parcel of land from abuse of his feudal superiors. Implicitly this amounted to a sanction of private property in spite of, or rather precisely because of, the absence of absolute rights to the ownership of land (Galey et al. 2007).

Another consequence was that the ability to conceptualize landownership as a question of multiple interests gave such legal and property systems considerable flexibility. It allowed lawyers to distinguish between current and future interests. It facilitated hierarchical control in which an owner might grant a form of tenure to another without thereby alienating his or her own control over land. It gave rise to the possibility that someone could hold land in trust for

another to enjoy because ownership, occupation and beneficial enjoyment could all be understood as separate entities (Booth P. , 2002).

In contrast, 'allodial' systems of property had a clear point of departure with the abolition of feudalism and the liberalization of the land market that was heralded by the Declaration of Rights in 1789 and the coming into force of the Civil Code in 1804. Within this new context, the right to property was an 'adjunct to freedom' and the right to dispose freely of property without let or hindrance was an integral part of that freedom (Galey & Booth, 2007).

The inspiration for the changes introduced with the Revolution was in part Roman law which reduced property in land to its physical attributes and distinguished between the law of real estate and the law of personal obligation. This form of landownership saw property in land as a natural right which preceded the State and implied an absence of personal obligation to others. Equally, however, the right to absolute possession did not imply sovereignty. It recognized the prior right of the sovereign State to land, but the corollary of that right was the duty of the State to protect the rights of the individual landowner. While the State had no preeminent claim on land, it could nevertheless require citizens to respect restrictions that it might impose on the way which land was used for the common good (Galey & Booth, 2007).

There is then a fundamental difference in conceptualizations of property between both systems. Within 'lineal' system of property, ownership is partial and contingent on others and the transfer of property rights is rarely, if ever, definitive. This has led to a conceptualization within Anglo-American thinking about property as being a bundle of rights in which the key concepts are tenure and estate. On the contrary, in 'allodial' systems rights to property must be transferred

in their entirety, even if they have been fragmented, so that no control over any part of them can be retained (Booth P. , 2005)

The way planning reflects and influences administrative structures is also embedded in the historical evolution of the state. For example, the ways French, English and American States emerged and set out their power in the face of civil society are very different. These origins help explain the fundamental differences between the respective planning systems. In France the State constitutes itself despite the initial handicap of a powerless monarchy facing a powerful and oppressive feudality. This initial weakness both allowed for the fiscal exemption of the French nobility, the underdevelopment as well as lack of centralization of the judiciary, and the pluralism of customary laws applying throughout the French kingdom especially in landed matters. That is why the historical development of the French state strongly relied, not on a centralized judiciary, but on a powerful and centralized administration, whose necessity was due to the difficulty of collecting scattered fiscal resources. The State developed under a seal of the union of the monarchy, on the one side, and the peasantry and bourgeoisie, on the other, against an aristocracy that was not only relieved of any fiscal duties, but also the fiscal competitor of the monarchy (Booth P. , 2002).

By contrast, the starting point for institutional evolution in England was a very powerful royal institution, under whose domination feudality was regularly and hierarchically organized. Both fiscal duties of the nobility as well as the early emergence of a centralized judiciary, taking over and exercising the judicial power in the name of the king and enabling the early unification of land law, were the expression of a strong royal power. In this context, the emergence of a

doctrine of limited government and the laws of the 17th century was the union of the nobility and the middle class against the oppressive power of the state (Booth P. , 2003).

In the United States the federal state emerged after its constituent states. State evolution is dominated by a liberal tradition which values individualism, accepts the primacy of private interests and prefers minimal government (Cullingworth, 1993). The influence of this tradition is reflected in the way the administrative system is designed to prevent centralization. This is achieved through a federal system of ‘checks and balances’ and a doctrine of separation of powers, where the national government shares sovereignty with the 50 states with the Supreme Court balancing the rights of each. Under American law, states are considered sovereign entities, except for secession and conducting foreign policy. In areas in which the federal government is empowered to act, federal law overrides state law. As such states have all powers not reserved centrally. They in turn, allocate specific rights, including planning to local governments which have no constitutional right to exist and are legal creations of the states (Kayden J. S., 2000).

The various historical ways in which states emerge and organize in the face of society impact state agencies and planning systems. Even after recent moves towards greater decentralization of planning powers, the United Kingdom is often considered the most centralized state in European and North American studies (Larsson, 2006) . Under the British unwritten constitution, the local level has no special protection in law, and as such, any right to exist. Local governments can be created and abolished by an Act of Parliament, as the Thatcher Government clearly showed (Thornley, 1990). In this model local authorities are agents carrying out central government policies and so central government regulations, laws and controls are

formulated to allow this to happen. In this model there is very little need for local taxation since finances are largely obtained from central grants. At the same time, local governments are administered through political committees with the mayor playing only a symbolic role. Thus, local units of government are fairly large and loosely linked to local communities (Cullingworth & Nadin, 2006).

By contrast in France, there is a tendency to prepare a national code of planning regulations and the creation of a hierarchy of spatial plans based upon a zoning approach. In these systems, the spatial plan is the crucial element. It allows adding an extra dimension of deliberateness to spatial policies. In regulating development, the spatial plan not only allows policies for specific locations to be seen as coherent wholes but also that relationships between any one location and others be thought out beforehand (Falludi, 2000). Therefore land-uses are defined through a formal system of plans at different levels of government in which plans at the higher level are administratively binding on the lower plans. Thus local plans have to comply with or at least not conflict with regional plans and so on (Newman & Thornley, 2005).

Implied is the assumption that the spatial dimension is one of the common facets of all or most government policies, and the spatial plan is a framework for integrating them (Falludi, 2000). As such it becomes a crucial tool for various branches of government to coordinate their relevant policies, which must fit with the plan. Thus, it not only regulates development, but also guides and integrates proactive government policies. In Germany this approach is also present but with the regional level playing a stronger role and with its own laws and plans and set of arrangements for creating a consensus between and within the levels in the hierarchy. This

results in a considerable variation in the criteria, but within a strong national framework (Healey P. , 2001).

In the United States the emphasis is very much on the municipalities with the national and regional levels playing only a minimal role. The American system is unique because the lack of centralized mechanisms mean that local governments generally rely for the most part on their own tax base for revenue, something referred to as fiscal federalism (Friedman, 2004). As such there is a great deal of competition for increasing the tax base between jurisdictions. The role of local planning is often reduced to planning amenities or offering various tax and economic incentives to private businesses and residents. Planning efforts and abilities are often circumscribed by residential and commercial mobility, as restrictive regulations or excessive taxation may lead to investment to move elsewhere.

Also U.S. local governments are much less and more complex than the European with services being supplied by a multiplicity of single-purpose agencies, such as planning commissions, boards of education or sewer commissions, so that a citizen may live within the area of a score of different local government units, some of them with different boundaries. Since these agencies are in general separately controlled there are little incentives for them to cooperate. There are often more different agents or actors associated with urban growth and change than in the typical European situation, a fact that makes the process harder to control (Hall, 2002).

The differences between legal families and underlying conceptualizations of property rights originated vastly different development systems. Earlier comparative studies of

development systems motivated by the process of European integration drew attention to the differences between the English and Continental European systems. Starting with a comparative analysis on the control of development in Leiden in the Netherlands and Oxford in England, Thomas & Tvrdy (1987) make a broad distinction between the legal certainty provided by systems in Continental Europe based on the Napoleonic or Scandinavian legal systems in contrast to the high degree of administrative discretion in the English system created by the legal framework of English common law.

This distinction is developed by Faludi (1987) which draws upon both American and European resources to introduce two 'proto-planning' theories. Proto-planning theory 'B' corresponds to the English discretionary system of development control. Faludi argues that such system is 'development-led' because eventual decisions on development proposals are left partially unconstrained by prior regulations. There is no absolute relationship between the plan and development control decisions which in the event may depend on other factors than the plan. Therefore, zoning is merely indicative of public policy, but not definitive and can be departed without complicated procedures. Moreover, development control can exist in the absence of formal plans, yet still invoke criteria based on putative planning policy. This may lead to a kind of policy that is implicit in the accumulation of individual decisions but is not evident in formal policy documents. It implies a high level of trust in the decision-makers, who may be politicians. There is a notable absence of certainty in such systems.

Proto-planning theory 'A' ties decision-making on individual development proposals to a series of preordained regulations and is to be found throughout much of Continental Europe.

Such systems are 'plan-led' because local municipalities define land uses and development rights in zoning ordinances which are legally binding. Such statutory formalization occurs at the 'plan production moment', as opposed to 'development-led' systems where development rights are only established when a building permission is granted. Zoning is thus a reflection of public policy and defines for a period of time all basic development possibilities. In such systems, the building permission only serves to attest the conformity of private intentions to public policy. It not only regulates development but also guides and integrates proactive government policies.

Focusing on development control, Booth (1996) analyses the forces that have shaped the control of development in Britain and France and the effects of the systems that the two countries have created. Expanding on Faludi's (1987) distinction, Booth notes that regulatory systems are based on the need to establish rights and create certainty, while discretionary systems are shaped by the desire to achieve a flexible response to future development.

Development systems based on Roman law offer a written definition of all conditions under which development may take place and are clearly based on a desire to maximize certainty for landowners and developers, allowing them to put forward proposals with minimum risk, as well as decision-makers, giving the least possible opportunity for decisions to be made according to whim, chance of political expediency. Development systems influenced by common law are based on quite different set of premises. They offer no guarantee of development rights because, until the point of decision, they leave partly open the basis on which development decisions are made. Also, such systems presume a high-level of trust in local decision-making, which becomes political rather than administrative in character.

This broad distinction is further detailed by Newman & Thornley's classification of European planning systems according to legal and administrative structures (1996), drawing on the five European legal families defined by Zweigert et al (1987). While the distinction previously identified between development systems influenced by the Napoleonic and British legal families is still present, the authors argue that other legal families within Europe produce yet different approaches to development control.

Particularly, the German and Scandinavian legal families are singled out because of internal geographical variances in planning processes and emphasis placed on different levels of government. According to Newman & Thornley (1996), the German focus on the regional level and the Scandinavian focus on the local level originate different typologies of development systems. But as the emphasis is on the administrative organization of the state and not the legal mode of regulation, the distinction is illusive.

At the local level apart from the United Kingdom and the United States, most Western countries studied in the planning literature have two levels of plans which can generally be described as structure plans and local plans (Larsson, 2006). The former is never legally binding to individuals but binds municipalities in Germany and Scandinavian countries. In France and the Netherlands this only aims at providing a context for the detailed plans and is neither mandatory nor binding.

Plans are broadly understood as granters of rights, both to municipalities and private land owners. Furthermore, the level at which these levels are assigned to private land owners tends to be only a detailed one, with higher levels being legally binding only to municipalities. Thus, the

granting of these rights is in principle more a purely administrative process working within the procedural rules and substantive policies contained in the legislation and the legally binding plans and regulations. These then serve as references to administrative decisions such as issuing a building permit. Therefore, while the systems of plans identify long term policies, they offer a precise definition of the zoning ordinance with regulations attached to them. Thus, there is a continuum from strategic policies to the eventual decision of a particular development proposal for a given plot.

Booth (1996) argues that such regulatory systems offer a written definition of all the conditions under which development may take place are clearly based on a desire to maximize certainty. The intention is to provide landowners with a defined future use of land and the potential for development, thus permitting them to put forward proposals with minimum risk. Also it attempts to provide decision-makers with the least possible opportunity for decisions to be made according to 'whim, chance, or political expediency'.

In the United Kingdom, local authorities also prepare development plans which set out the land-use policies for its area. Although they are not legally binding, there is a statutory duty to prepare and adopt them, making them important considerations assessing a planning application. Nevertheless, other material considerations can override them. Therefore, as previously mentioned in such discretionary system there is no absolute relationship between the plan and the development control decisions, which in the event may depend on other factors than the plan. Plans are thus indicative of policy, but not definitive. Moreover, development control can exist in the absence of formal plans, yet still invoke criteria based on putative planning

policy. Discretionary systems are praised for their flexibility but create potentially difficult problems about the relationship of the decisions on planning applications to the policy contained in plans.

This may lead to a kind of policy that is implicit in the accumulation of individual decisions but is not evident in formal policy documents. They imply a high level of trust in the decision-makers, who may be politicians. There is a notable absence of certainty in such systems (Booth P. , 1996).

In the United States, although the ‘Standard Enabling Act’ of 1928 requires that zoning ordinances be made in accordance to comprehensive plans, these are only rarely produced and play a very limited role in defining the criteria by which property rights are assigned to real estate. This is made through zoning ordinances, which are constantly changed, independent from plans and define at an unspecified time in the future the rights that property owners have (Hall, 2002).

The difference between zoning and planning becomes a fundamental distinction because although zoning should represent an instrument of planning formalizing the concern with long-term development of an area and the relationships between local objectives and overall community and regional goals, it takes the place of the function to which it is supposedly subservient. Therefore, what was originally adopted as an extremely rigid and certain device of development control was increasingly transformed in to a highly flexible, complex and discretionary system. As zoning variances increasingly became the norm, instead of the exception, the US planning system moved from a ‘rule-application’ process characterized by

certainty and a lack of scope for discretion into an increasingly 'implied flexibility' implicit in the bargaining process between developers, communities and local governments mediated by the judicial system (Cullingworth, 1994).

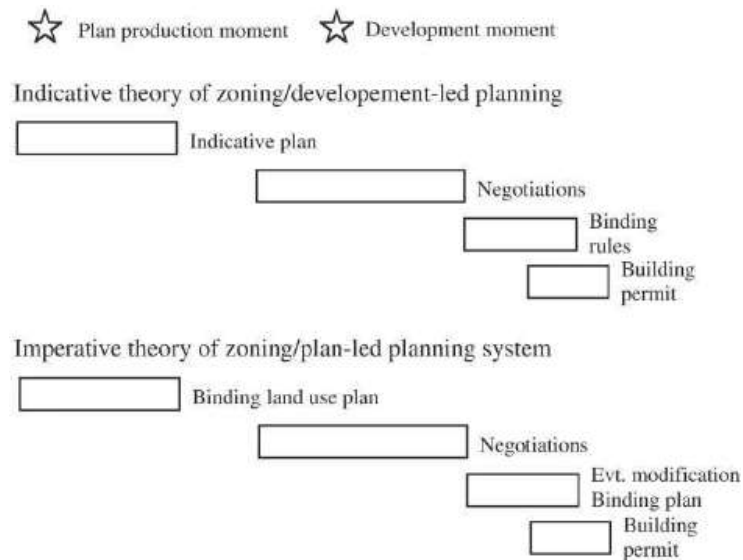
Summarizing, development systems influenced by the Napoleonic legal family tend to be characterized by zoning and regulations supported by an arsenal of mechanisms for public acquisition of land that overrides private law and a well-developed system of taxation, acknowledging only a subsidiary role for negotiation and for the use of contract. Such structure tends to be the inheritance of strong governments. As Galey et al (2007) mention, underlying this inheritance is an expression of a regime of administrative law molded by jurisprudence because of the separation of administrative and judicial authority. In this administrative law regime, the unilateral administrative act has been upheld as the symbol of the power of public authority, whose base in theory is the definition and practice of the general interest. In this regime also, control by the courts of administrative decision-making is as much about the substance as the procedure.

In contrast, the discretionary, procedural, negotiated planning put in place by development systems influenced by common law derives from an administrative tradition that is marked by the absence of formal separation of administration and judiciary, and by the influence that judicial decision-making has had on administrative decision-making, notably through procedural norms informed by the concept of natural justice. The impact of a tradition of autonomous government in the hands of the justices of the peace, carrying out their responsibilities in a benevolent fashion, treating problems case by case is clearly present. In this tradition, the

emphasis in upon form and not on substance as courts are concerned far more with the procedures than with results (Booth P. , 2003).

One other element consistently identified in explaining diverging principles and practices within planning systems is the tension between the desire to maximize certainty and the desire to allow flexibility (Faludi, 1987). In some cases, plans are just indicative of planning policies (e.g. England, United States). There is no relationship between the plan and development control decisions which may be dependent on other factors. Such systems are often praised for their flexibility in adapting to different circumstances and criticized for undermining comprehensive planning approaches. In other cases, plans identify both short and long-term policy while at the same time offering a precise definition of land-uses with regulations attached to them (e.g. France, Germany, Netherlands). There is a continuum from the strategic policies to the eventual decision on a particular development. It is often said that while such systems provide a high degree of certainty to stakeholders involved in the development process, the inherent rigidity of the process is not capable of adapting to changing environments. Figure 4 below summarizes the key differences between development-led and plan-led planning systems:

Figure 5. Categorization of “development-led” and “plan-led” planning systems. Source: Gielen & Tasan-Kok, 2010.



The ability of public agencies to implement planning policy and distribute the costs and benefits of development can also vary greatly between countries. Countries such as the Netherlands and Finland have very active land policies and high percentage of land ownership (Thornley & Newman, 2002). In such cases, public control of development is high because public agencies act both as planning authorities and suppliers of urban land (Larsson, 2006). In countries where most development occurs under private auspices; public control of development varies. Some countries such as the United States rely almost exclusively on the private sector. Development is more influenced by market cycles and general economic trends (Cullingworth, 1993). In other countries such as France and Germany, municipalities enjoy extensive powers in deciding if, where, when and how a development may take place. In such cases, public agencies rely on different public instruments to structure and intervene in property markets.

Also, another important factor in explaining differences between planning systems is the organizational structure of the state and articulation between state levels. Such structures determine the levels of the politico-administrative machinery to which planning powers are attributed to. They also determine the political dynamics through which these powers are exercised. In some European countries, in the last thirty years the objectives of planning have exerted a major influence in the reforms and proposed changes in the political administrative geography (Breuillard, Stephenson, & Sadoux, 2007). As Friedman (2005: 211) mentions, planning systems are not static but ‘move’ in the sense that that they are continually being revamped to adapt to perceived changes both internal and external in origin.

As examples, Breuillard et al (2007) mention that local planning in England is based on a district division which to a great deal has been established to serve spatial planning purposes. And as part of the decentralization policies in France, new regions were established in a way which was not least suitable for planning purposes. A division in regions has also been made in Finland to constitute a suitable base for regional planning. Furthermore, municipalities in several countries establish a special organization for spatial planning. As such while following their own course, planning instruments and procedures are linked to larger questions which touch on the relationships between plans and institutions, as well as the pursuit of the styles and structures best adapted to governing land use change.

The differences discussed in the development systems influenced by the ‘Napoleonic’ and ‘Anglo-American’ legal families had a significant impact in the development of the property sector. For instance, the leasehold system in England encouraged builders because it enabled

them to proceed without having to find capital to finance land purchases. Investment in development was thereby facilitated because risks were shared. Development was dominated by small investors and building societies which increasingly developed an expertise in site planning and construction. This was the pattern used by new sources of capital in both the United Kingdom and the United States that in the later part of the 20th century came to play a major role in commercial development (Galey & Booth, 2007).

The pattern of development was rather different in countries with development systems influenced by the Napoleonic legal family. A tradition of State intervention in urban development from the nineteenth century became essential. For the most part, the activities of site development and construction were generally separated. In France for example, only in the later 20th century did a structure of investment in land emerge, but it required legislation to ensure that developers could gain access to the capital necessary to develop. New kinds of contracts were also devised to satisfy demands from developers and private households.

2.4 LARGE-SCALE URBAN PROJECTS AND PUBLIC/ PRIVATE DEVELOPMENT

Although the origins of large-scale urban development projects can be traced back to the patronage partnerships of the late 19th century in the US (Beauregard R., 1997), its modern roots lie in the changes in global relations that transformed urban economics and increased interurban competition to remedy problems with federal urban renewal efforts (Fainstein S., 2001).

Contemporary large-scale urban projects began to be adopted by city officials in the United States in the 1970s for downtown redevelopment projects, setting in motion a policy shift that has since had a profound effect on the practice of planning (Sagalyn L., 2007). Since the earlier

widely publicized flagship projects such as Baltimore's Inner Harbor and Boston's Faneuil Hall Marketplace (Harvey, 1989), large-scale urban projects increasingly became the choice for public agencies to capitalize public land to generate public benefits often in partnership with the private sector (Sagalyn & Frieden, 1989).

Urban development projects embody, express and shape political and economic transformations, constituting emblems of contemporary global-local restructuring processes. Each project is inevitably embedded in local, regional, national and supranational economic and institutional frameworks while simultaneously exhaling the shifting articulations between these scales as the parameters of political dynamics change (Moulaert & Swyngedouw, 2003). The literature on large scale urban development projects is extensive, spanning professional publications, academic journals, reports and several books from both sides of the Atlantic. The literature seeks to understand the political and economic transformations that both originate and are caused by such projects; as well as studies of the planning process and impact of projects built.

The literature on large-scale urban development projects can be divided in three main frameworks. The first framework of analysis looks at public-private partnerships and the economic consequences of projects built. Earlier studies by political scientists focused on the imbalances of power within the joint ventures formed between the public and the private sector, often pointing out the favorable treatment given to developers to the detriment of communities and other social necessary uses (Logan & Molotch, 1987). Commenting on the American and British experiences, particularly a new waterfront and inner-harbor development in Baltimore,

David Harvey (1989) argued that such public-private partnerships were inherently speculative in execution and design as the risk was to a large extent borne by the public sector. Thus, they amounted to little more than a subsidy for affluent consumers and corporations at the expense of local collective consumption for the working poor (Harvey, 1989). For Sagalyn (2007), such type of criticisms betrayed an ideological aversion to market based solutions and lacked analysis of detailed case studies able to systematically assess risk/ return or cost benefit/ relationships, or whether projects actually performed as their initial financial projections predicted (Sagalyn L. , 2007).

Fainstein (2001), through a detailed study of public/private partnerships in London and New York City during the 1980-2000 period concluded that, public-private partnerships were unequal and tended to rely on property development as an economic growth strategy while ignoring other strategies that had the potential to develop worker skills and directly spur job creation and placement. While useful under certain conditions, public redevelopment programs and assistance to the private sector could form part of sensible programs, but needed to be within the context of economic planning aimed at creating space to support the industry without glutting the market, including control of price levels and participation in development profits (Fainstein S. , 2001).

For Gordon (1997), such type of analysis provides limited guidance for practice. If the public sector wishes to remain engaged in implementation, rather than retreating to a purely regulatory role, it must increase the effectiveness and accountability of the agencies that it entrusts with the task of rebuilding the city (Gordon, 1997). Based on case studies in New York,

London, Boston and Toronto, the author concludes that there is a need for the initial structure to allow the project and its politics to change, acknowledgement that political issues are likely to emerge over the course of the implementation; and the need for local officials and developers to adapt while constraining overtly complex ambitions (Sagalyn L. , 2007).

Focusing on the redevelopment of Times Square district in New York City during the 80's and 90's; Sagalyn (2003) points out that the essence of public/ private development is the inherent asymmetry in the reduced degrees of freedom that private investors and public officials have to bear in the partnerships. Private developers benefit from greater maneuverability because they face few political risks. For city and state officials, however the combined economic and political costs of severing ties are often unpredictably high, so new compromises must be found in revised deals. The political imperative is the bottom line and forces a solution. Thus, the challenge is to find forms of engagements that afford some protection for the taxpayer while taking on enough risk as to allow its political goals to be implemented (Sagalyn L. , 2003).

Figure 6. Poster of "The City at 42nd Street", N.Y.C. Source: Cooper, Robertson & Partners, 1990.



Within Europe, studies of public/ private development became common since the early 1990's. Such work emerged from analysis of two big shifts in urban governance in Western Europe: decentralization of urban government decision making and urban regeneration (Sagalyn L. , 2007). The research has focused on a broad range of topics, ranging from institutional analyses of partnerships and survey-based analysis of developers and market agents on the success and limitation of urban regeneration.

Figure 7. Canary Wharf Redevelopment, London. Source: Olympia & York, 1988.



Moulaert et. al. (2003) focused on the way in which globalization and liberalization articulate with the emergence of new forms of governance and on the relationship between large-scale urban development and political, social and economic power relations. Based on an analysis of thirteen large-scale urban development projects in twelve European countries, the authors argue that, contrary to their market-led entrepreneurial activities and predominantly privatized management structures, urban development projects tend to be state led and often state financed.

Furthermore, the actual configurations of the project-based institutions created to implement the projects reveal an extraordinary degree of selectivity. There is a significant deficit with respect to accountability, representation and presence of formal rules of inclusion or participation. Most importantly, participation is rarely statutory and tends to occur through ad hoc co-optation and invitation, usually by the key power brokers within the institutions. Overall, the authors decry the

lack of democracy and social policy in the new urban development policies and the poor integration of large urban projects in wider urban processes and planning systems (Moulaert, Rodriguez, & Swyngedouw, 2003, p. 250).

Figure 8. Quartier Massena, Paris. Source: Christian de Portzamparc, 1995.



Fainstein (2008) argues that UDP's can be a vehicle for the provision of public benefits, including employment, cultural facilities and affordable housing. However, such projects are risky for both public and private participants, as they must be primarily oriented toward profitability, and typically produce a landscape dominated by bulky buildings that do not encourage urbanity (Fainstein S. , 2008, p. 783). Through a comparison of mega-projects in New York, London and Amsterdam, the author concludes that they represent a convergence between American and European approaches to development in private sector involvement and market orientation of government interventions.

The question of visibility highlights the architectural component of projects and the use of iconic architecture by 'startchitects' to improve its visibility. Indeed, images of urban megaprojects are often pointed out as the reason for the proliferation of particular aesthetic standards and designs, particularly the high-rise office tower which has become a symbol of globalization (Orueta F. D., 2008). From an urban design perspective, plans are often criticized for their 'tabula rasa' approach as work is typically undertaken by global firms with little knowledge of local culture and history and little time to do so, resulting in decontextualized and ahistoric approaches. Projects are often used to establish a hegemony of vision which secures legitimacy for the new coalitions of public and private stakeholders through the spectacularization of both development perspectives and political programs, which takes away the focus from the substantive, on-the-ground transformations of the urban-regional socio-economic fabric.

At the same time, the architects are confronted with the standardization of architectural form and the imperatives of global real estate investment, as well as the demand for highly iconic and even spectacular architecture that distinguishes a project from the surrounding city. The architecture of UMPs therefore necessarily needs to be positioned in two ways: on the one hand, it must react to the urban surroundings and find a way of standing out against the existing buildings and place-specific styles and materials. On the other hand, the architects, planners and politicians responsible for the design must find solutions to the problem of how to be visible in comparison with those international role-models and similar projects in competing cities – of which there are plenty.

The second framework of analysis of large-scale urban development projects looks at its political economy at national and local levels. Projects are often by governments as tools to advance urban and regional policy and address housing issues, redirect urban development to targeted areas or trigger economic development. Often, significant upfront investments is required to particularly related to infrastructure upgrading and the expansion of the transport network which in most cases the private sector is unwilling to bear. Such investments are typically required for interventions that do not generate profits but create the conditions necessary to attract private investment. In such cases, public agencies must fund the required upfront investment which becomes an integral part of political programs.

The literature on the political economy of large scale urban development focuses mostly on the United States and projects built in the last four decades. It seeks to understand the popularity of large scale single buildings and the inability of municipalities to build large scale infrastructure. A survey in 1998 (Judd, 2003) of cities with 50,000+ populations found that 178 of 463 were constructing new convention centers, and 181 of 463 were constructing new sports stadiums. However, in the same period there was a near-total cessation of large infrastructure construction projects like highways, underground transit networks, and new airports (Altshuler & Luberoff, 2003).

The diminution of infrastructural megaprojects, beginning in the 1970s, was due to a new attitude of “do no harm” derived from concerns of neighborhood and environmental activists about the negative impacts of new projects (Altshuler & Luberoff, 2003). In the absence of a strong federal mandate, bottom-up constituencies needed to support projects. By the same token,

the proliferation of single-building megaprojects can be attributed to the same combination of bottom-up federalism, active local constituencies, and regulatory barriers that stifled new infrastructural megaproject construction.

Convention centers and stadiums on the other hand, had far more vocal constituencies supporting them. They were also less likely to engender fierce opposition. Furthermore, single-building megaprojects occupied comparatively much less space and adversely impact far fewer people than infrastructure megaprojects. And while federal funding was unavailable for such structures, state and local funding was used for an increasing percentage of megaprojects (Siegfried & Zimbalist, 2000).

Many of the US's proliferating single-building megaprojects were constructed in or near city centers, even as the previous generation of single-purpose megaprojects from the 1960s and 1970s shied away from them (Ryan, 2012). Proponents of such facilities have successfully argued that new megaprojects are necessary to keep their host cities competitive, to keep locally-beloved sports teams from departing or to generate tax revenue and jobs. This created a public-private political economy, termed the "urban regime" (Fainstein & Fainstein., 1986) and the growth machine (Logan & Molotch, 1987) where the municipality focused more on revenue creation and less on providing services (Ryan, 2012).

Given the significant impacts on the infrastructure and budget of cities, the implementation of project required identification with political programs. Increasingly, such projects became regarded as instruments of public policy to advance economic and social programs as symbols of political mandates and highly visible and material results of public policy and elected officials. Its high visibility could modify the image of cities and regions and

transform how countries were regarded and depicted abroad becoming a critical component of the tourist city phenomenon. Increasingly, projects become important urban marketing tools that public agencies used to promote their regions and localities.

The growth of the tourist economy and of tourist infrastructure also reflected a societal turn toward leisure, fantasy, and entertainment (Hannigan, 1998). Visitors longed for, and city policymakers tried to create, a tourist bubble where tourists could find something different than their everyday experience (Fainstein & Judd, 1999). Cities devastated by deindustrialization and drained by rampant suburbanization used projects to entice suburbanites and out of town visitors to otherwise unglamorous locations (Judd, 2003). For many suburbanites and conventioners, attending sporting events were the only reason for them visit city centers. Cities lacking benevolent climates, spectacular scenery, or significant historic buildings saw large-scale urban development as the only way to bring thousands of outside eyes to their distressed centers.

The third framework analyzes the interplay between the processes of globalization and state restructuring (Brenner N. , 2005). Globalization refers to a process started in the 1970's of expansion and intensification of the interconnectedness amongst territorial jurisdictions, through flows of trade and investment, as well as cultural, social and political practices, aided by communication and transportation advancement (Brenner & Theodore, 2002). Such processes entail a dialectical interplay between the strengthening and internationalization of world markets by disembedded flows of capital that need to be fixed in space to satisfy its reproductive requirements. These dialectical processes of glocalization impacted the state's capacity to govern and this, in turn lead to a restructuring of the role of the state and a search for new forms of regulation (Jessop, 2000).

Across the political spectrum scholars forecasted the imminent demise of national state power due to the purportedly borderless and politically uncontrollable forces of economic integration. Capital's greater mobility and increasing scales of operation have irreversibly weakened the state's ability to regulate economic activities within its boundaries. Therefore, globalization has significantly altered the nature of economic regulation, provoking a hollowing out of the traditionally regulatory functions of the state (Newman & Thornley, 2005).

Other authors argue that rather than having produced an erosion of state territoriality; glocalization processes have provoked a restructuring of the state to provide capital with ever more of its essential territorial preconditions and collective goods in both sub- and supranational spatial scales. However, this does not necessarily mean that the national scale has lost its importance. National states are being qualitatively transformed, not dismantled. The national level has taken on new roles and readjusted the way it performs its traditional regulatory functions (Brenner N. , 2001). At the same time, the importance of both sub- and supranational forms of territorial organization have increased.

According to this view, the restructuring process consists of a transfer of powers previously linked at the national states upwards to supra-regional or international bodies, downwards to regional or local states, or outwards to relatively autonomous cross-national alliances among local, metropolitan or regional states with complementary interests. This 'denationalization' of statehood includes the mentioned undermining of the national economy, the weakening of the unity of the nation-state and; the reallocation of functions across the demarcation between public and private responsibilities within each territorialized political

system – a process commonly mentioned as a shift from government to ‘governance’. Such processes are associated with an enhanced role for national states in inter-scalar management and a counter-shift from government to ‘meta-governance’ (Jessop, 2000).

This view of state restructuring provoked by glocalising processes is questioned by the new public policy focus with comprehensive strategic spatial planning. The agencies and administrative procedures that implement planning policy are embedded within the varying organizational structures of states. Such structures determine the levels of the politico-administrative machinery to which planning powers are attributed, and the political dynamics through which these powers are exercised.

For Salet (2008).the study of urban mega-projects must be positioned in a context of urban institutional change. In the authors view, processes of decentralization and recentralization in the post-administrative state are producing a continuous rescaling of inter-relationships in the metropolitan arena. Thus, large urban projects can no longer be considered as local projects since their size is embedded in frames of multi-actor and multilevel governance. Such conditions call for new multi-level frames of analysis able to grasp the complex relations between the new projects and the multilayered networks in which they are embedded (Salet, 2008).

2.5 SUMMARY – ISSUES AND QUESTIONS

The review of the literature on strategic planning theory raises the questions of the direction of change in spatial planning systems and its implications for planning theory. While motivations for the mentioned shift in planning focus by public agencies have varied, objectives have typically been to articulate more coherent and coordinated spatial frameworks for urban development (Albrechts, 2006). Together the new policy statements and planning legislation enacted in the European and American regions seem to form part of an over-arching ‘spatial turn’ in planning, as place and territory have regained prominence as the focus of policy attention, and terms like

'longer range' and 'comprehensiveness' have made their way back to the planning discourse (Davoudi & Starng, 2009).

However, concept of 'strategic spatial planning' remains ambiguous and broad in scope, defying easy generalization. The concept encompasses multiple meanings which illustrates the difficulty of building theoretical frameworks based on the new policies and legislations. Indeed, its ambiguity has led some authors to question its appeal and value for both analytical and practical purposes (Balducci, 2008). Little agreement exists with regards to common values, approaches and processes as well as how it relates to practices prevalent in previous decades and recent evolutions in planning theory (Albrechts L., 2004).

Arguments of convergence of planning approaches are challenged by differences between nation-states and spatial planning systems. Is there a common set of values, approaches and processes being implemented able to be normatively defined? How different are they from the approaches to planning that were previously dominant, including the neoliberal model of the 80's and 90's; and the 'rational-comprehensive' approach of the previous decades? Is there an overarching shift in the emphasis of public policy towards strategic spatial planning in Western Europe and the United States, or differences between administrative structures and legal styles impact the way concepts are interpreted and implemented? Are the typologies and distinction between planning approaches still valid with the adoption of the new strategic policies, or new categories are necessary to describe the forms that spatial planning systems have taken?

Comparative studies on spatial planning systems illustrate how different administrative and legal systems impact the way development is regulated. Particularly relevant is the distinction

between planning systems influenced by Roman law and planning systems influenced by common law. This distinction challenges the argument of convergence between systems originated by the new strategic focus of urban policies raising the issue of how the new concepts and policies are being interpreted and implemented in different contexts.

Also, comparative studies tend to focus on the formal regulation of development as expressed in official documents rather than their actual implementation. The focus is on the formal regulation of development as a theoretical construct rather than their actual implementation. The emphasis is placed on describing approaches and identifying differences in the way legal principles and administrative procedures are expressed in official documents (e.g. ordinances, plans) as opposed to the reality of their operations in practice (Nadin & Stead, 2008). In addition, there is almost an exclusive focus on European and American cases. Less research is available testing whether formal differences found between systems as expressed in official documents are valid when implemented in practice and; how spatial planning systems of emerging economies compare with typologies identified in Western Europe and the United States. Further research is required to understand how systems of development control impact the content and pace of development. Such studies could further help substantiate public policy focused on improving regulatory systems to manage and influence land-use.

Even with the vast literature available, large gaps remain in what is known about large-scale urban developments and what the track record means for the planning profession. Even though descriptions of projects, institutional structures and financing arrangements are common place,

little research exists on details of deal negotiation and project execution and even less about project performance (Sagalyn L. , 2007, p. 7).

Questions raised include the balances of power within the partnerships, ambivalent relationship with statutory planning norms, accountability and public benefits generated. Few studies focus on the details of deal negotiation, project executions and project performance, and on what the track record means for the planning profession. Little research exists evaluating the impact of recent urban institutional changes on the most recent ‘wave’ of public-private partnerships created to implement new development programs. Issues such as the role of public agencies in the new projects and how the proposals are being impacted by different institutional arrangements remain unaddressed. Are administrative scales being further ‘relativized’ with the new policies and regulations enacted at different levels, or are we seeing a re-ordering of the state back to an explicit hierarchy of jurisdictions? Or on the contrary, yet new state forms and relationships between administrative levels are emerging, necessary to implement strategic planning policies?

Furthermore, the structure of the new public-private partnerships which were created with mandates to elaborate and implement the development programs posit the question of how different the role of public agencies from their predecessors is. Is ‘meta-steering’ still occurring, as public agencies cede control and devolve functions to private institutions and actors, while getting more involved in organizing the self-organization of partnerships and regimes? Or are new forms of collaboration between the public and private sectors being used to implement the new urban development projects?

CHAPTER 3 : RESEARCH STRATEGY, DESIGN AND METHODOLOGY

3.1 RESEARCH STRATEGY AND RESEARCH QUESTIONS

The research compares the impacts of new planning legislation and strategic local plans introduced in New York, Paris and Sao Paulo on three large scale urban projects developed in each city from 2001 to 2012. Each city enacted a new strategic local plan in the earlier part of the decade which modified how UDP's were planned and introduced new mechanisms to implement them. The objective of this study is to understand whether the new strategic plans and all the regulations attached to them (1) rezoned the sites based on the guidelines provided by local plans; (2) facilitated or hindered implementation; and (3) delivered public benefits. If these mechanisms hinder implementation, then public benefits could be lost. But, even if they facilitate implementation; they might still not generate large public benefits. The study focuses particularly on whether the impact of the new strategic plans varies by the form that they take.

The case studies selected used a different model of strategic plan differentiated by three key variables: (1) articulation with local land-use; (2) instruments of plan implementation and; (3) planning and financing incentives. Each model was a product of new planning legislation enacted between 2001 and 2005 with the objective of promoting greater integration between development programs elaborated for special zoning districts and local zoning resolutions. The purpose is to compare how the three variables (1) role of local land use guidelines; (2) instruments of plan implementation and; (3) planning and financing incentives differed between the cases and how this impacted: (1) variation in planning controls; (2) implementation and (3) public benefits.

To provide an adequate context to address the research questions, the case studies were selected based on having similar planning objectives, program and timing of delivery. At the same time each case study was planned and implemented through a contrasting strategic plan because each respective city had a different planning culture, identified in the literature (e.g. Booth, 2007) as ‘plan-led’ (Paris); ‘development-led’ (New York City) and ‘hybrid’ (Sao Paulo).

Planning cultures are the product of overlapping elements which combine the regulatory framework within which planning, and development takes place. Elements that are particularly relevant include the legal system defining local rules, the decision processes that regulate land uses and the administrative procedures that determine the operation of government agencies. Each element is embedded in the historical context, socio-economic, political and social patterns of each city.

The strategic plans that cities use and the context in which they operate are relevant to large-scale urban development projects because their legitimacy is gained through the embodiment in the legislation and regulations that form part of the local planning framework. The nature and style of the planning system can vary from city to city and therefore generate different approaches to land-use regulation and in particular to the development of large-scale urban projects.

Strategic plans within contrasting planning cultures place a different emphasis in the desire to maximize certainty and the desire to allow for flexibility (e.g. Faludi, 1987). Each plan has a different articulation between planning policy and development controls. It also provides public

agencies with different implementation capacities and financing mechanisms to develop large scale urban projects. (Newman & Thornley, 1996).

The differences between strategic plans is particularly visible when an extensive rezoning is required to develop a large-scale urban project. Often cities need to create a new special purpose district to implement the required changes, and different plans provide different alternatives through which the rezoning can be achieved. In some cases, the new district can simply overlay the existent zoning districts without having to change any existing regulation or plan approved for the area. Once the new district is approved, existing regulations simply cease to be effective within its boundaries. In other cases, the new district may function as a coordinated set of changes and exceptions to existing zoning districts within the boundaries of the targeted development area. For example, additional regulations may be added to an existing zoning district to allow for other uses and bulks. Often, most special districts are implemented through a combination of changes to existing zoning regulations which typically entail exceptions applicable within the new districts; and creation of new sets of regulations that overlay existing districts which cease to be effective.

The way these changes are articulated with existing controls can be a determinant factor in the planning process of the large-scale urban project. Such articulation entails not only the various ways through which the changes are implemented, but also the extent to which existing controls are allowed to change and deviate from higher-tier guidelines. Cities will typically produce policy documents with guidelines for development controls and public investment. Such

documents may be comprehensive or sectorial and can play different roles in the implementation of special districts and modification of existing zoning controls.

In some cases, special zoning districts may be identified and regulated in a comprehensive local land use plan. The plan identifies and regulates all special zoning districts with the municipality and defines the basic planning parameters that the zoning code of each district is required to follow. Once the basic planning requirements for each special purpose districts are established in the local land-use plan, there is little room for modifications during the design and implementation phases of an urban redevelopment project. Zoning controls can only be modified when the local land use plan is revised and updated. The definition of development controls occurs at the ‘plan-production moment’ through a combination of local participatory processes and cumulative guidelines defined in high-tier plans. The adoption of a new plan (typically every four to seven years) is formalized in the enactment of a new zoning resolution which states all basic development possibilities within the municipality and allows for very little modifications until the next revision.

In other cases, special zoning districts are gradually adopted according to the development intentions of public agencies, communities and private investors. The enactment of new special district overlays existing zoning districts in the targeted development area and usually requires several partial amendments to the local zoning resolution throughout the planning and implementation processes. The definitions of uses and bulks permitted as well as public benefits to be included in the new district are subject only to approval by city council following the city’s required local review processes with limited articulation with higher-tier plans which when produced only have an indicative role.

The definition of permitted land uses and bulks is largely independent from local land use plans which when produced do not bind existent zoning districts. The process of changing zoning controls can be initiated by both private and public agencies at any time and is overseen by the city's local environmental and land use review processes. The modification of zoning controls occurs at or shortly before the 'development-moment'.

The exemption of the planning process for special districts means that a negotiative process replaces the regulatory role that statutory planning controls provide between individual applications for development and public ambitions to shape urban development and provide public benefits (Birch, 2005). The planning process of such projects has a discretionary element not present in 'as-of-right' planning applications because the regulatory function of local governments can no longer be exercised through control of permitted uses and bulks a priori. Instead, public strategies for development are expressed through the ability of planning agencies to negotiate an adequate incentive structure through the planning controls and financing strategies adopted.

While the scope of negotiations is wider and less constrained than planning processes within statutory procedures, the bargaining framework can still vary according to the integration of the new districts with strategic plans and public programs for transfer and allocation of public funds. In 'development-led' planning systems, the scope of negotiations for modifying zoning controls or providing planning incentives in UDP's is generally broad and unconstrained. There is a general absence of planning requirements defined in local land-use plans able to bind the regulations adopted for the new districts. In such cases, strategic plans can only exert an indirect

influence through the extent to which planning agencies choose to follow their recommendations in the bargaining process. Such systems allow for a significant level of discretion and flexibility.

The autonomy of the new regulatory structures and need to include the private sector in the redevelopment effort poses significant challenges to public agencies of how to best create an incentive structure that will achieve its development objectives without compromising capital budgets and future revenues. While regulatory structures must be flexible, there is also an important need for cities to convey certainty about planned public investments, future development possibilities and required contributions by controlling the degree of variation permitted by special purpose districts. If zoning controls and incentive programs deviate too much from existent regulations, not enough public benefits will be provided, and private investors may end up benefiting at the expense of public subsidies. If proposals are regulated too tightly and not enough public investment is committed, projects may fail to attract enough private interest to spur new desired development. Such challenges are often exacerbated in the context of constrained public funding where required infrastructure work and public amenities cannot be financed through local capital budgets.

The way planning controls and financing strategies balance incentives provided with public benefits required is crucial to maximize the extraction of revenues and public benefits. As uses are determined through the new regulatory structures but the market is largely relied upon to allocate land to competing bidders, prices will reflect expectations of what policy is. As zoning controls are modified and public investments realized, the incentive structure to develop changes as the project progresses, impacting property prices unevenly. The possibility of sudden changes

increases the degree of uncertainty and may compromise prior investments or generate excessive gains. It may also weaken the possibility for the new regulatory structures to incorporate development policies defined at higher government levels while increasing the potential for discretion in local decision making.

In New York City for example, the existent zoning controls within new special districts are modified through individual amendments to the city's Zoning Resolution through local environmental and land use review processes. Zoning regulations for special zoning districts are not legally required to follow planning guidelines included in its strategic plan for permitted uses and bulks, public open spaces and amenities or affordable housing. The process provides extensive flexibility to change zoning existing districts to develop large scale urban projects. Furthermore, the private sector is often relied upon to implement the plan and deliver public benefits. The financing packages provided typically include fiscal and financial incentives to developers by public agencies at different government levels balanced with the provision of affordable housing, public amenities and monetary contributions. Planning controls for new districts tend to reflect the necessity of public agencies to provide incentives to the private sector. The emphasis of the planning process is on flexibility and negotiations (Booth, 2005).

In 'plan-led' systems such as Paris, the planning process for large-scale urban projects is linked to a hierarchical system of spatial plans and programs for allocation of public funds between government levels. The system is based on a desire to maximize certainty for land-owners and private investors through the prior definition of conditions in which development may take place. The definition of planning controls and public benefit packages provided tends

to occur at the ‘plan production moment’ guided through the cumulative binding guidelines defined in higher-tier plans. The planning process is in principle a more administrative process working within the procedural rules and substantive policies contained in the legislation and the legally binding spatial plans and regulations, acknowledging only a subsidiary role for negotiation and the use of contract (Booth P., 2003).

Special districts (Zone d’Aménagement Concerté – ZAC) are required to be fully integrated with local land use plans (Plan Local d’Urbanisme – PLU) and public programs for transfer of funds between government levels (e.g. Contrats de Plan). The adoption of a new ZAC entitles a local ‘public developer’ (Société d’Economie Mixte – SEM) majority owned by the city to buy all land within the new district at indexed prices, realize all public investments and sell the developed lots to recover costs. The implementation phase is as much part of the development process as the initial modification of zoning controls and acquisition of approvals. The emphasis of the planning process is on certainty and articulation between planning levels (Booth, 2007).

In addition, the financing strategy and allocation of public funds is an intrinsic component of the planning and implementation process. There is an implication that there must be some form of public influence or control over the flow of funds into large/scale urban projects. The planning process includes the programming of the allocation of public funds at different government levels to finance the implementation of development and see it through to its full implementation. It is implicit in the definition of planning controls and public benefits that public investment will be available to ensure implementation (Booth, 2007).

Other local systems of planning and implementing SZD's combine elements of both 'plan-led' and 'development-led' planning systems. Like in France, the Brazilian planning system also requires special zoning districts to be regulated in local strategic urban plans. But, following the example of the United States, the financing packages provided are premised on the private sector implementing the project and delivering the public benefits. In Sao Paulo for example, the 2002 Strategic Master Plan (Plano Director Estrategico - PDE) identifies each special zoning district (Operacao Urbana Consorciada – OU) and defines the planning controls and public benefits to be provided in each case. The planning guidelines are binding on the regulations to be adopted for new special zoning districts. Once a new OU is approved, the difference between the existent base 'as-of-right' FAR and the new maximum achievable FAR permitted by the new regulations – known as Certificados Adicionais do Direito de Construcao, CEPAC - have to be bought from the local development agency (Empresa Municipal de Urbanizacao – EMU) in a process known as onerous concession of development rights (Outerga Onerosa de Direitos de Construir).

In addition, the approval of an OU entitles the EMU to issue additional CEPAC's which can be bought through private auctions or in secondary public markets through brokers and can only be used within the limits of that district. The revenues generated by the sale of CEPAC's are used to finance public investments and provide the public benefits required by the new OU. As such, the funding of the required upfront investments and provision of public benefits depends of the purchase of CEPAC's by private investors issued within the new district. The development initiative is shared by public agencies and the private sector (Schiffer & Deak, 2007).

The three models of strategic plans are summarized below:

- 1. Independent Model (New York City):** Plans provides indicative guidelines which are non-binding on the local zoning resolution. Projects are implemented through the creation of special zoning districts that partially amend the underlying zoning districts. Implementation tends to rely on the private sector, with financing packages provided public composed mostly of fiscal and planning incentives designed to attract private investments.
- 2. Mixed Model (São Paulo):** In São Paulo, the strategic plans provide guidelines that are binding on special zoning districts but not on the underlying zoning resolution. The plan provided innovative financing tools but relied on the private sector to implement projects and deliver public benefits.
- 3. Dependent model (Paris):** The Paris strategic plan requires the greatest integration with special zoning districts (ZAC's) and the underlying zoning resolution while also giving municipalities the broadest array of public policy tools and access to public funding to implement plans and finance the required upfront investment.

Table 1 below provide a summary of the key differences between each model:

Table 1. Three models of Special Zoning Districts present in NYC, Paris and São Paulo from 2005.

			Independent Variables		
			Land-use Guidelines	Instruments of Plan Implementation	Planning and Financing Incentives
Model of Special Zoning Districts	Independent model	Special Zoning District (New York City)	Absent/ non-binding	Very limited. Dependent of private sector initiative	Extensive planning and fiscal incentives used to attract private investment.
	Mixed Model	Operação Urbana (São Paulo)	OU's included on local plan (PDE) but not on zoning resolution (LZ)	Extensive in legislation but not applied in practice.	Planning and financing incentives limited by OU regulations in PDE
	Implementation	Zone d'Aménagement Concérte (Paris)	ZAC's included local plan (PLU/ PAAD) and integrated with zoning parameters	Extensive. Public developer (SEMAVIP) with broad array of tools/ rights to implement plan.	Very limited. Small variations allowed to PLU

The variances identified in the literature between planning cultures of cities suggest alternative outcomes for the case studies selected despite the similarities between projects. Variances between development models determine alternative roles for the public and private sector in establishing new zoning controls, implementing the projects and funding the required urban infrastructure. Such variances would suggest alternative project outcomes particularly in terms of how development risk was shared and in determining who benefited from the additional development value created.

Each model had a different articulation with the local zoning resolution, used different instruments of planning implementation and had different financing incentives to implement the plans and extract public benefits. In theory, such differences should have different implications for the planning and implementation of each project. As Booth (1996) mentions, in regulatory planning systems such as the French the difficulty is relating zoning and regulations at the detailed level to larger scale strategies. In theory low-tier strategic plan should conform to upper hierarchical levels. But because the zoning system proposes a tight relationship between the plan and decisions on individual applications for development, by the same token they may weaken

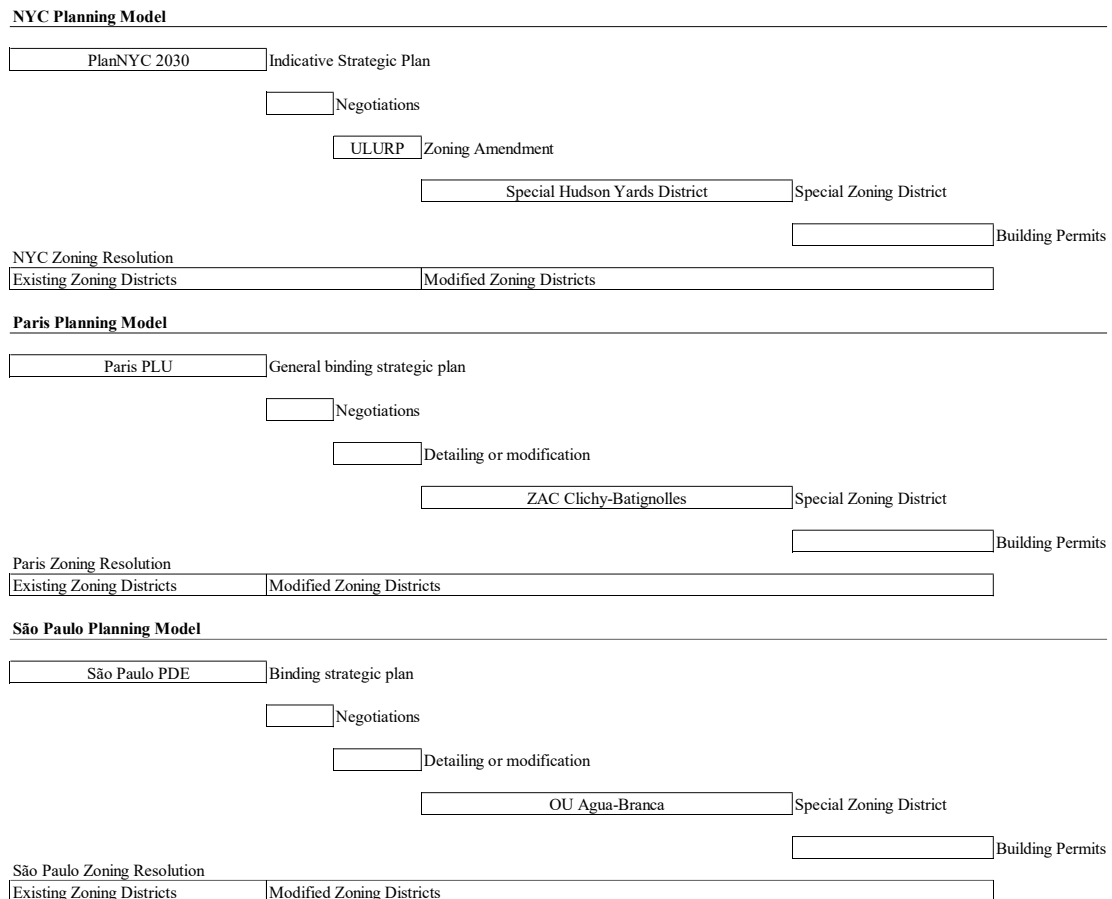
the link between individual development decisions and longer-term, larger-scale strategies for the city of Paris as whole or for the larger metropolitan region. The New York model seems to have more possibility for large scale strategic policy to have a direct bearing on individual development control decisions. This may seem paradoxical given that the links between plan and decision, so clear in dependent models, is non-binding in an independent model. But exactly because of the absence of binding relationships at the local level, it allows for all forms of plan and policy statements to potentially become material considerations.

Also, the New York model seems to provide greater flexibility in responding to changes in policy goals which the Paris and Sao Paulo models seem to lack. There is no question of having to find a way around binding regulations, because there is an explicit recognition that plans cannot predict every future circumstance. Moreover, and at least as importantly, explicit recognition of material considerations outweighing the provisions of the New York plan leading to the necessity for a proper accounting of decisions once they are made.

On the negative side the system seems to provide for more uncertainty both for developers and decision makers. The potential for political or administrative discretion in making decision is higher because of the extent to which decision makers are left to define the extent of the variations to the underlying zoning resolution. Also, as development control is formally separated from plan-making, the value of such activities may be weakened. On the contrary, the Paris system may come under strain in dealing with uncertainty and in coping with stakeholder's desire to retain power over the decision-making process. There is an inherent difficulty in creating a document that makes a deliberate statement about individual development rights and

at the same time presents a coherent view of long-term local strategies. Therefore, zoning may simply tend to reflect the ‘status quo’ rather than take a strategic view of future development. Or it may tend to reflect local ambitions for development which exceeds the realities of future need.

Figure 9. Comparison of planning process from strategic plan to building permit in each model



Because of the higher degree of flexibility provided, the New York model should have a greater capacity to adapt to changes in circumstances and local policy objectives during planning and implementation. On the other hand, the ability to integrate large-scale strategic policy may be more limited than in the Paris and São Paulo. In addition, the New York model seems to

provide more flexibility for delivering public benefits. In Paris and São Paulo, such requirements are defined in the local land use plan through the cumulative guidelines of higher-tier plans prior to the elaboration of the zoning controls for the special zoning district. In New York City their inclusion in the zoning codes is overseen by the city's local land use and environmental review processes without the city's local strategic plan playing an active role. While the certainty of Paris local land use plan seems better suited to articulate large-scale policy and include public benefits in the zoning regulations of special zoning districts, the formality of the structure may be less effective in a context of rapid changing circumstances and policy goals. The additional flexibility of the New York model seems to provide a greater possibility to create attractive development opportunities and respond to the interests of private investors and communities.

But, is this really the case? Few observers believe that theory and practice are the same, that one determines the other. Consequently, we need to investigate if these consequences actually occur and 'how' they are produced or not. It is not enough to make laws, laws must also be implemented. The research compares how the three variables (1) role of local land use guidelines; (2) instruments of plan implementation and; (3) planning and financing incentives actually differed between the cases and how this impacted: (1) variation in planning controls; (2) implementation and (3) public benefits delivered.

The research argument, in brief, is that when policy intentions change during the planning process of a special zoning district, the degree of flexibility provided by local land use is important to ensure that new development programs are implemented, and public benefits are provided. In such cases, the certainty that the Paris local land use plan provides about future

development opportunities and public benefits may be inadequate to changes in development programs. Therefore, the system must also have built-in mechanisms to provide flexibility. On the other hand, the additional degree of flexibility that the New York system allows may be provided at the expense of safeguarding the public interest. Therefore, it is important to examine the planning mechanisms through which the system attempts to ensure that public benefits are provided when zoning controls change. To pursue the research objective of determining how the relationship between special zoning districts and statutory planning regulations influences the ability of local planning agencies to extract revenues and public benefits from UDP's the study will address the following research questions:

- . How was the special zoning district regulated by the respective local strategic land use plan? What were the motives that led the local planning agencies to propose the adoption of a new special zoning district in each case? Who were the actors involved in the process?
- . How were planning policies defined for the city as a whole in the strategic plan integrated in the special zoning district created for each project
- . How were the planning controls and requirements for provision of public benefits defined in each case? What was the role of the local land use plan in the process? What were the criteria used to define the bulks and uses permitted; open spaces amenities, schools and affordable housing units?
- . What were the implementation mechanisms created to implement the plan? What was the role of the public and private sector in implementation.

. How were the public benefits funded? How was the increment in land values used to finance the required public investments?

. How were the costs and benefits of the new developments distributed between the public and private sectors?

3.1.1 CASE STUDY SELECTION

The selection criterion is based on the suitability of each urban development projects and framing spatial planning systems to provide an adequate context for the research questions to be addressed. The goal is to select urban development projects implemented through each of the development model identified in the literature and have enough similarities to study the impact of the independent variables attributed to each model on the dependent variables to be discussed.

The selection criteria for the case studies is based on the intention to examine the effect of the selected independent variables on the selected dependent variable (Ragin, 2006). Therefore, the differentiating selection criterion used is the type of regulation included in strategic urban plans for special zoning districts. Based on the literature review it became clear that cases had to be representative of the three types of contrasting relationships between plans and projects found in 'plan-led', 'development-led' and hybrid spatial planning system.

In order to make the three cases as comparable as possible and isolate as much as possible the relationship between the independent and dependent variables to be studied (Flyeberg, 2006), other selection criteria were used including the adoption of special zoning districts in order to modify existent zoning districts and provided incentives to finance the public investments

required by redevelopment projects proposed for large scale derelict industrial urban sites with similar programs including mixed uses, open space amenities and affordable housing.

A. Differentiating Criteria:

A.1 Selection Criteria 1- Shift in Planning Policy towards Strategic Planning: Shift in the last decade of focus in the public policy framework towards urban development, expressing a new emphasis in ‘strategic spatial planning’ by public agencies at different administrative levels. Such shift may imply the enactment of new planning related legislation at different levels, new urban policy statements or different approaches to planning practice by public agencies responsible for development control at different scales.

A.2 Selection Criteria 2– Distinct Planning Models: Spatial planning systems belonging to the ‘plan-led’ and ‘development-led’ typologies identified in the literature. In addition, in order to address the limitation of the literature on comparative planning studies, one case will have to be outside of Western Europe and North America.

A.3 Selection Criteria 3 - Distinct Implementation Models and Financing Structures: Differentiated implementation structures based on specific purpose public entities with various mandates to acquire lots, execute the required infrastructure and external urbanism work and

finance the required investment through capital markets, public bond issues, subsidies and fees collected from private investors and developers.

B. Similar Criteria:

B.4 Selection Criteria 4 - Policy Intentions: Similar public policy intentions to redevelop a central large scale urban sites converting industrial uses in mixed urban uses and public amenities through public/ private partnerships and capture part of the increase in land values to finance the required upfront investment in infrastructure, public amenities and revenues.

B.5 Selection Criteria 5 - Site characteristics and ownership structure: Selection of development sites with similar characteristics in terms of size, ownership structure and existing uses.

B.6 Selection Criteria 6 - Historical uses and Existing Zoning: Selection of sites with similar historical uses and existing zoning districts.

B.7 Selection Criteria 7 - Planning timing and process: Selection of sites with similar planning processes and timing (2001 – 2012).

Based on the selection criteria, the case studies selected were the following:

Case Study 1: Special 'Hudson Yards' District, New York City, USA

Figure 10. Aerial view of Hudson Yards Project. Source: Related Companies, 2012.



In 2004, the City Planning Commission of New York City approved ten ‘Uniform Land-Use Review Procedures’ for the 145 hectares of land known as ‘Hudson Yards’ located between West 42nd Street and West 30th Street, Eight Avenue to the Hudson River in the Westside of midtown Manhattan. The ambitious development program approved in 2005 by the New York City council aims to convert the manufacturing area into a transit-oriented mixed-use district. The new special Hudson Yards district was superimposed on the existent zoning districts, with its regulations supplementing and superseding the regulations of the existing zoning districts. The zoning allowed for 2.2 million square meters of new office space, 13,500 new housing units, including almost 4,000 affordable units, one hundred thousand square meters of new retail space, two hundred thousand square meters of new hotels, including a new headquarters hotel for the Javits Convention Center and the extension of the No.7 subway line.

In order to implement the development program and finance certain property acquisition and infrastructure work, the City of New York created in 2005 two new corporations³ under the ‘Not-for-profit corporation law’ of the State of New York with the ability to obtain financing through bond issuances secured by revenues of the each corporation, including payments in lieu of taxes and payments in lieu of mortgage recording tax collected within the Hudson Yards Financing District and certain payments from the City. Other financing strategies were also available through the New York City Industrial Development Agency’s ‘Uniform Tax Exemption Policy’ including real estate tax discounts, specific to commercial development projects in the Hudson Yards area.

Case Study 2: Zone d’Aménagement Concerté ‘Clichy Batignolles

Figure 11. Aerial View of Clichy Batignolles Project. Paris. Source: SEMAVIP, 2012.



³ Hudson Yards Development Corporation and Hudson Yards Infrastructure Corporation.

The special zoning district 'Clichy-Batignolles' in Paris builds on the Parisian bid for the 2012 Olympic Games. The site with close to 50 hectares is located in the 17th *Arrondissement* (district) in the north-west of the city on derelict railway land belonging to the French National Railways (SNCF, *Société Nationale des Chemins de fer français*). As part of the preparatory studies for the new Paris PLU and Olympic bid, four design teams were commissioned in 2002 to study the site and make planning recommendations for the new Olympic village to be built as well as planning the future conversion to a mixed-use district.

Based on the plans prepared by the design firm of F. Grethner the city of Paris acquired in 2004 the first 10 hectares of land within the site where a new urban park was to be located. In order to implement it, a new special zoning district 'ZAC-Cardinet-Chalabre' with 7,3 hectares was created in 2005. Along with the new urban park (named 'Martin Luther King, first section with 4,3 hectares opened in 2007), it proposed 27,000 sqm of housing (with 50% being social housing), 3,000 sqm of commercial space, a new school and kindergarten.

Following the choice of London as the host of the 2012 Olympic Games, the planning concept for the site was redefined through a participatory planning process involving the public and private landowners, city planning commission and surrounding communities. The process resulted in the creation of a new special zoning district, the 'ZAC Clichy-Batignolles' with 43 hectares enacted by the city council in 2007, modifying the 2006 PLU. The development program approved included the second section of the Martin Luther King urban park with 7.3 hectares, 200,000 sqm of new residential spaces, representing close to 3500 units, with 50%

being social housing; 120,000 sqm of office space, 9,000 sqm of retail space and close to 30,000 sqm of public amenities, representing close to 900 million euros of new investment.

Case Study 3: Operacao Urbana Água Branca, São Paulo, Brazil.

Figure 12. Aerial view of the Agua-Branca Project. Source: Tecnisa, 2012.



The OU Agua Branca was first established in 1995, with the enactment of a municipal law 11.774/ 95. It included 504 hectares distributed between the Tiete Marginal Road to the North, the Pacaembu and Abraao Ribeiro Avenues to the east, Turiassu Street and Francisco Matarazzo Avenue to the South and Santa Maria Avenue to the West. The area was also mainly occupied with derelict industrial and rail way uses. Given the improvements in the level of infrastructure and accessibility, the municipality of Sao Paulo decided to take advantage of the possibility to enact special zoning districts in order to manage the growth and finance part of the public investments required. The initial plan proposed changing the industrial uses permitted by the existent zoning districts to mixed-used districts and increase the densities allowed with 2.1

million sqm of additional development. It also proposed a new train station and a public hospital. To finance the public investments required by the plan, it was proposed the implementation of various mechanisms including ‘Onerous Concession of Development Rights’ in which all additional FAR would have to be bought from the municipality as well as various exactions and impact fees.

The failure to attract significant private investment originated a rethinking of the process with the creation of a special study group within the Sao Paulo Department of City Planning. The preparatory studies for the Sao Paulo PDE and the decision to submit a bid to host the 2012 Olympic Games resulted in the proposal to locate the Olympic Village, designed by architect Paulo Mendes da Rocha, within the development area. As in Paris and New York City, the Olympic bid formed the basis of an international competition organized in 2002 ‘Concurso Bairro Novo’, calling for proposals for a new mixed used district to be located in the Olympic Village site. The winning proposal by architect Euclides Oliveira was incorporated into the special zoning district law which formed part of the Sao Paulo strategic master plan published in 2004 and the zoning maps published for each of the city’s sub-prefectures in 2004.

A.1 Selection Criteria 1 - Shift in Planning Policy towards Strategic Planning:

In addressing the first selection criteria mentioned, in all three cases new policy guidelines and new planning legislation have been adopted in the last decade at different government levels with the intention of changing the spatial planning framework for urban development. Figure 10 below summarizes the planning legislation in place at different government levels for each case-

study highlighting the simultaneous timing of planning reforms introduced which shifted the three systems towards a strategic planning approach.

Table 2. Regulatory Framework and Planning Reforms

		Unique model of Special Zoning District																			Three distinct models of Special Zoning District																				
		1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
New York City	National	Standard State Zoning Enabling Act (1926), Standard City Planning Enabling Act (1928)																																							
	State/ Regional	Standard State Enabling Act (1936)																																							
	Local	PlanNYC 2030																																							
	Zoning Resolution	New York City Zoning Resolution (1961) - partially amended several times																																							
Paris	National	Loi d'orientation Fonciere (1967) - revised CU																				Loi SRU (2001) - revised CU																			
	State/ Regional	SDAU (1965)															SDRIF (1994)										SCOT (2008)														
	Local Plan						POS (1977)					POS (1984 revision)					POS (1989 revision) - revised several times															PLU (2006)									
	Zoning Resolution																																								
Sao Paulo	National	Various laws																				Estatuto da Cidade (2001)																			
	State/ Regional																																								
	Local Plan	PDDI (1971)					PD (1985)					PD (1988)										PDE (2002)																			
	Zoning Resolution	LPUOS (1972) - partially amended several times																									LZ/ PRE (2004)														

In the case of the United States, development control has traditionally been a responsibility of state legislatures which historically have allocated its powers to municipalities. The last attempt at passing a national land use policy act, which would have facilitated information exchange between national, state and local levels, was aborted in the early 1970s (Kayden, 2000). Since then, however, growing public environmental concerns have led to the passing of

state and regional legislation calling for a greater role of public agencies in spatial planning, in what has been termed ‘the quiet revolution in land use regulation’⁴ (Yaro, 2001).

Building on these innovations, in the 1990’s the American Planning Association created the ‘Growing Smart’ project in reaction to what many US planners believed were the undesirable environmental consequences of the way the United States planning system was conceived (Burchell, Listokin, & Galley, 2000). The initiative aimed at updating and rethinking the legislative framework within which planning takes place, by reformulating the balance of power between levels of government in defining planning policies; and implementing new land development ordinances at the local level (Meck, 2002).

Particularly, the legislative proposals included in the 2002 publication ‘Growing Smart Legislative Guidebook’ have had a significant impact (Downs & Costa, 2005). Following its indications, numerous states across the country have recently modernized or are considering modernizing laws that govern planning and zoning (APA, 2002).

More recently, the shift in policy focus at the federal and state level in the United States towards a more strategic approach has been given a new impetus with the passing of ‘The American Recovery and Reinvestment Act of 2009’ by President Obama on February 17th. It includes measures for infrastructure modernization and enhancement of energy independence.

⁴ Representative earlier examples include the new state growth management systems in Oregon, Vermont and Florida; regional land use regulatory commissions for several large natural resource areas, adoption of local growth management systems by hundreds of municipalities in large metropolitan areas from the San Francisco Bay area to New York and the National Environmental Policy Act adopted by the federal government (Yaro, 2001).

Amongst with provisions, it includes \$13.61 billion for projects and programs administered by the Department of Housing and Urban Development. Other initiatives with a federal focus include the Regional Plan Association 'America 2050' and its effort to promote a balanced growth strategy for the United States based on the concept of mega-regions.

At the local level, the last decade has seen the most extensive rezoning in the modern history of New York City. During Michael Bloomberg's administration alone in the last seven years, more than 100 rezoning proposals have been adopted by the City Council, representing one-fifth of the city's area, around 8,400 blocks (Buetener & Rivera, 2009). These include new baseball stadiums in the Bronx and Queens, high-rise housing on the Brooklyn and Queens waterfronts, campus expansions for the major NYC high-education institutions and the redevelopment of Manhattan's west side¹⁰. Most of the proposals were justified by estimates of city's population growth in the next 20 years and studies of how to accommodate the extra people.

Drawing on that work, in 2007 the city administration published a wide-ranging strategic plan 'PlanNYC' which represented the first effort at a master plan for the city since the John Lindsay mayoralty of the 1970s (Fainstein, 2008). With the objective to make the city more environmentally friendly as it expands to meet the needs of 1 million more residents by 2030, the plan offered 127 specific proposals on land use, transportation and energy among others.

At the end of 2000 France enacted a major reform of its planning system with the enactment of a new national planning law (Loi SRU).⁵It replaced the 1967 ‘Loi d’orientation fonciere’ which was concerned primarily with land. It presented a radical restructuring of the hierarchy and instruments of spatial planning. In addition, it carried new sections that dealt with housing policy and urban transportation. The law explicitly linked the planning process to the development and implementation of urban policy. It also expressed an intention to promote joint work between ‘communes’¹² and to make plan preparation an instrument of cooperation. It represented a desire of public policy to make planning genuinely prospective and strategic, with an accent placed upon sustainable development. It was intentionally seen as part of a trio of reforming statutes that linked spatial planning to institutional reform of local government.
⁶(Booth P. ,2009).

One of the main innovations of the new law was the introduction of a new form of strategic planning document ‘schema de coherence territorial’ (SCOT, strategy for territorial coherence). Every large urban area was required to prepare it and in addition could also be prepared for other areas. The intention is to go beyond the land use strategies of the ‘schema directeur’ (SD, planning strategy) that the SCOT replaced, covering economic development, social housing

⁵ ‘Loi n. 2000-1208, du 13 decembre 2000 relative à la solidarité et au renouvellement urbains’ [Law n 2000-1208, December 13th 2000 relative to solidarity and urban renewal].

⁶ The other two statutes are ‘loi n° 99-533 du 25 juin 1999 d’orientation pour l’aménagement et le développement durable du territoire’ [Law n. 99-533, June 25th, 1999 Strategy for regional planning and sustainable development] and ‘Loi n°99-586 du 12 juillet 1999 relative au renforcement et à la simplification de la coopération intercommunale’ [Law n. 99-586, July 12th, 1999, renforcement and simplification of district cooperation].

policy as well as transport policy and environmental protection. Another innovation at the local level was the replacement of the old plan d'occupation des sols (POS; local land-use plans) by a new plan local de urbanisme (PLU, local master plan) which amongst the innovations introduced, had to include measures for sustainable development (Booth P., 2003). Furthermore, new zones d'aménagement concerté (ZAC, special zoning districts) would now have to be fully integrated in the PLU so the declaration of a ZAC would no longer be a means of departing from the land use policy for the commune as a whole (Booth P.2005).

At the local level, following the national trend, the Paris region has also gone through a new round of planning in recent years, significantly changing the spatial framework for urban development towards a new emphasis on strategic planning and sustainability. This change of direction responded to political pressure, but also as a reaction to the issues encountered with the main urban development projects ongoing in Paris at the time, particularly 'Paris Rive Gauche' (Newman & Thornley, 2005). One of the significant changes was the enactment in 2006 by the city council of a new PLU, substituting the old POS enacted in 1977 and revised in 1984 and 1989⁷

As in France, the national policy towards urban development in Brazil was transformed in 2001 with the enactment of a new national planning law - the City statute¹⁵⁸. It established the

⁷ The plan was complemented in 2007 with the approval of 'Climate Protection Plan' as well as draft for 'Transport Plan' adding to the Urban Transport Plan (PDUIF) adopted in 2000 for the Ile-de-France region. Also following the new national regulations, a new SCOT was approved in 2008 for the Ile-de-France region. Following the indications of the new planning instruments, at the end of 2008, 940ha were developed, about 10% of the total area of the city of Paris (Subra & Newman, 2008).

⁸ Federal Law n. 10.257 of July 10th, 2001

norms that regulated the use of urban property in favor of the common good, safety and well-being of citizens, as well as environmental equilibrium. The new law regulated articles 182 and 183 on urban policy of the 1988 federal Constitution. The articles marked a turning point in Brazilian strategic national urban policies, by establishing the ‘social function’ of property and calling for a series of instruments to guarantee the democratization of urban management and the ‘right to the city’. The articles required for specific legislation of national scope that could regulate the new public instruments of development control and mandatory formulation of master plans for municipalities with more than 20,000 inhabitants. The ‘City Statute’ addressed these Constitutional requirements by defining the content of planning instruments for expressing urban policy at the national, regional and local levels as regulating the public instruments of development control.

At the local level, the city of Sao Paulo approved in 2001 its ‘Strategic Master Plan’. The plan continued a remodeling of the decision-making processes in urban planning of the São Paulo Metropolitan Region ongoing since the early 1990s. (Schiffer & Deak,2007). The plan abandoned ‘sectoral planning’ and replaced it with municipal plans in the spirit of strategic planning, isolated initiatives taking the form of large urban development projects and public-private partnerships It proposed nine new urban operations, in the declared purpose of creating public space and dealing with the main local problems, such as demand for public transport, infrastructure, or social housing (Schiffer & Deak, 2007). It also introduced two important new legal procedures into the municipal decision-making process, namely participatory budgeting and increased autonomy of decentralized prefectures.

A.2 Selection Criteria 2 – Distinct Planning Models:

In addressing the second selection criteria, two of the cases selected have spatial planning systems identified in the literature as being ‘plan-led’ (France) or ‘development led’ (United States) (Booth, 1996) (Faludi, 1987). In addition, the case of Brazil remains unaddressed by the literature on comparative planning systems, which as previously mentioned tends to focus almost exclusively on Western Europe and North America. The three cases selected have different administrative systems, both in terms of the organizational structures of the state and articulations between state levels.

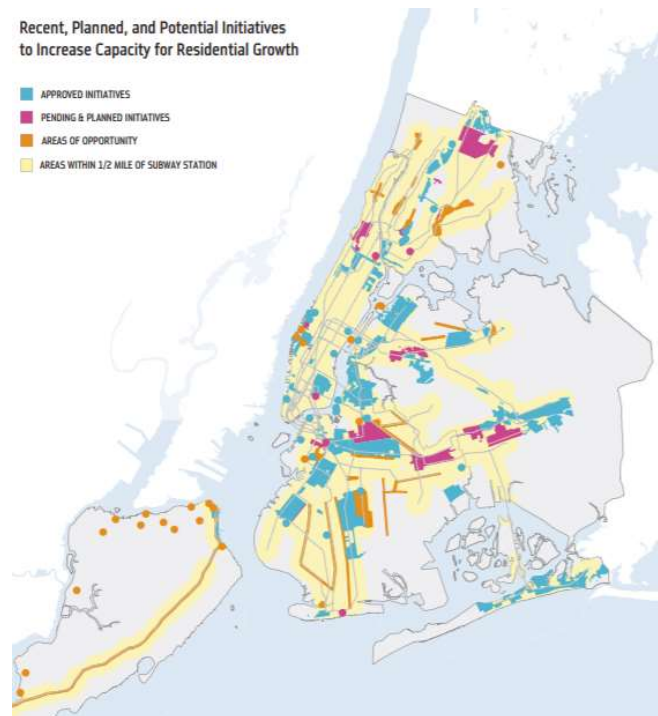
In the United States, although the ‘Standard Enabling Act’ of 1928 requires that zoning ordinances be made in accordance with comprehensive plans, these are only rarely produced and play a very limited role in providing a regulatory framework for urban development. Instead development control is made through zoning ordinances, which define land uses and development rights at an unspecified time in the future independently from plans and are constantly changed (Cullingworth, 1997).

The difference between zoning and planning is important because although zoning should represent an instrument of planning formalizing the concern with long-term development of an area and the relationships between local objectives and overall community and regional goals, it has taken the place of the function to which it is supposedly subservient. Therefore, what was originally adopted as an extremely rigid and certain device of development control was increasingly being transformed into a highly flexible, complex and discretionary instrument. As

zoning variances increasingly became the norm, instead of the exception, the US planning system moved from a 'rule application' process characterized by certainty and a lack of scope for discretion into an increasingly 'development-led' system, in which the granting of development rights and building permits does not follow comprehensive plans at different administrative levels, but is arrived at through a bargaining process between developers, communities and local governments mediated by the judicial system (Cullingworth, 1994).

In the planning process for the Special Hudson Yards District, the zoning amendments proposed to the NYC zoning resolution were not required to follow the recommendations included in the DCP Hudson Yards Master Plan and PlanNYC 2030. In order to change the existent zoning districts, the Zoning Resolution had to be amended through site-specific local review procedures without reference to statutory local land-use plans. The revenues and public benefits to be provided by the new district were defined through a negotiative process in which local plans had no legal jurisdiction. The influence of the plans was limited to the extent to which the Department of City Planning followed its recommendations in the bargaining process defining the zoning controls for the new district.

Figure 13. NYC Strategic Plan. Map of Initiatives to Increase Capacity for Residential Growth. Source: NYC/ DCP, 2007.



The French spatial planning system follows the ‘plan-led’ tendency of thinking about matters in advance and preparing a complete set of rules based upon a codification of abstract principles. Policy expresses both short and long-term policy while offering a precise definition of land-uses with the intention to provide a continuum from the strategic policies to the eventual decision on a particular development. This is accomplished through a hierarchical planning structure in which local planning decisions must function within a regional and national framework. Plans are supposed to be drawn up from the regional level on down, and as the level of government decreases, plan detail increases. Therefore land-uses are defined through a formal system of plans at different levels of government in which plans at the higher level are administratively binding on the lower plans. Thus, local plans have to comply with or at least not conflict with

regional plans and so on. Regional plans are responsible for outlining both goals, which are legally binding on lower levels of planning, and principles, which are not, and organize the state into territorial regions in which certain land uses are privileged or encouraged (Booth P. 1996).

At the local level, plans are broadly understood as granters of property rights, both to municipalities and private land owners. Furthermore, the level at which development rights are assigned to private land owners tends to be only a detailed one, with higher levels being legally binding only to municipalities. Thus, the granting of these rights is in principle more a purely administrative process working within the procedural rules and substantive policies contained in the legislation and the legally binding plans and regulations. These then serve as references to administrative decisions such as issuing a building permit. The local system of development control is characterized by zoning and regulations supported by an arsenal of mechanisms for public acquisition of land that overrides private law and a well-developed system of taxation, acknowledging only a subsidiary role for negotiation and for the use of contract (Booth P. 2005).

In the planning process of the ZAC Clichy Batignolles, the Paris PLU had legal jurisdiction over the zoning controls and public benefits to be provided by the new district. The boundaries of the ZAC were identified in the 2006 Paris PLU and a specific section in the plan defined the planning guidelines to be followed including the maximum FAR allowed for the site as a whole as well as percentages of public parks and affordable housing to be implemented. Because such requirements were binding on the controls and incentives to be approved, the negotiations with private investors and local communities developed from a precise base that was not negotiable.

Figure 14. Paris Strategic Plan. Zoning Map. Source: APUR, 2006.



Although the Brazilian legal system is decidedly based on civil law tradition, following Portuguese influences, whether the spatial planning system is ‘plan-led’ or development-led’ is unclear. The 1988 Constitution states that ‘urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan’. As previously mentioned, it also mandates every municipality with more than 20,000 inhabitants to prepare comprehensive local master plans.

Following these guidelines, the 2001 national planning law ‘City Statute’ created the National Urban Development law (Provisional Measure N. 2220, Chapter II) and regulated the content of the local master plans (Chapter III). But while a preliminary version of a national territorial plan was published in 2006 by the Ministry of National Integration, it is still subject of

ongoing debates. There are also no state or metropolitan plans in place, able to mediate national policies and articulate supra-local territorial strategies.

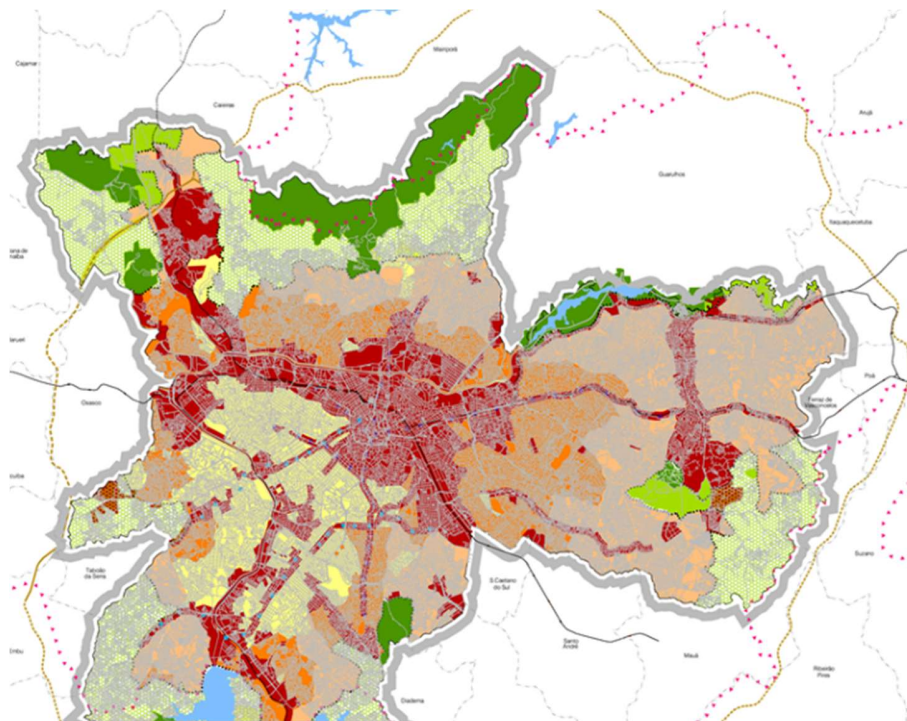
At the local level, Schiffer & Deak argue that formerly prevalent comprehensive urban planning was first replaced in the 1970s by 'sectoral', which was replaced in 1990's by 'strategic' planning (Schiffer & Deak, 2007). The 'City Statute' required plans to propose short-, medium-, and long-term measures and actions, approved by law, according to a prospective diagnosis for the future socio-economic and spatial development organization of land use'. Still, reality seems to have moved in the opposite direction, as 'sectorial' planning was abandoned in favor of fragmented municipal plans and isolated public-private partnerships, with the enactment of Law 13.885/ 04 labelled 'Strategic Regional Plans for municipalities'.

Furthermore, the new instruments of development control established by the 'City Statute', such as the possibility of transferring development rights between sites and the possibility for private land-owners to buy additional development rights from public agencies or in private markets seem to have introduced a discretionary dimension to the granting of building permits independent from base zoning regulations. Such new possibilities seem to have created a 'hybrid' spatial planning system in Brazil, incorporating elements of the 'plan-led' architecture intended by the 'City Statute' and 'development-led' types of land-use regulations typical of the 'Anglo-American' tradition.

In the planning process of the OU Agua Branca, its boundaries were also identified in the 2002 Strategic Master Plan of Sao Paulo. As the Paris PLU, the plan also included a section defining the respective planning regulations to be followed by planning applications for each

special zoning district. While the planning framework is similar to the Parisian case, the implementation instruments available to public agencies and private landowners make the financing of public investment dependent of private initiative. Public investments can only be financed if private investors decide to buy the additional development rights granted through the plan. Such planning approach where the development initiative is shared between public and private entities combines elements of the French and American cases.

Figure 15. Sao Paulo Strategic Plan. Map of Urban Development Policies. Source: Sao Paulo/ DCP, 2002.



A.3 Selection Criteria 3 - Distinct Implementation Models and Financing Structures:

In the special Hudson Yards district in order to implement the development program and finance certain property acquisition and infrastructure work, the City of New York created in

2005 two new corporations⁹ under the ‘Not-for-profit corporation law’ of the State of New York with the ability to obtain financing through bond issuances secured by revenues of the each corporation, including payments in lieu of taxes and payments in lieu of mortgage recording tax collected within the Hudson Yards Financing District and certain payments from the City. Other financing strategies were also available through the New York City Industrial Development Agency’s ‘Uniform Tax Exemption Policy’ including real estate tax discounts, specific to commercial development projects in the Hudson Yards area.

Beginning with the implementation of the plan in 2007, the Hudson Development Corporation, in partnership with the Metropolitan Transportation Authority and the City Planning Commission solicited proposals to develop the eastern and western portions of the West Side Rail Yards, a 10 hectare site occupied by a rail storage yard operated by ‘The Long Island Rail Road Company’ and owned by the Metropolitan Transportation Authority. After the initial winner Tishman Speyer dropped out of the competition, a joint venture by The Related Companies and Goldman Sachs Group was eventually selected in 2008 to develop the air space over the two development sites with Kohn Pedersen Fox as the leading design firm. The developer, together with the city planning commission is currently preparing to file a joint application for the western half of the site. The proposal includes between 4,624 and 5,762 apartments (with 20 percent of the rentals being below-market rate), 6 hectares of public space, five hundred thousand square meters of public space five hundred thousand square meters, one

⁹ Hudson Yards Development Corporation and Hudson Yards Infrastructure Corporation.

hundred thousand square meters of commercial space (either an office tower or a 1,200-room hotel)¹⁰.

In the ZAC ‘Clichy-Batignolles’ in order to implement the development program approved for the new special district, the city designated *Société d’économie mixte de la Ville de Paris* (SEMAVIP, Public/ Private Partnership of the City of Paris) as the ‘public developer’.

SEMAVIP is one of the nineteenth types of entities currently operating in Paris in areas such as planning, real estate development and service provision. It is majority owned by the city of Paris (77.47%) with private investors such as BNP Paribas owning minority stakes. Created in 1985, its purpose is to plan and develop public sites in the North and East areas of the city of Paris. Its main activities include leading the planning process, realizing the public investments (such as the ‘Martin Luther King Park’), developing the public buildings and selling the serviced plots to private developers.

In Água-Branca, the implementation and financing strategy used was largely based on attracting private investment to finance a narrow program of infrastructure improvements and social housing units. The additional returns to investors generated by the OU regulations’ exceptions to existing zoning controls would support the required contributions. The process was overseen by EMURB, the development agency of the city of São Paulo.

B.4 Selection Criteria 4 - Policy Intentions:

¹⁰ See Figure 9, Appendix C.

In the three cases examined, the decision to redevelop each site was similarly made by each city based on its inclusion in the national submission made to the Olympic Committee to host the 2012 Games. In New York City, the bid provided its Department of City Planning in 2001 with an opportunity to revive a longstanding plan to expand the Javits Convention Centre and build a new stadium on top of the West Side Rail Yards. In Paris, the Clichy-Batignolles site had already been chosen in 1997 as the location of the Olympic Village for the 2008 Olympic bid and was again chosen in 2001 for the 2012 bid. In São Paulo the strategic plan elaborated by the local city planning department in 2001 for the Olympic bid proposed to locate the Olympic village and stadium in the Água Branca development site.

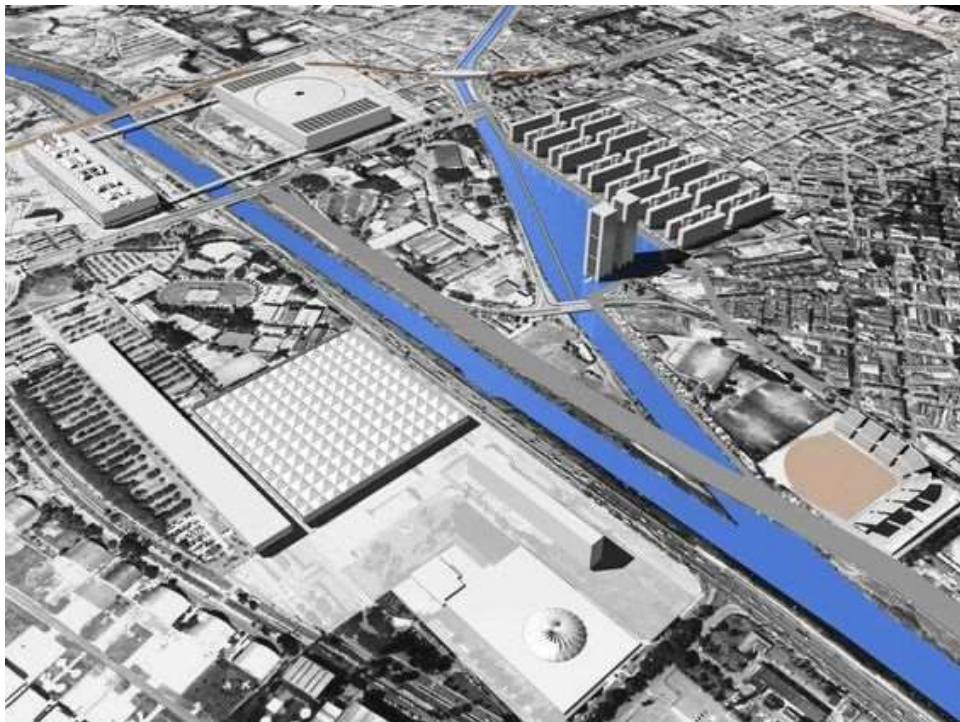
Figure 16. Olympic Proposal for Hudson Yards. Source: Kohn Pedersen Fox, 2001.



Figure 17. Olympic Proposal for Clichy-Batignolles. Source: Grether-Osty-OGI, 2001.



Figure 18. Olympic Proposal for Agua-Branca. Source: Paulo Mendes da Rocha, 2001.



B.5 Selection Criteria 5 - Site characteristics and ownership structure:

The development sites had similar characteristics in terms of size, ownership structure and existing uses. They were one of the largest undeveloped tracts of land within the urban core of each city and thus one of the few options able to accommodate the Olympic facilities. A significant portion of each development site was owned by public agencies and the city itself. Prior to the decision to redevelop, all sites had active railways and facilities associated with the railway companies. As a result, a significant portion was owned by a local railway company and its affiliates.

Table 3. Existing Ownership

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles	OU Agua-Branca
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil
Total Land Area (m ²)	1,450,000	500,000	1,076,260
Ownership (m ²)	Private	153,000	681,220
	Public - Government	11,400	-
	Public - City	11,000	28,220
	Public - Others	43,000	205,790
	Railway Company	-	281,600
Ownership (%)	Private	0%	63%
	Public - Government	0%	0%
	Public - City	0%	3%
	Public - Others	0%	19%
	Railway Company	0%	56%
Ownership Analysis	Majority of area privately owned; larger sites owned by public agencies	Approx. 70% of area owned by public agencies	Majority of area privately owned, larger sites owned by private corporations

B.6 Selection Criteria 6 - Historical uses and Existing Zoning:

Historically all three sites had been occupied by industrial and logistical uses associated with railroads. Hudson Yards historically had a predominantly industrial use as a warehouse, supply and distribution center for moving goods to the rest of the city. Its evolution in the

twentieth century had been largely defined by a significant presence of transport infrastructure and large public projects related to the railways. The Long Island Rail Road (LIRR) John D. Caemmerer West Side Yard was used as a storage and maintenance facility for its operations at Pennsylvania Station. The Clichy-Batignolles site had its development defined by the construction in 1835 of the first railway in the country. It had been the site of a temporary train station Embarcadère des Batignolles opened in 1837 and prior to the beginning of the redevelopment process was also occupied with active railways and associated logistics facilities. Similarly, the Água-Branca site had its development structured by the construction of several railways and respective stations built by the Sao Paulo railways and the Sao Paulo Metropolitan Railway Company such as 'Barra Funda' and 'Estacao da Lapa' inaugurated in 1898.

In the Hudson Yards development area, 70 percent was zoned for manufacturing uses, 27 percent for commercial uses and the remaining three percent was zoned residential. The major manufacturing designations were M1-5 and M2-3 with floor area ratios (FAR) of 5.0 and 2.0 respectively. Commercial designations varied, with the most common being C6-2 and C6-4 with FAR's of 6.0 and 10.0 respectively for commercial uses. The only residential district was the 'R8-B' with a FAR of 4.0 located at the southern portion of the study area in Chelsea. The maximum achievable FAR was generally 5.0 and 6.0 with scattered areas of higher density (base 10.0 FAR). In addition, there were four special zoning districts wholly or partially located within the perimeter of the new special Hudson Yards District.

Figure 19. Aerial View, Special Hudson Yards District. Source: NYC/ DCP, 2000.



In the Clichy-Batgnolles development area, the vast majority of the area was zoned as ‘UN’ for logistical uses associated with the railway services which meant that it was regulated by a separate code associated with the functioning of the railway system. In areas zoned as ‘UN’ no development was allowed. The site owned by the semi-public railway contractor GEODIS was zoned as ‘UI’ for industrial uses permitting a maximum FAR of 3.5. In addition, there were also smaller sites zoned as UH, permitting a combination of uses and maximum a FAR of 4.

Figure 20. Aerial View, ZAC Clichy-Batignolles. Source: Paris DCP, 2000.



In the Agua-Branca development area, the central section of the site was zoned as ‘Z8’ reflecting the existent low-density industrial uses. Under the various sub-categories included in the ‘Z8’ districts, maximum achievable FAR could vary between 0.05 and 0.15; covering a maximum of 2.5% to 7% of the respective lot. In addition, the sections already occupied with industrial activities were zoned as ‘Z6’, also used for industrial uses and allowing for a maximum achievable FAR of 1.5 occupying a maximum of 70% of the lot surface. By contrast, most the surrounding areas were zoned for residential uses reflecting the mentioned residential development in the higher areas. Prevalent existing zoning districts included ‘Z2’ for lower density residential uses, allowing for a maximum achievable FAR of 1 in 50% of the lot; and ‘Z3’ for higher density residential uses with an permitted FAR ratio that could go from 2.5 up to 4.

Figure 21. Aerial View, OU Agua-Branca. Source: Sao Paulo/ DCP, 2000.



In the three special zoning districts examined, existing zoning controls mostly reflected current uses and did not allow for the type of development intended by each Olympic submission and subsequent development program elaborated. In all cases, the vast majority of each site was zoned for low-density industrial and logistical uses. The existing zoning was typically associated with railway infrastructure, which explained how such large plots of urban land could have remained undeveloped while being surrounded by some of the most dense and expensive urban neighborhoods in the world. In order to implement the type of densities and uses intended, the existing zoning controls would have to be modified or supplanted by new zoning districts, as was the case with the special districts approved for each development area.

Table 4. Existing Zoning

Area (m ²)	Area (m ²)	Area (%)	Designation	Main Uses Permitted	Base FAR/ Maximum FAR	Analysis of Existing Zoning Controls
Special Hudson Yards District	70%		M1-5	Manufacturing	5	. Majority zoned for low-density
			M1-6		10.0/ 12.0	
			M2-3		2	
	27%		C1-7A	Commercial	2.0 Commercial/ 6.02 Residential	. Several sub-categories within
			C2-6A		2.0 Commercial/ 4.0 Residential	
			C6-2		6.0 Commercial/ 6.02 Residential	
			C6-3		6.0 Commercial/ 7.05 Residential	
			C6-4		10 - 12 Commercial/ 10 - 12 Residential	
	3%		R8	Residential	0.94 - 6.02	. Possibility to increase FAR through exsiting incetive zoning
			R8B		4	
ZAC Clichy-Batignolles			UN	Logistical Uses	n.a.	. Majority of area zoned for logistical uses, not allowing any development
			UI	Industrial Uses	3.5	
			Uhb	Mixed-Use	3.0 Residential/ 1.0 commercial	
Operacao Urbana Agua-Branca			Z6	Industrial Uses	1.5	. Vast majority zoned for very low-density industrial uses
			Z8	Special Uses	n.a.	

B.7 Selection Criteria 7 - Planning timing and process: From 2001 to 20011, the three selected sites were twice rezoned using a special zoning district with the objective of first implementing the Olympic facilities and then developing a new mixed-use neighborhood and deliver public benefits. The planning process to elaborate a strategic plan for each site went through a two-phase process. A strategic planning study was elaborated in 2001 by the planning department of each city to select the appropriate location of the Olympic facilities. The plan led to a detailed urban design plan for each site that located the main Olympic facilities and associated required infrastructure. In all cases the strategic documents incorporated previous plans proposed by the city, private sector and proposals from prior submissions to the Olympic Committee.

The existing zoning districts did not permit the uses and bulks proposed by the master plans as they predominantly allowed for industrial and manufacturing uses and very low densities. Each site had to be rezoned for the development programs to be implemented in time for the Olympic Games. Faced with significant time constraints (the Olympic decision would be

announced in the Summer of 2005), all three cities opted to use a special zoning district to modify the existent zoning. Using a special zoning district allowed each city to overlay the required new zoning on existing districts effectively creating a situation of exception for the development sites.

In New York City, the Special Hudson Yards District left the Stadium outside of the review process known as ULURP and then approved all other individual amendments to the Zoning Resolution in record time. In Paris, it was decided to create two separate ZAC's, so that the acquisition of the land required for the Olympic facilities could proceed quickly. Both special districts were approved in the beginning of 2005. In São Paulo, the planning process did not progress as far because São Paulo lost the bid to Rio de Janeiro in 2004. Thus, the plan elaborated by Paulo Mendes da Rocha never left the 'drawing table' as both the 1995 regulations of the Água Branca special zoning district and underlying zoning districts were not modified.

When London was declared the winner, both New York and Paris were faced with the challenge to elaborate a new plan for each site. The special zoning districts approved in 2005 were largely based on the development of the facilities and infrastructure required to host the Olympic Game which were not feasible unless the city was selected as the host. A similar challenge was faced by São Paulo as it still needed to modify the previous 1995 Água Branca special zoning district. As such, from 2005 to 2011 each city modified the previously approved special zoning districts and initiated implementation. In New York and São Paulo, a new public competition was elaborated for the sites to provide a basis of the rezoning. In Paris, the same team was commissioned to revise the existing plan. Based on the guidelines provided, each city

undertook from 2005 to 2010 the formal process required to revise the special district and modify the underlying zoning controls.

Table 5. Planning and Development Timeline

	1991	1995	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
	Richard Coifman Randy Levine Joseph E. Rose	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)	Michael Bloomberg (Act. Term)
Political leadership													
Olympics			Decision to participate in Olympic competition		NYC announced as US winner		Final presentation of Olympic bid	London announced as winner					
Planning			Forecast midtown development framework (NYDCP)		Economic Overview (Chabman & Winkler)	Hudson Yards Master Plan - preferred direction (NYDCP)	Final Generic Environmental Impact Statement (EIS) for Hudson Yards ULRP Processes	Approval of Zoning amendments creating the Special District State Stadium	City Proposal to buy Hudson Yards site rejected by MTA	Agreement City/ MTA West Side Rail Yards Competition	Expansion plan for Javits Center drastically revised by state officials	Final Generic Environmental Impact Statement	Approval of Zoning Amendments to Hudson Yards Site of Hudson Yards
Implementation									Successful Issue of \$2 billion of bonds by MTA	Property Acquisition/ Tunneling work for Hudson Yards 7 subway line.			MTA Signs Contract with Related Companies New Properties Group
Political leadership													
Olympics					Decision to participate in Olympic competition			London Announced as Winner					
Planning			Planning guidelines elaborated by Paris Development Council		Deliberation by City Council determining objectives for the site plan		Urban Design Competition/ Generic Environmental Impact Statement selected as winner	Approval of ZAC Cardinet-Chalabre	Planning contract signed between City/ MTA/ State	Final Generic Environmental Impact Statement/ City/ MTA/ State Review	Studies by Planning Department/ Design team to modify maximum permitted height in Park	Announcement of new location for the "Paris de la Justice" management model	Modification of ZAC "Clichy-Batignolles" management model
Implementation								Development of SEMAVIP Transfer of funds/ Land Acquisition/ Implementation of new Park	Planning contract with SEMAVIP	Final review of Park Property Acquisition by SEMAVIP			Urban design guidelines SEMAVIP
Political leadership													
Olympics			Decision to participate in Olympic competition		Rio de Janeiro announced as national winner								
Planning			Planning Studies by EMURB		Planning Studies by GTI as part of new Strategic Plan		Batons Novo Competition Site Reopening	Batons Novo Proposal discarded					Terms of Reference/ Environmental Impact Study
Implementation			Construction of Rector Engenharia		Approval of new Batons Novo Site Plan								Telephone site sold to Rector Engenharia 125 million

Special Hudson Yards District

ZAC's Clichy-Batignolles/ Cardinet-Chalabre

Operacao Urbana Agua-Branca

3.2 RESEARCH DESIGN

To test the research hypothesis, the proposed research will use a research design based on a comparative study of representative case studies of large scale projects planned and implemented with contrasting articulations with local land use plans and implementation models. The research uses comparative case study analysis to gather relevant data and produce valid findings based on the collection and analysis of quantitative and qualitative data. The intention is to compare the merits of each model from a planning perspective – how contrasting methods of changing development rights and capturing incremental land values generate public amenities such as schools, parks, infrastructure work and affordable housing.

The sources used include planning documents, press articles, interviews and field research on the planning process of the three case studies, their administrative and institutional frameworks combined with quantitative analysis of the development proposals and outcomes of each project. It finally operationalizes the data gathering by defining the independent and dependent variables, identifying the specific sub-variables and determining which data will be used to answer each research question.

3.2.1 RESEARCH VARIABLES

3.2.1.1 INDEPENDENT VARIABLES

IV 1. Role of local land-use guidelines in planning process: Comparison of how land-use guidelines differed between cases. The objective is to compare the role that local land-use documents played in the planning process leading to rezoning of each site. Specifically, it focuses on comparing the framework of policy objectives and guidelines defined for each project

in local plans, and how it impacted the planning process of each special zoning district. A key component of the analysis was that the local policy framework was not static throughout the planning process of each special district. Indeed, the focus of the research is on the effect of the *changes* in the underlying policy framework promoted by legislative reform.

IV 2. Instruments of Plan Implementation: Comparison of the structure of planning incentives implemented in each special district and the role of public and private stakeholders in the planning process. The objective is to compare the ‘implementation capacity’ of each model as measured by the range of *planning instruments* and incentives available to stakeholders to implement the project.

IV 3. Planning and Financing Incentives: Comparison of how the financing strategy used in each case to finance the proposed public benefits. Specifically, it focuses on comparing the instruments of ‘public value capture’ by which part of increase in property values originated by planning incentives was used to finance the public amenities proposed by each project.

3.2.1.2 DEPENDENT VARIABLES

DV.1 Variation in Zoning Controls: Comparison of how the variation between zoning regulations before and after the enactment of a new special zoning district actually differed between cases. Specifically, it compares the extent of the variation between the new zoning controls for each special district and what was previously in place. The objective is it compare how flexible was the existing planning framework as measured by the extent of the variation between the final project parameters and what was previously allowed.

DV.2 Implementation: Comparison of how the implementation of the first commercial projects planned for each project, required infrastructure and public amenities actually differed between cases. The objective is to analyze the execution of the infrastructure work and commercial developments and how it compared relative to the initial development program approved. Specifically, it compares how the phasing and completion rate of the railways extensions and platforms, public parks, schools differed between cases. It then compares how commercial projects were developed and funded relative to the phasing of the public projects. The objective is to compare how the structure of each special zoning district influenced the pace of execution, the development program proposed and focus placed on the public and private work planned for each site.

DV 3. Provision of Public Benefits: Comparison of how the provision of public benefits in the development program of each special zoning district actually differed between cases. The objective is to compare the final development program approved relative to the initial objectives as formalized in local planning documents. Specifically, it compares the provision of public benefits, in the form of affordable housing, public revenues and public amenities (e.g parks, schools, cultural and recreational facilities) provided by each case study. The objective is to compare how effective the planning process was in achieving the initial policy goals and providing public benefits through the rezoning of each site.

3.2.2 DATA SOURCES AND DATA COLLECTION

3.2.2.1 INTERVIEWS

Interviews are methods of gathering information using a set of preplanned core questions. According to the (Shneiderman and Plaisant, 2005), interviews can be very productive since the interviewer can pursue specific issues of concern may lead to focused and constructive suggestions. The main advantages of the interview method are as follows (Genise, 2002; Shneiderman and Plaisant, 2005) :

1. Direct contact with the users often leads to specific, constructive suggestions;
2. They are good at obtaining detailed information;
3. Few participants are needed to gather rich and detailed data.

Comparative studies require careful elaboration of research methodologies for selection of data sources; data collection techniques and data analysis procedures in order avoid mere juxtaposition of descriptive accounts (Newman & Thornley, 2005). The difficulties of matching up comparable data and units are exacerbated by the fact that case studies selected are located in different countries, and in cities where jurisdictional lines do not coincide with physical and economic borders. In addition, the objective is to understand the mix of general and specific factors that have created the proposals for the specific projects selected (Fainstein, 2001).

The research was based on 15 structured and semi-structured interviews with different key stakeholders involved in each process, including officials and staff members of the different city-wide planning agencies, public agencies responsible for the planning process; employees of the

private firms involved in the projects, members of the main community groups part of the process; and academics and practitioners familiar with the case-studies and respective planning contexts¹¹. The interviews were designed to elaborate on, complement, and test the information obtained through previous observations.

3.2.2.2 ARCHIVAL RESEARCH

The secondary data collection was based on official planning documents and maps at different administrative levels, from the national to local zoning ordinances; policy statements, statistical material published by governments, academic and business resources; property company reports; publications of community groups; local media, relevant academic literature and first-hand notes from briefing meetings and public hearings¹².

Analysis and synthesis occurred throughout the research but was strongly emphasized after the on-site data collection. Writing also took place at all phases of the research, but more intensively toward the end of the research process, to synthesize the data collection and analysis, as well as to further develop the theoretical foundation of the project.

3.2.2.3 OBSERVATIONAL EVALUATION

The analysis was complemented with visits to each development to broaden and substantiate the understanding of the urban context and challenges addressed by the program and implementation of new projects.

¹¹ See Appendix B for list of contacts and interviews for each selected case study

¹² See Appendix A for a list of key planning documents

3.3 RESEARCH METHODOLOGY

3.3.1 Quantitative/ qualitative research methods

The research uses both qualitative and quantitative research. Both approaches differ regarding their approaches to collecting data. Stake (1995) describes three major differences in qualitative and quantitative emphasis, noting a distinction between: explanation and understanding as the purpose of the inquiry; the personal and impersonal role of the researcher; and knowledge and knowledge constructed. In qualitative research, different knowledge claims, enquiry strategies and data collection methods and analysis are employed (Creswell, 2003). Qualitative data sources include observation and participant observation (fieldwork), interviews and questionnaires, documents and texts and the researcher's impressions and reactions (Myers, 2009). Data is derived from direct observation of behaviors, from interviews, from written opinions, or from public documents.

Quantitative research on the other hand makes use of questionnaires, surveys and experiments to gather data that is revised and tabulated in numbers, which allows the data to be characterized by the use of statistical analysis. It measures variables on a sample of subjects and expresses the relationship between variables using statistics such as correlations, relative frequency, or difference between means.

Qualitative urban studies are often framed with concepts, models and theories. An inductive method is then used to support or challenge theoretical assumptions. Although the research process in qualitative research is inductive, Merriam (1998) notes that most qualitative research inherently molds or changes existing theory in that: (1) data are analyzed and

interpreted in light of the concepts of a particular theoretical orientation; (2) findings are usually discussed in relation to existing knowledge (some of which is theory) with the aim of demonstrating how the present study has contributed to expanding the knowledge base.

However, Lincoln and Guba (1985) caution that qualitative research is an approach that acknowledges the researcher's subjectivity, requires that 'biases, motivations, interests or perspectives of the enquirer' are identified and made explicit throughout the study. Some other disadvantages of qualitative research include: Research bias can bias the design of a study; researcher bias can enter into data collection; sources or subjects may not all be equally credible; some subjects may be previously influenced and affect the outcome of the study; background information may be missing.

Each planning project is distinct and must be looked at individually. It is assumed that existing literature on new projects does not exist and only theoretical approaches or similar cases can be found. Therefore, primary research is essential for most planning projects. Planning projects as a base for academic work are most common in an exploratory stage and project based, so as literature suggests, a qualitative research approach is necessary (Silverman, 2000).

3.3.2 Case Study Research

A case study is one of several ways of doing research whether it is social science related or even socially related. Other ways include but are not limited to experiments, surveys, histories and economic and epidemiological research. Gillhan (2000) defines a case study as an investigation to answer specific research questions which seek a range of different evidences

from the case setting. Yin (2003) defines a case study as an empirical inquiry that investigates a contemporary phenomenon and context are not clearly defined.

The case study approach is especially useful in situations where contextual conditions of the event being studied are critical and where the researcher has no control over the events as they unfold. Ritchie and Lewis (2003) see the primary defining features of a case study as being 'multiplicity of perspectives which are rooted in a specific context'. According to McMillan and Schumacher (2001), a case study examines a –bounded system or a case over time in detail, employing multiple sources of data found in the setting. All the collected evidences are collated to arrive at the best possible responses to the research question (s).

Given the interpretive position adopted in this research and the nature of the research in questions, the case study methodology was considered the most appropriate approach to employ because it provides a systematic way to collect data, analyze information, and report results. Further, unlike many other forms of research, the case study does not utilize any particular methods of data collection or data analysis; therefore, a combination of data collection methods were selected in this study in anticipation of providing a more complete picture; thus is allowed for the adoption of both qualitative and quantitative data collection methods which presents a more coherent picture of the an unique situation. Case studies are categorized as a triangulated research. Using multiple sources of data helps to confirm the validity of the research. Case studies do not claim to be representative, but the emphasis is on what can be learned from a single case (Tellis, 1997).

The case study approach makes use of multiple methods of data collection such as interviews, document reviews, archival records, and direct and participant observations and subsequently ‘thick descriptions’ of the phenomena under study (Yin, 2003). Such ‘thick descriptions’ give the researcher access to the subtleties of changing and multiple interpretations (Walsham, 1995). A descriptive statistical method was used to analyze the quantitative data from each case study.

Case study research has been subject to criticism on the grounds of non-representativeness and lack of statistical generalizability. Moreover, the richness and complexity of the data collected means that the data is often open to different interpretation, and potential ‘researcher bias’ (Conford and Smithson, 1996). Despite the lack of a detailed step-by-step data analysis of case study data (Miles and Huberman, 1994) and the problem of not being able to provide generalizability in a statistical sense, Denzin and Lincoln (2000) argue that case studies can be generalized, arguing that “looking at multiple actors in multiple settings enhances generalizability”. Similarly, Yin (2003) argues that case studies are used for analytical generalizations, where the researcher’s aim is to generalize a particular set of results to some broader theoretical propositions.

3.3.3 *Research Evaluation*

The traditional criteria for ensuring the credibility of the research data – objectivity, reliability and validity – are used in scientific and experimental studies because they are often based on standardized instruments and can be assessed in a relatively straightforward manner. In contrast, qualitative studies are usually not based upon standardized instruments and they often

utilize smaller, non-random samples. Assessing the accuracy of qualitative findings is not easy. However, there are several possible strategies and criteria that can be used to enhance the trustworthiness of qualitative research findings. Trustworthiness is the corresponding term used in qualitative research as a measure of the quality of research. It is the extent to which the data and data analysis are believable and trustworthy. Guba and Lincoln (1981) suggest that ‘the trustworthiness of qualitative research can be established by using four strategies: credibility, transferability, dependability and conformability, and are constructed parallel to the analogous quantitative criteria of internal and external validity, reliability and neutrality. Each strategy in turn uses criteria like reflexivity, triangulation and dense descriptions.

Credibility: Credibility in qualitative research is defined as the extent to which the data and data analysis are believable and trustworthy. Credibility is analogous to internal validity, that is, how research match reality.

Transferability: Research findings are transferable or generalizable only if they fit into new contexts outside the actual study context. Transferability is analogous to external validity, that is, the extent to which findings can be generalized. Generalizability refers to the extent to which one can extend the account of a particular situation or population to other persons, times or setting than those directly studied (Maxwell, 2002).

Transferability is considered a major challenge in qualitative research due to the subjectivity from the researcher as the key instrument and is a threat to valid inferences in its traditional thinking about research data. However, a qualitative researcher can enhance transferability by detailing the research methods, contexts, and assumptions underlying the study.

Seale (1999) advocates that transferability is achieved by providing a detailed, rich description of the settings studied to provide the reader with sufficient information to be able to judge the applicability of the findings to other settings that they know.

Cases in urban studies research in general, and thus also in this research, are not fully comparable to a laboratory experiment. The measures for controlling all possible alternative third variables might offer some external validity: we can reasonably expect that other similar cases also would produce the same or similar results. However, this is not enough, as we still must face the risk of basing the findings upon too specific cases. The research must be able to claim that what happens in the studied cases is not exceptional and is valid for other cases. Or, if the cases are exceptional, the specific features that make them exceptional need to be identified. The goal is to be able to claim that it is reasonable to expect, or plausible, that the recommendations would be applicable in other cases.

Dependability: Dependability is analogous to reliability in that is the consistency of observing the same findings under similar circumstances. According to Merriam (1998), it refers to the extent to which research findings can be replicated with similar subjects in a similar context. It emphasizes the importance of the researcher accounting for or describing the changing contexts and circumstances that are fundamental to consistency of the research outcome.

Reliability is problematic, highly contextual and changes continuously depending on various influencing factors. It is further compounded by the possibility of multiple interpretations of reality by the study subjects; a similar study with different subjects or in a different institution

with different organizational culture and context or by a different researcher may not yield the same results. The quality of inferences also depends on the personal construction of meaning based on the individual experience of the researcher and how skilled the researcher is at gathering the data and interpreting them. Merriam (1998) suggests that reliability in this type of research should be determined by whether the results are consistent with the data collected.

3.4 WHY COMPARATIVE CASE STUDIES?

This method is most suitable for institutionalism accounts of urban governance focused on the role of institutions and relationships between them (Healey, 2004). Given the complex nature of the object of study, a comparative case study method seems the most adequate to deal a variety of evidence – such as documents and interviews – beyond what might be available in a historical study or experiment (Yin, 2009). Although the ability to generalize is hindered by the national and cultural specificities of each case, it is expected that the conclusions of the study will have relevant policy implications for the regulation of special zoning districts in different planning frameworks (Ragin, 2006).

In planning at local, national and or international level, each planning project is distinct and has to be looked at individually. It is assumed that existing literature on new projects does not exist and only theoretical approaches or similar cases can be found. Therefore, primary research is essential for most planning projects. Planning projects as a base for academic work are most commonly used at the exploratory stage and thus a qualitative research approach is appropriate (Silverman, 2000). Within qualitative research, several research methods exist including for instance case study, interview, observation or focus groups. Urban (re)development projects are

not so easy to reproduce in a laboratory as for example physical, biological or even psychological phenomena. The projects studied are an open social system and thus too complex to be 'modulated' in an experiment (Swanborn, 1996: 22-24, 38-45). The needed data is usually not fully available nor operational: there is not a list of all the urban (re)development projects in the country (total population) which would make possible a random selection of representative projects (sample). And even if this random selection was possible, there is not enough data available for all these projects and/or the data are not available in the needed form, because the data are not quantifiable, because the projects are too old, or because very relevant information is not available to the public or because there are no good archives.

Therefore, although available literature has been extensively used, this research can be considered as a case-based one. It uses a 'multiple case design', (Yin, 1989; Van Hoesel, 1985: 239; both quoted in Swanborn, 1996: 23), or a 'cross case display' design (Miles en Huberman, 1994: 172-177). Such a research design consists of studying several cases and comparing them with each other.

Case research was chosen not only because of the data gathering limitations. Also, the case-study method was an appropriate complement to the available literature, which often does not include up-to-date information about the studied phenomenon. Also, the case-study method was necessary to get the detailed information about the studied phenomenon, for this required using different sources, paying attention to many aspects and measuring them at different moments.

This is not possible with a one moment-survey, there was need to be involved more deeply in the phenomenon by studying several cases. The research focused on the planning and

development phase, which starts with the original submission of the Olympic bids and ends at the delivery of the initial real estate products. up to at least the signing of the development agreement, using a variety of data sources (documents, interviews, visits to the site, etc). Finally, the case-study method was necessary because there was a need to study the cases in their system, in their natural environment. However, cases have not been studied in a ‘holistic’ way. The research did not focus on the whole phenomenon, i.e. but rather in isolating the relevant variables of the phenomenon from the rest of the infinite other aspects or variables that could characterize the phenomenon (Swanborn, 1996: 11-18, 22-24, 26-28).

The relevant variables are the independent and dependent variables detailed bellow. All the cases have been studied following the same check lists that were used in the literature research. So both literature research and case research have focused on the same variables and sub-variables, complementing each other. Cases have been selected as ‘convenience samples’ (Swanborn, 1996: 59) as to strengthen the validity of the findings. In addition, some other, more practical selection criteria have been used: those projects have been selected that were available in terms of availability of archives, willingness of the involved persons to collaborate, visibility of the results, etc.

CHAPTER 4 : PLANNING BY AMMENDMENTS: THE CREATION OF THE SPECIAL HUDSON YARDS DISTRICT, NEW YORK CITY, U.S.A.

4.1 OVERVIEW

This chapter describes the planning and development process until 2012 of the Hudson Yards site. The purpose of this chapter is to examine the influence of the flexibility and discretion provided by the New York planning system on the incentive structure created by the planning regulations and incentive programs adopted for the Special Hudson Yards District. The chapter illustrates the challenges that local planning agencies face in elaborating zoning controls and incentive programs for a special purpose district exempt from statutory zoning districts in a ‘development-led’ planning system. From the publication of the first framework for development in 2001 until the adoption by the New York City Council of the zoning amendments to the Western Rail Yard site in the end of 2009, the New York City Zoning Resolution was subject to more than twenty amendments. A new special purpose district was added, and various existent special purpose districts were changed or eliminated. In addition, because no general obligation bonds were available, various incentive programs were adopted in order use future tax revenues to fund the required infrastructure work with general obligation bonds.

Section two of this chapter describes how the legal and administrative background and evolution of the New York planning system influenced the planning process of the Special Hudson Yards District. Section three describes the various phases of the planning process from the publishing of the first framework for development in 2001 to the approval of the zoning amendment for the Western Rail Yards site in the end of 2009. Section four discusses how the

flexibility provided by the planning framework influenced the final land uses permitted for the development area through the successive amendments to the NYC Zoning Resolution and various incentive programs used to implement the development program.

4.2 NEW YORK URBAN SYSTEM

New York City, even after the financial crisis of 2008 and 2009, continues to be considered by the literature and media as one of the preeminent global cities together with London and Tokyo, as defined by its influence on world financial markets. It is the largest city in the United States and it is located at the center its most populous metropolitan region estimated in 2007 at 18.8 million people. The industries it hosts perform vital functions of command and control within contemporary world systems. It is home to the NYSE and the NASDAQ, the two largest stock exchanges in the world by market capitalization. The status of the city is expressed in the sheer magnitude of its 'FBS' sector, the number of foreign firms doing business with them and its cultural and social connections with the rest of world (Fainstein, 2001).

4.3 CONTEXT AND PLANNING FRAMEWORK

The planning process of the Special Hudson Yards District cannot be understood except in the context of the constitutional arrangements, the legal framework and a culture of decision making that are specific to New York City and are a product of its history. Furthermore, some of the planning tools of its system, for the apparent similarities that it may have with the Parisian and Sao Paulo systems, have specific purposes which derive from cultural understandings about the nature of government and decision-making (Booth, 2009).

The comparative uniqueness of the New York Planning system is defined by strong property rights and autonomy from state and federal governments. The term ‘system’ itself may in some instances be inappropriate to refer to the multiplicity of institutions, procedures and policies operating under a series of general concepts of constitutional freedoms, private property and police power rights which together form the local planning framework in New York City (Cullingworth, 1994). Its distinct approach is patterned on a national administrative and legal framework influenced by a liberal tradition that values power sharing and ‘checks and balances’ in order to prevent centralization and protect private interests (Cullingworth, 1997).

The United States do not have a national land law defining property rights in land. For local land use planning the most important part of federal law is to be found in the last clause of the Fifth Amendment to the Constitution dating back to 1791¹³. It severely restricts the ability of planning proposals put forward by public agencies to interfere with private interests. Any zoning change that may benefit one particular property to the detriment of others or reduce its value through changes in permitted uses or bulk restrictions can be challenged in courts. Eminent domain cannot be used to acquire property considered necessary for public projects without provision of adequate compensation. The possibility to reshuffle property boundaries through land readjustment mechanisms and ‘recapture’ part of the increase in property values due to public investments and increases in floor-area ratios (FAR) is limited. Desired uses tend to be

¹³ The clause is known as ‘the taking clause’ phrased as: ‘(...) nor shall private property be deprived for public use, without just compensation.’

incentivized through combinations of amendments to existent zoning districts and various programs providing public subsidies and zoning bonuses.

The sharing of powers between government levels makes municipalities such as New York City largely autonomous from state and federal levels in planning decisions. Legal supervision of local planning is mainly performed by the judicial system which tends to focus on procedural issues to the detriment of substantive policy. The absence of centralized mechanisms means that no elected official has authority over all planning agencies within the municipality or region. Control over local planning initiatives is dispersed amongst a complex mosaic of formal and informal institutions besides the planning commission such as community boards, other public agencies, community-based organizations and private investors. New York City is paradigmatic of such dispersion of power, with multiple entities ranging from a 13-member city planning commission to 59 local community boards and 64 Business Improvement Districts (BID) sharing responsibility over planning policy and development decisions.

Attempts to provide top-down comprehensive blueprints for urban development and public spending through periodic adoptions of new zoning resolutions are largely absent. In earlier decades New York City did have a more unified planning system under the direction of Robert Moses. Nevertheless, the backlash against its authoritarian style and disregard for public participation epitomized in Jane Jacobs critiques moved the system in the opposite direction. Through successive revisions to the city's chapter, it now provides extensive opportunities for public participation in development decisions through review processes known as Environmental Quality Review (EQR) and Uniform Land Use Review Process (ULURP) in place since 1975

and the important role that community boards have in providing forums for discussion and advisory votes.

The emphasis on the municipal level means that local governments in the United States have to rely mostly on their own tax base and private capital to fund the multiplicity of single-purpose agencies such as boards of education and sewer commissions responsible for the provision of public services. In this sort of ‘fiscal federalism’ local governments such as New York City and Jersey City are incentivized to compete with one another in order to provide an attractive investment climate. In the absence of capital budget funding, public planning has to accommodate the generous provision of fiscal and economic incentives to businesses and residents in order to prevent investment from moving elsewhere. Given the need to compete for revenues, local regulation of land uses through zoning ordinances is often biased towards the ‘highest and best’ use in order to generate the highest fiscal dividend and help fund the implementation of plans and financing of infrastructure work.

As in Paris and Sao Paulo, zoning statutes, subdivision regulations and building codes constitute the primary local tools of development control in New York City. The institutional structure for land use regulation in New York City is provided by the 1961 Zoning Resolution as originally enacted and amended from time to time in the past 50 years (Kayden, 2000). It divides the city map in three basic land-use zoning districts¹⁴ which are further divided in one or more 18

¹⁴ Residential (R), Commercial (C) and Manufacturing (M) which occupy about sixty seven percent of the city’s net land area, exclusive of streets.

use groups according to permitted uses and density levels. When planning proposals comply with all applicable regulations, building permits are issued ‘as-of-right’ meaning that no discretionary action is required by the City Planning Commission or Board of Standard and Appeals.

The New York City Zoning Resolution is based on state enabling legislation passed in 1936. All fifty states in the United States have passed legislation enabling municipalities to operate zoning controls, based on the Standard State Zoning Enabling Act (SZEA) published in 1926 by the Department of Commerce. The publication of the act, together with the Standard Enabling City Planning Act (SCPEA) published in 1928 signaled a major shift in the United States away from governmental alteration of urban form through public works towards a highly conservative legal and administrative control of private development. For many states including New York, both acts still supply the legal framework for local zoning statutes and planning agencies (Meck, 1996). The last attempt to pass a new national planning law was aborted in the early 1970’s.

In the New York City system of development control, zoning maps are largely independent from plans adopted by the City Planning Commission and Department of City Planning. The New York City zoning resolution has mostly an administrative-legal function of expressing the development rights attached to individual plots in the city independently of any time period. On the contrary of the Parisian and Sao Paulo systems, zoning statutes in New York City are not revised through the periodic adoptions of comprehensive plans but partially amended from time to time according to specific objectives. The Zoning Resolution of 1916 was only completely revised once with the adoption of a new resolution in 1961 which is still in effect today. A draft

for a new zoning resolution produced in 2000 by the City Planning Commission was quickly dismissed due to opposition by the building industry and non-profit organizations.

City-wide strategic plans such as the ‘PlaNYC 2030’ adopted by the New York City Department of City Planning in 2007 do not have legal jurisdiction over existing zoning maps. The private sector non-profit groups can also generate plans. They serve mostly as discussion, education or lobbying documents without legal standing. Changes to existent zoning regulations in New York City proceed mostly on a project basis through individual variances and overlays of special purpose districts to existing zoning maps granted by the City Planning Commission and Board of Standards and appeals.

The planning guidelines for the redevelopment of the Hudson Yards area were defined in a non-binding framework document published by the Department of City Planning which served as the basis for an urban design plan ‘Preferred Direction Plan’ commissioned in 2002 in partnership with the Economic Development Corporation. The recommendations of both documents did not have legal jurisdiction over the existent zoning districts. Instead they functioned as a statement of policy intentions which provided a basis for discussion in the public review processes. In order to change the land-uses permitted for the site, the Zoning Resolution had to be amended through a zoning map change (040499(A) ZMM) and a zoning text amendment (040500(A) ZRM). It created a new Special Hudson Yards District¹⁵ which overlaid the land uses permitted by the existent zoning districts and modified and eliminated various

¹⁵ Article IX, Chapter 3, 1961 Zoning Resolution, The City of New York.

special purpose districts previously adopted for the development area. The new district was first approved by City Council in 2005 and it has since already been amended several times.

The origins of the separation between local planning policies and zoning regulations can be traced back to the New York zoning resolution of 1916 which set the pattern for the rest of the country. Influenced by the Frankfurt experience with zoning, the New York code included land use controls, controls of building heights, setbacks and yards. But the zoning map tended to freeze and protect current uses instead of proposing beneficial changes. It did not relate to a comprehensive plan based on an underlying qualitative and quantitative study of future land use demand. Instead it acted as a substitute for such plan aimed at maintaining property values through separation of land-uses.

Both the 1921 SZEA and the 1928 SCPEA used the term ‘zoning map’ to describe a map of zoning districts developed as part of the proposed regulatory scheme. Although the SZEA required that zoning regulations be made ‘in accordance with a comprehensive plan’¹⁶ it did not define what a comprehensive plan was or required the updating of those plans with any frequency. Also, the indispensable elements of the plan were not listed nor were there sanctions imposed for failure to plan. This led to a confusion of the land-use element with the zoning plan. The language of the acts encouraged overall zoning unsupported by a comprehensive plan for the future development of the city, leading local governments to prepare zoning proposals without reference to long-range integrated policy issues. With its emphasis on legally enforceable uses of

¹⁶ Section VI, 1926 Standard Zoning Enabling Act

land, zoning lost its essential planning concern for future patterns of development. Because it was the zoning ordinance that was legally binding, virtually all states passed zoning statutes making it the primary means through which development rights were determined.

The appeal of zoning lied in its apparent rigidity and certainty, which served the interest of most constituents while abiding to constitutional requirements of equal treatment, due process and separation of powers. Indeed, the system was thought as virtually self-executing with little room for discretionary actions. When variances were requested, they were to be addressed by an independent commission and any appeal could be taken to a board of adjustment or the courts. Master plans were still commissioned, but they were typically superficial glossy productions mostly for promotional purposes and largely irrelevant in influencing land uses. Following the doctrine of separation of powers, it suggested that the planning commission, a semi-independent agency, receive and adopt the comprehensive plan and oversee the planning staff. By excluding elected officials from plan making it weakened the emerging role of the planner as an integral element of local governments.

The problem with such rigidity and certainty in development control was that however carefully drafted, zoning ordinances could not provide for the unforeseen and cover all circumstances that could arise. For example, if the city had been built out at the density envisioned in 1916, it could contain over 55 million people. The separation from planning meant that changes in permitted uses and densities could be made through the periodic city-wide revisions of zoning districts linked to comprehensive plans and public spending programs. Instead the search for increased flexible control over land uses was gradually introduced in the

New York Planning system as in others throughout the United States through concession of individual variances and partial amendments to the existent zoning text and maps involving the relaxation of existing regulations. The New York Zoning resolution of 1916 for example was subject to thousands of amendments (Kayden, 2000).

As the Zoning Resolution increasingly proved unable to address the individual intentions of public and private stakeholders it was replaced by a new Resolution in 1961. The new Zoning Resolution not only introduced new zoning rules but also included new mechanisms of granting exceptions to them. One of the most relevant was the introduction of special purpose districts. Mapped to specific geographic areas and justified on the basis that the area's unique circumstances required distinct zoning treatment; the special districts overlaid existing zoning and created an alternative regime of planning requirements. The first special purpose district was enacted in 1967 for the Theatre District in midtown Manhattan. Some of the most visible urban projects in New York City such as Lincoln Center, the redevelopment of the Times Square area and Battery Park City were implemented through the creation of a special purpose district. The current version the Zoning Resolution, in articles VIII through XIII has thirty-nine special purpose districts including the mentioned Special Hudson Yards district which overlaid existent zoning districts and motivated changes to parts of four special purpose districts previously adopted.

Another mechanism gradually used to change the basic zoning districts became known as 'incentive zoning'. Instead of requiring the provision of certain public amenities such as plazas, it encouraged developers to build them in exchange for a 'bonus' normally in the form of floor

area ratio (FAR) above the base limit allowed by existent regulations. Between 1961 and 1974 alone, developers provided 136 plazas and 57 arcades in exchange for millions of additional square feet in FAR bonuses.

The Special Hudson Yards District financing plan provided various incentive zoning programs in order to incentive the provision of affordable housing and help service the debt on bonds issued to finance density ameliorating infrastructure improvements. Developers of commercial or residential projects in the Special Hudson Yards District were given the opportunity to receive FAR bonuses above the 'base' FAR permitted 'as-of-right' in the zoning districts adopted in exchange for a monetary contribution to a district improvement fund and provision of affordable housing units and performing arts space.

One other planning mechanism gradually introduced through successive amendments to the New York City Zoning Resolution was the ability to transfer unused development rights¹⁷ 'as-of-right' between lots through lot mergers. This possibility was actually introduced prior to the 1961 Zoning Resolution in an amendment to section nine of the previous code. Because the 1916 code did not include an FAR control, the practical constraint on the height of skyscrapers was a rule that stated that if the a tower occupied no more than 25 percent of the lot's area, it would be permitted to exceed the height and setback limitations set by the existent zoning. Such rule meant that the possibility to build above the base limit was dependent on the builders' ability to control sufficient lot area around the construction site. An amendment introduced in 1959 to section nine

¹⁷ Also known as 'air rights'.

and amended a second time in 1977 allowed the acquisition of the air rights of contiguous lots through lot mergers in order to meet the twenty five percent requirements.

In 1968 a new amendment expanded the possibility of transferring unused development rights of buildings designated as landmarks by the newly created Landmarks Preservation Commissions to non-contiguous lots across a street or street intersection in order to preserve the character of the landmark site. This provision was further relaxed in 1969, partially in response to the development pressures on the Grand Central Terminal. Projects such as South Sea Seaport, Tudor City or the most recent redevelopment of the Meatpacking District in West Chelsea around the preservation of the High Line were implemented through the transfer of unused development rights from granting sites being preserved to surrounding receiving sites where maximum achievable FAR was extended. As part of the development incentives included in the Special Hudson Yards District, developers could purchase additional FAR through transfer of existing unused 'air rights' of land designated for public uses¹⁸ to selected receiving sites where it could be used as part of the FAR bonus necessary to achieve the new maximum achievable FAR defined in the new zoning controls approved for the special district.

The emphasis on individual development decisions to the detriment of city-wide planning policies in New York City was also motivated by the need to increase the opportunities for public participation in development control and constrain the possibility of planning powers being centralized as in Robert Moses era. An amendment to the City Charter in 1951 created

¹⁸ Particularly the Mid-Block Boulevard and Park in Phase II Area and the Eastern Rail Yards .

fifty-nine community boards with members nominated by city councilors and borough presidents. The objective was to provide a forum for discussing planning projects, vote on applications and sponsor community-developed plans¹⁹. The special Hudson Yards district falls within the jurisdiction of community board four. Its activities have included being part of the Hudson Yards Community Advisory Committee, sponsoring public and community forums and endorsement of alternative plans such as the one produced by the Hell's Kitchen Neighborhood Association.

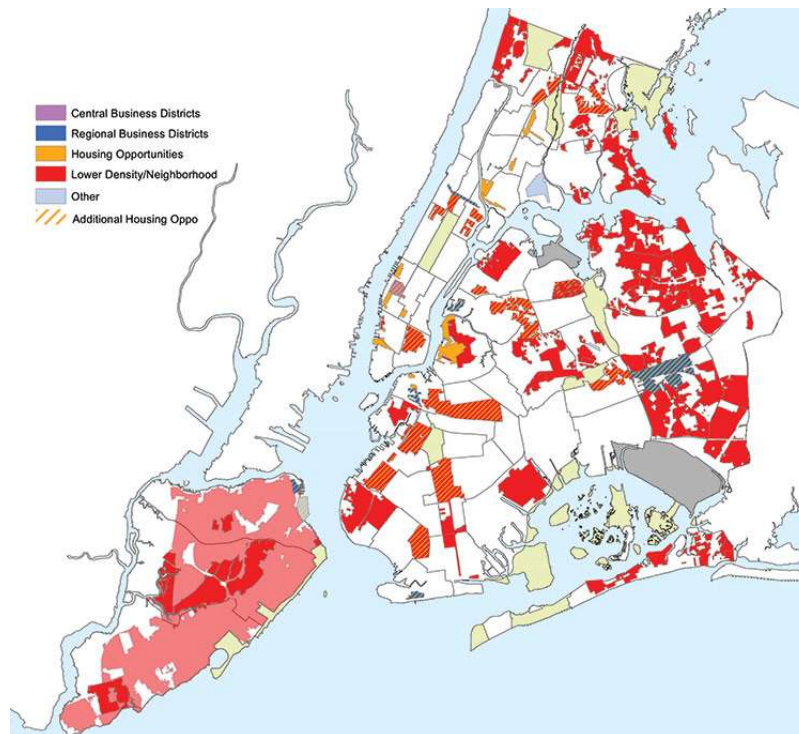
Further revisions to the City's Charter in 1976 and 1989 introduced the requirement that zoning amendments and special permits be subject to a public review process known as (ULURP)²⁰. It could be initiated by private individuals, groups (developers, civic groups), or public agencies (a community board, the city planning department, or other municipal unit). Since requests for zoning amendments required the filing of a standard land use review application, the opportunities for public participation in development decisions in New York increased substantially. Zoning text amendments are subject to a similar procedure set forth in Sections 200 and 201 of the Charter. In the redevelopment of Hudson Yards, ten separate ULURP applications had to be filled in order to amend the existent zoning districts. Since its adoption in 2005, several other amendments have been proposed, including the rezoning of the Eastern and Western portions John D. Camerer West Side Rail Yard Site

¹⁹ Known as 'Section 197a Plans'.

²⁰ Sections 197-c and 197-d of the City Charter.

The gradual use of mechanisms to change existent zoning regulations and increase the possibilities for public participation have transformed what was originally adopted by the SZEA and SECPA as an extremely rigid and certain device for controlling development into a highly flexible, complex and discretionary system. Over time, the local planning system of New York City moved from the strict ‘rule-application’ process intended by the 1916 Zoning Resolution into a ‘development-led’ planning system. Changes to the zoning map increasingly proceeded through individual variances and amendments considered on a project basis through public review processes instead of periodic adoptions of new zoning resolutions. Land-uses are regulated through provision of top-down blueprints to induce the desired results. Instead zoning changes are based on specific planning proposals formulated and reviewed beforehand by a multiplicity of parties which originate amendments to the Zoning Resolution in the parts concerning the targeted development area. The materialization of planning policy is expressed in the bargaining process over planning proposals between planning agencies, private investors and community groups, mediated by the judicial system. In last decade alone, New York’s City Council has adopted more than individual 100 rezoning proposals, representing one-fifth on the city’s area, around 8,400 blocks, as illustrated by figure 18, below.

Figure 22. Zoning initiatives adopted. 2002-2012. Source: NYC/ DCP, 2013.



The fragmentation of planning powers and emphasis placed on negotiation provides extensive opportunities for public participation in the development decisions. At the same time, it weakens the intermediary role that land use regulations could provide between individual development decisions and larger scale planning policies. The system has few mechanisms to evaluate and plan the cumulative implications of individual development decisions. In 2007, the Bloomberg administration did publish a strategic plan ‘PlanNYC’ drawing on previous planning studies commissioned to forecast the city’s future land use demands. The plan was required to be revised every four years. It represented the first effort to produce an integrated policy statement for the city since the John Lindsay mayoralty of the 1970’s. But the plan has no legal jurisdiction over public agencies and private landowners. The ability of ‘PlanNYC’ to impact

zoning changes is largely restricted to the role it has in influencing the public review process in new applications for zoning amendments.

Similarly, the role of agencies with regional planning capabilities is restricted by the absence of formal powers to implement its regional programs. Specific efforts at regional planning have a long history in the United States, dating back to the Regional Plan Associations of New York, Chicago and Los Angeles of the 1920's. However, despite federal support, regional planning has largely been fragmented and uncoordinated. Success stories, such as the Portland, Oregon growth boundary; and the Minneapolis-St Paul metropolitan area experience with tax base sharing are rare. The New York based Regional Plan Association had no legal jurisdiction over the planning guidelines produced in the studies commissioned by the City Planning Department. Its actual power is difficult to measure since much of its advocacy is conducted behind the scenes through private discussion with opinion leaders and decision-makers. Its formal influence over the planning process of the Special Hudson Yards District was largely limited to several non-binding reports and testimonies produced including a 2004 study arguing that a mixed-use development was more desirable than the initial proposal to build a sport facility on the site²¹.

The state level has historically delegated its planning powers to municipalities. But in authorizing cities to plan states do not completely relinquish their power. Particularly state level growth management planning has become more common in recent decades in what has been

²¹ Regional Plan Association (December 2004) 'Urban Development Alternatives for the Hudson Rail Yards'. Available online at < <http://www.rpa.org/2005/02/study-shows-mixed-use-development-outperforms-stadium-on-far-west-side.html>>

termed ‘the quiet revolution in land use regulation’ (Yaro, 2001)²². However, for the most part, these efforts have not shown uniformity in their intergovernmental structure or program objectives. With the exception of New Jersey’s brief experimentation with the ‘Big Map’, state plans in the United States have generally been focused on non-spatial regulatory intervention. In the state of New York, planning tools where they exist are weak and faced with the independence of counties and municipalities. Any possibility of regional-scale transport planning for example is hampered by different attitudes of 780 municipal governments and three state departments of transport.

State executive agencies with powers over economic development, transportation and housing among others also engage in planning activities. The most active are the Port Authority of New York and New Jersey and the Empire State Corporation. In the redevelopment of the Hudson Yards area, the Metropolitan Transportation Authority (MTA) has had a significant influence due to the presence of transport infrastructure in the targeted area and ownership of the D. Caemmerer West Side Rail Yard, a 10 hectare site within the area occupied by a rail storage yards operated by the ‘Long island Rail Road Company’. As part of the redevelopment plan, the MTA proposed the construction and operation of an extension of the No.7 train agreed October 2006. Together with the City Planning Commission, it also requested and chose a proposal to

²² Representative earlier examples include the new state growth management systems in Oregon, Vermont and Florida; regional land use regulatory commissions for several large natural resource areas, adoption of local growth management systems by hundreds of municipalities in large metropolitan areas from the San Francisco Bay area to New York and the National Environmental Policy Act adopted by the federal government.

develop the air space above the rail yard site following the newly approved zoning amendments in September of 2006.

Federal intervention has historically been confined to the indirect impact produced through an uncoordinated patchwork of national institutions and laws including environmental regulation, management of nationally owned land, transportation and the provision of financial assistance and housing subsidies. The influence of national initiatives such as the recent ‘America 2050’ effort by the Regional Plan Association to promote a balanced growth strategy for the United States based on the concept of mega-regions exert a ‘behind-the-scenes’ influence.

Oversight by the state and federal governments over city government is achieved indirectly through federal and state law. For example, in addition to negotiated exchanges, developers in New York City can tap in to a set of regularized federal and state programs in which they can be rewarded in exchange for undertaking certain actions viewed as providing community benefits. The Federal Low Income Housing Tax Credit Program (LIHTC) is frequently used by one the three sub-allocating agencies²³ to allocate a portion of the Tax credits available to the State of New York. Each agency has its own Qualified Allocation Plan which also allocates 4% ‘as-of-right’ tax credits under section 42 of the Internal Revenue Code generated through the use of proceeds of federally tax exempt private activity bonds issued by other State agencies such as Industrial Development Agencies and Public Housing Authorities.

²³ New York State Housing Finance Agency Financing (NSSHFA), New York City Department of Housing Preservation and Development (HPD) and the New York City Housing Development Corporation (HDC)

Other significant incentive programs are also provided by the New York City Industrial Development Agency (IDA). Among others, it provides tax benefits to developers working outside of Manhattan under the Industrial and Commercial Incentives Program (ICIP) as well as access to tax exempt bond financing through its various bond programs. In order to incentivize the redevelopment of the Special Hudson Yards District, it proposed amendments to its ‘Uniform Tax Exemption Policy’(UTEP)²⁴ in order to offer financial incentives, particularly real estate related tax discounts specific to commercial development projects in the project area. The revenues generated by the PILOT programs were then used together with zoning bonus payments, proceeds from sale of transferable development rights and other property taxes as collateral for bond issues by the new development corporations created in 2005 in order to implement the development program and finance property acquisition and infrastructure work.

4.4 THE PLANNING PROCESS OF THE SPECIAL HUDSON YARDS DISTRICT

The framework for development of the Hudson Yards area²⁵ was first defined in a policy document ‘Far West Midtown – A Framework for Development’ published in the Winter of 2001 by the New York City Department of City Planning. Since the adoption of the 1916 Zoning Resolution the area had been subject to few zoning amendments. Historically it had a predominantly industrial use as warehouse, supply and distribution centre for moving goods to

²⁴ Appendix E of the ‘Second Amended and Restated Uniform Tax Exemption Policy of the New York City Industrial Development Agency’ as approved on December 12, 2006.

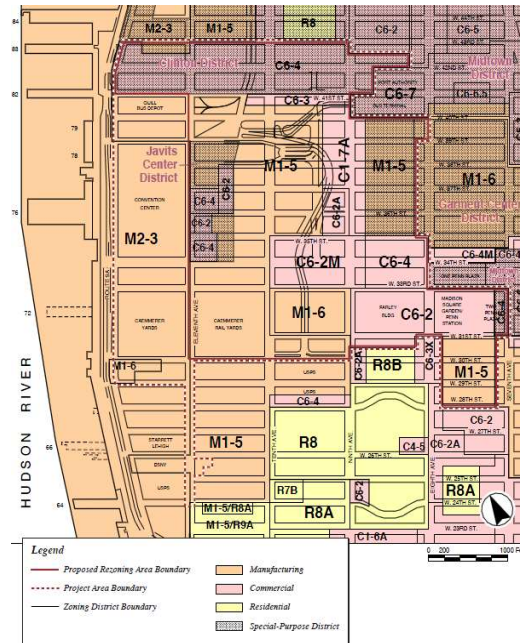
²⁵ Generally defined as the area located between West 30th Street to the South, Seventh and Eighth avenues to the East, West 43rd Street to the North, and Twelfth Avenue on the West Side of mid town Manhattan in the City of New York.

the rest of the city. Its evolution in the twentieth century was largely defined by a significant presence of transport infrastructure and large public projects including: (1) the passenger tunnel built in the early years of the 20th century by the Pennsylvania Railroad to a new Pennsylvania Station located in the Farley Building, (2) the West side Improvement Project completed in 1939, which resulted in construction of the elevated Miller highway and the ‘High Line’ elevated rail yards (later moved from its West 35th Street alignment to its current East-West alignment between West 34th and West 33rd Streets); (3) the construction of the Lincoln Tunnel and the Port Authority Bus Terminal; and (4) the construction of the Jacob K. Javits Convention Centre in 1980 and the Long Island Rail Road (LIRR) John D. Caemmerer West Side Yard used to as a storage and maintenance facility for its operations at Pennsylvania Station (figure 23, below).

Figure 23. Aerial View - John D. Caemmerer Railyards, New York City. Source: NYC/ DCP, 2000.



Figure 24. Existing Zoning. Special Hudson Yards District. Source: NYC/ DCP, 2005.



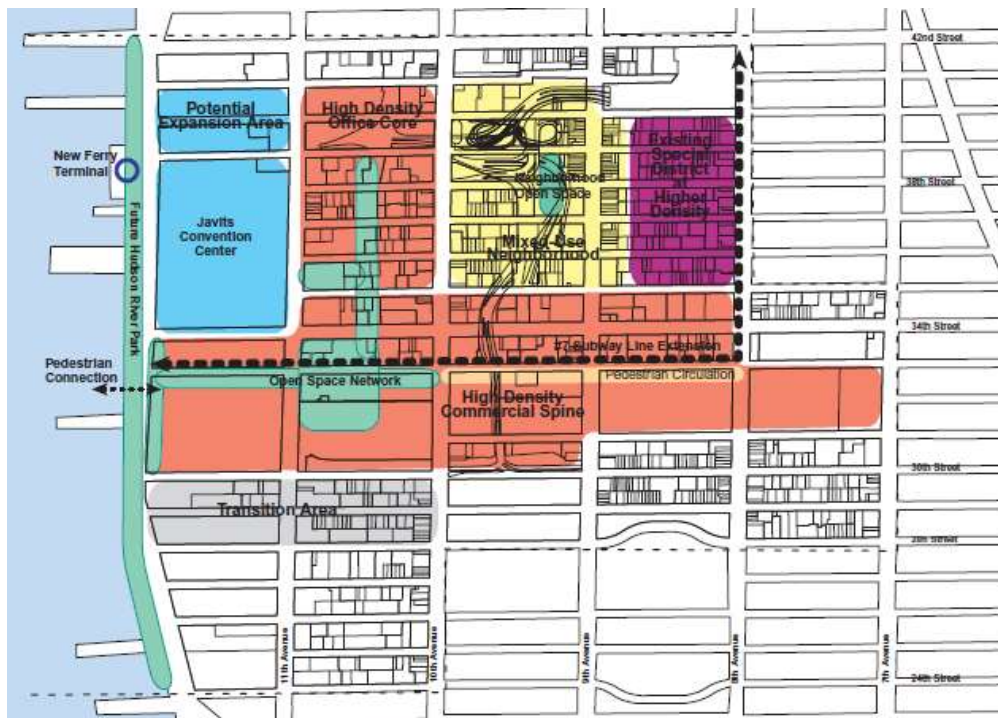
The area was mostly zoned to match its historical industrial and manufacturing uses (figure 24). In addition it also included whole or parts of four special zoning districts including (1) the Special Clinton District, created in 1974 to preserve the low-scale, working class character of the neighborhood; (2) the Special Midtown District, enacted in 1982 to preserve the historic uses and character of areas such Times Square while promoting growth along Sixth and Eighth Avenues; (3) the Special Garment Centre District, created in 1987 to preserve garment related manufacturing uses in the middle of blocks; and (4) the Special Jacob Javits Convention Centre District established in 1990 to promote access and compatible development around the Convention Centre. The zoning amendments changed the existent M1-5 districts to C6-2 and C6-4 which permitted higher densities, a wider range of uses and more design flexibility. The failure

of the new zoning district to trigger development was one of the main reasons presented for the need to elaborate a new development framework for the area.

There were also in place a number of plans adopted by public and private agencies with jurisdiction over permitted uses, including: (1) the Chelsea 197a Plan developed by Community Board 4 and which resulted in the rezoning of the West Chelsea area in 1999; (2) the Local Waterfront Revitalization Program, promoted by the New York City State in order to improve public access to the waterfront, which provided the basis for a study by the Department of City Planning which resulted in the adoption of a new waterfront rezoning; (3) the Fashion Centre Business Improvement District, a not-for-profit corporation established in 1993 to promote New York City's apparel industry and improve the public spaces and economic vitality of the Garment Centre District; and (5) 34th Street Partnership, a coalition of tenants, property owners and City officials formed to revitalize a 31-block district in the heart of midtown.

The initial framework published in 2001 (figure 25) contained already some of the conceptual elements and proposed implementation tools that would later form part of the Special Hudson Yards District approved in 2005. Overall it proposed changing the seven million square feet of new development permitted by the existent zoning districts to up to thirty to forty million square feet of new offices, hotels, housing and an expanded exhibition and sports facilities in six distinct sub areas. It also proposed the extension of the Number 7 subway line and a network of public spaces, including a park on top of the John D. Caemmerer West Side Yard connecting it to the new Hudson River Park.

Figure 25. Conceptual Development Framework Map. Far West Midtown. Source: NYC/ DCP, 2001.



The proposal formed one of the cornerstones of a wider planning effort to revitalize the West side of Manhattan. Other related projects in the area included: (1) a new \$7 billion Trans-Hudson Express rail tunnel under the Hudson river connecting to Pennsylvania Train Station; (2) the rezoning of the West Chelsea area and creation of a new public park on top of the ‘High Line’ elevated rail yard; (3) implementation of a 5 mile riverfront park along the west side waterfront linking Battery Park City to Riverside Park; and (4) the conversion of the current Farley Post Office Building in an intermodal transit facility, Moynihan Station.

In order to implement the proposed framework, the policy statement recommended the adoption of a new special purpose district which should overlay existing zoning districts. In conjunction with the zoning changes, it also described two potential financing strategies. It

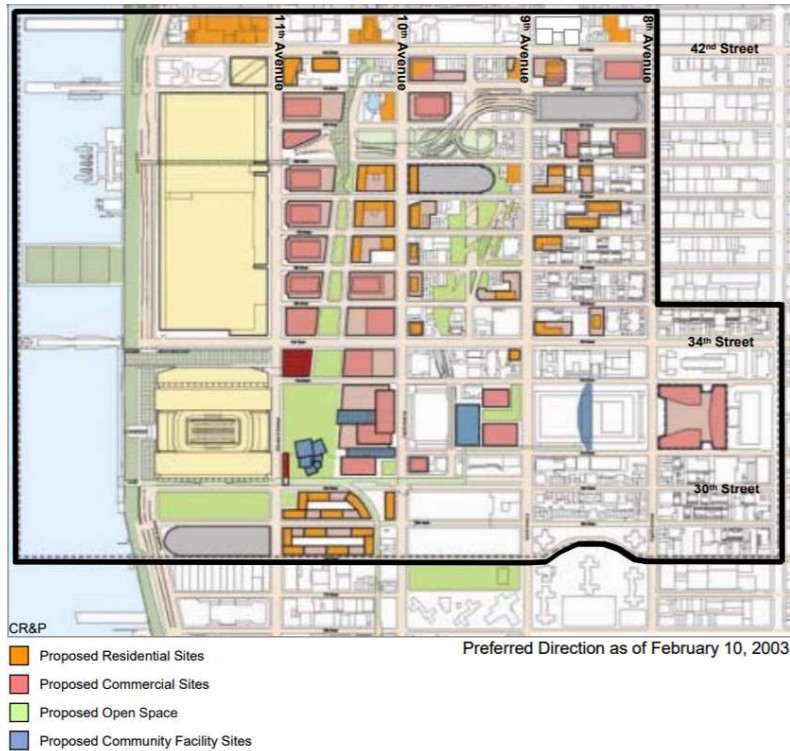
recommended the city to propose state legislation allowing the use of a portion of the incremental property taxes resulting from new development in the area to reimburse the debt service on the bonds issued to finance capital improvements serving the area. It also recommended an incentive zoning strategy where the use of additional development rights above what was permitted by the existent zoning districts should only be allowed in exchange for a monetary contribution to a district improvement fund. The revenues regenerated by the program should then be used to reimburse the plan's capital expenditures, support general obligation bonds or fund capital expenditures directly.

The election in 2002 of Michael Bloomberg and its deputy mayor for economic development Daniel L. Doctoroff adopted the framework as a cornerstone of its ambitious plans for economic development in the city. Up to 2009, the new administration together with the City Planning Commission oversaw more than one hundred amendments to the Zoning Resolution, representing around 8,400 blocks, one-fifth of the city's area (Buetener & Rivera, 2009). Some of the most relevant projects proposed included new baseball stadiums in the Bronx and Queens, high-rise housing on the waterfront of Brooklyn and Queens boroughs; and campus expansions for the major high educational institutions in the city.

Most of the proposals were justified with studies commissioned in 2002 to forecast population growth in a twenty-year horizon and propose strategies to accommodate the additional space needs. The forecasts included a study elaborated by Economics Research Associates and Cushman & Wakefield 'Economic Overview and Demand Study' with the

objective of preparing market forecasts and assess the potential of using new development to finance the infrastructure investments proposed for the Hudson Yards area.

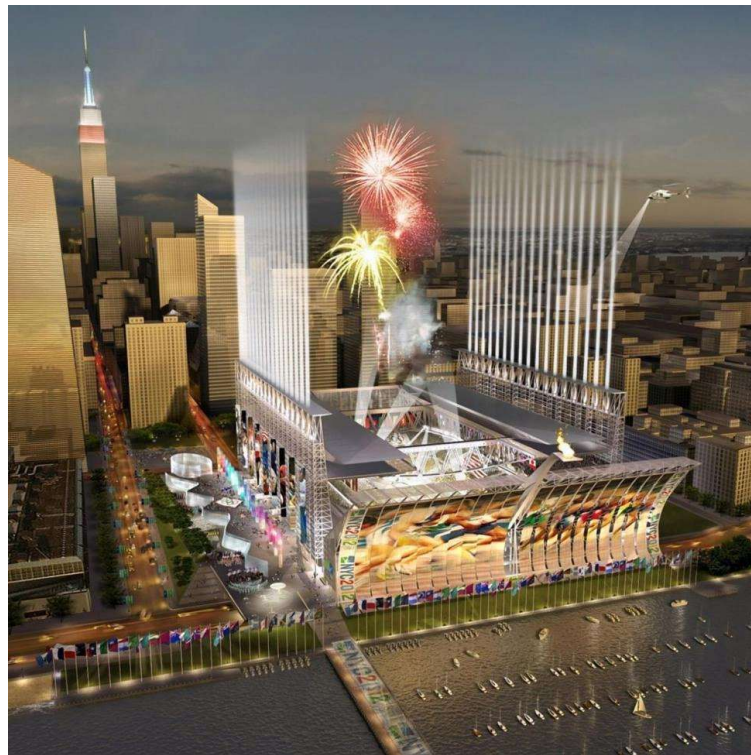
Figure 26. Hudson Yards Master Plan - Preferred Direction. Source: NYC/ DCP, 2003



The competition for hosting the 2012 Olympic Games provided the opportunity to revive a longstanding plan to expand the Jacob J. Javits Convention Centre and build a baseball stadium on top of the John D. Caemmerer West Side Yard which would later become the new home of the New York Jets football team. Indeed, both projects together with a new Olympic Village on the Brooklyn waterfront were crucial components of the New York City bid submitted to the Olympic Committee in 2004. Both projects were first incorporated in the urban design plan ‘Hudson Yards Master Plan – Preferred Direction’ commissioned in June 2002 by the New York City Department of City Planning in partnership with the New York City Economic

Development Corporation to a multi-disciplinary team led by Cooper, Robertson & Partners. The plan (figure 16) detailed the conceptual framework defined in 2001 including a detailed definition of location and property boundaries of sites with residential and commercial uses as well community facilities and as definition of proposed public spaces. The most relevant changes were the inclusion of the 75,000-seat stadium and almost doubling in size of the Convention Centre.

Figure 27. Proposal for the NYC 2012 Olympics stadium at Hudson Yards. Source: Kohn Pedersen Fox, 2001.



The New York based Regional Plan Association had no legal jurisdiction over the planning guidelines produced in the studies commissioned by the City Planning Department. Its actual power is difficult to measure since much of its advocacy is conducted behind the scenes through private discussion with opinion leaders and decision-makers. Its formal influence over the

planning process of the Special Hudson Yards District was largely limited to several non-binding reports and testimonies produced including a 2004 study arguing that a mixed-use development was more desirable than the initial proposal to build a sport facility on the site²⁶ (figure 28, below).

Figure 28. Urban Development Alternatives for Hudson Rail Yards. Source: Regional Plan Association, 2003.



²⁶ Regional Plan Association (December 2004) 'Urban Development Alternatives for the Hudson Rail Yards'. Available online at < <http://www.rpa.org/2005/02/study-shows-mixed-use-development-outperforms-stadium-on-far-west-side.html>>

In order to change the uses permitted by the existent zoning, the NYC Planning Commission and the MTA filed a joint environmental assessment statement notifying the intent to prepare a Draft Generic Environmental Impact Statement. It led to the preparation of Draft Scoping document which was subject to an initial public hearing in April, 2003. Based on the public comments provided, a Final Scoping Document was released in May and Draft of the First Generic Environmental Impact Statement (FGEIS) in June. With it, the agencies submitted to environmental review the proposed action to amend the New York City Zoning Resolution in order to permit close to 28 million square feet of new commercial and residential uses²⁷, the construction of a new midblock park and boulevard system, construction and operation of the No. 7 Subway lines, and the mentioned expansion of the Convention Centre and new Multi-use facility. The document also considered and rejected eighteen alternatives, including some proposed by community groups.

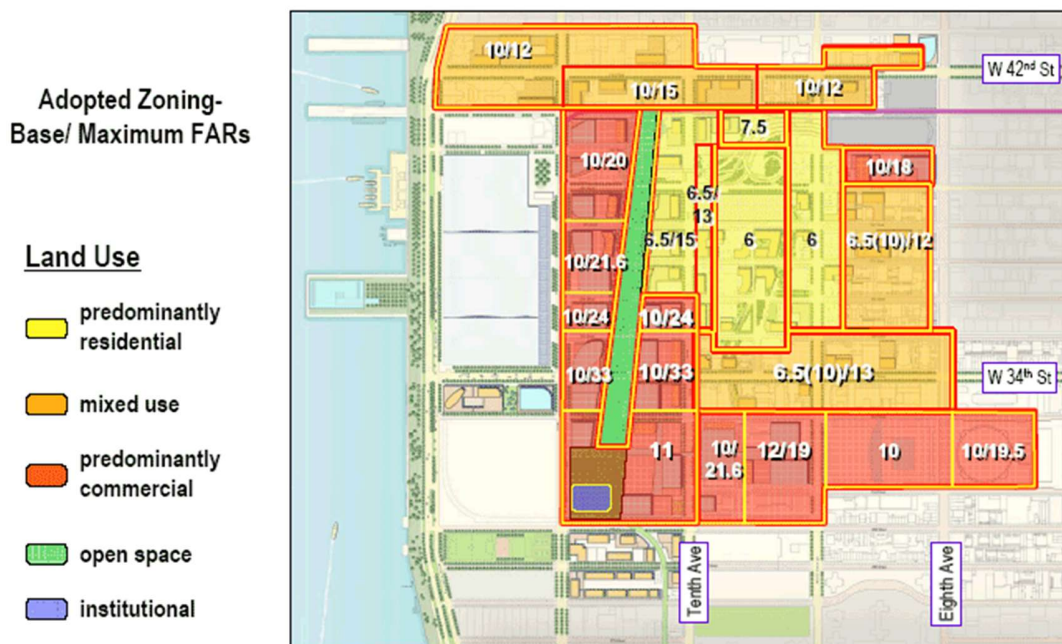
In order to implement the project, the FGEIS proposed the creation of a Special Zoning Yards District through amendments to Zoning Text and Map. It also proposed to change zoning controls and remapping existing special districts in order to avoid overlapping and elimination of the Special Jacob K. Javits Convention Centre District. In general, the zoning map and text amendments proposed would convert districts permitting manufacturing uses into different user groups of commercial (C6-6, C6-4, C6-4M, C6-3, C6-3X, C2-8) and residential (R8A) zoning

²⁷ Including 24 million square feet of new office space; 13,500 new housing units, including almost 4,000 affordable units; 1 million square feet of new retail space; and 2 million square feet of new hotels, including a new headquarters hotel for the Javits Convention Centre

districts in order to form a ‘bowl’ within the rezoning area. Medium-density contextual districts (C1-7A and R8A) would be located along Ninth Avenue, surrounded by higher density districts (C2-8 and C6-4) along Tenth Avenue, West 34th Street, West 42nd Street, and within the Special Garment Center District. The highest densities would be located closest to the proposed subway stations along Eleventh Avenue and the West 33rd Street.

The zoning amendments proposed would increase substantially the base FAR permitted ‘as-of-right’ by the prior zoning. Particularly in sub districts A, B, C and E, the existent mix of manufacturing (M1-5 and M1-6) and commercial districts (C6-2, C6-2M and C6-3) would be rezoned to the commercial district C6-4. Typically the C6-4 zoning district allows a base ‘as-of-right’ 10 FAR, which can be increased up to a maximum of 12 FAR with certain bonuses. However the maximum achievable FAR within the Special Hudson Yards District would be significantly increased to as high as 33 in order to incentive the provision of affordable housing and finance the provision of infrastructure improvements and open spaces proposed.

Figure 29. Hudson Yards - Adopted Zoning-Base/ Maximum FARs. Source: NYC/ DCP, 2005.



In addition, several other applications for zoning amendments were necessary for several related actions including site selection and acquisition, as well as an amendment to the city map (C040508 MMM) in order to establish the two major public open spaces. The Midblock Park and Boulevard System already defined the first framework for development, which would add 4.3 acres of open space to the area. In addition, it proposed a full-block park with approximately 3.6 acres, located south of the park originally proposed for the D. Caemmerer West Side Rail Yard in order to accommodate the proposed multi-use sports facility. It was recommended that the design of both facilities integrate a pedestrian promenade allowing pedestrian access to the renovated High Line public park.

The FGEIS included an analysis of community facilities and services²⁸ for the project area following the recommendation of the New York City Environmental Quality review for projects that add more than one hundred residential units. The analysis was based on a conservative assumption that by 2025 the project would have added 9,899 additional dwelling units and about twenty seven million square feet of commercial, retail and space. It concluded that the plan would result in significant adverse impacts to public elementary and intermediate schools as well as local publicly funded day care centres. It recommended that both adverse impacts required ‘mitigation’. Suggestions included adjusting school catchment areas and building additional capacity at existing schools as well as a new day care facility or adding capacity to existing facilities in or near the Project area. Besides the proposed open public spaces, no other publicly funded community facilities were included in the proposal. Instead the zoning districts proposed permitted the inclusion of community facility uses.

It was argued that the development proposed would generate substantial economic benefits that would accrue to New York City and New York State economies from initial public and private investments in the construction period as well as operating income from an estimated holding period of twenty years. Upon completion, the project would cumulatively generate 225,941 direct and indirect jobs in New York City, including 111,148 direct new jobs, and the remaining created by the demand for goods and services by new direct employment and

²⁸ Chapter Six, First Generic Environmental Review Statement,

economic activity. It would represent \$12.7 billion of total direct and indirect wages and salaries in New York City, plus \$13.9 billion in the broader New York State economy.

It was also projected that the construction period would generate \$1.47 billion of new tax revenues for New York City and New York State. The largest portion would come from personal income taxes, and corporate, business, and related taxes on direct and induced economic activity. New York State would receive about \$939.1 million of the tax revenues generated by construction with the rest going to New York City. In addition, at full build out assumed in 2025 the project development would generate annual tax revenues from operations of approximately \$689.4 million for New York City, and an additional \$939.2 million for New York State²⁹.

The analysis forecast estimated that the implementation of the plan would involve capital expenditures of approximately \$23.5 billion through a combination of public and private investment. The required investments included (in 2003 dollars) the capital expenditure of about \$6.9 billion by 2010 and another nearly \$16.6 billion in mostly private investment between 2010 and the completion of the project (assumed to be 2025).

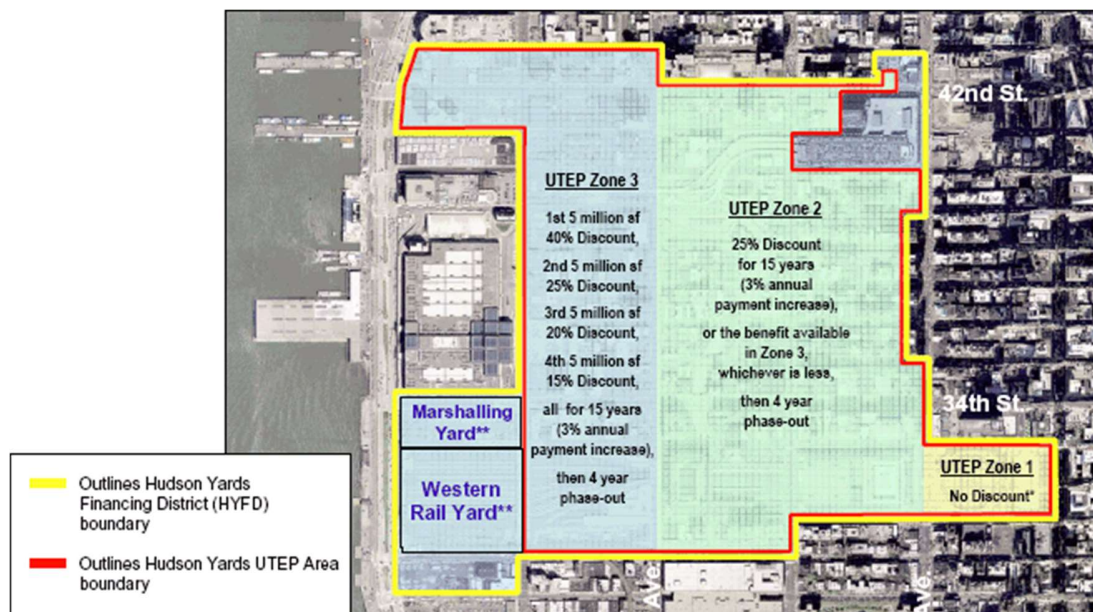
The plan included a detailed financing strategy to implement the development program and finance property acquisition and infrastructure work, including the No.7 Subway extension and proposed public open spaces. Its largest component included a tax increment financing strategy based on the 'Uniform Tax Exemption Policy' (UTEP) of the New York Industrial Development

²⁹ The estimate included revenues from property taxes, sales and use taxes, hotel occupancy taxes, personal income taxes, corporation and other business taxes, utility taxes and commercial rent taxes.

Agency (NYIDA). It involved capturing part of the increases in revenues from new commercial and residential development in the area to service the debt on bonds to be issued by a special purpose local development corporation.

In order to incentivize development, the HYDC proposed amendments³⁰ to the UTEP that created a specific program that offered financial assistance to developers of commercial projects within the area through incentive structure designed to spur development while garnering the maximum real property related tax revenues for the city. The program divided the area in three different sub-districts with different investment priorities where commercial construction projects would be exempt from paying real estate related taxes (figure 30, below).

Figure 30. Financial Incentive Maps. Hudson Yards Financing District. Source. Hudson Yards Development Corporation, 2005.



³⁰ Appendix E of the 'Second Amended and Restated Uniform Tax Exemption Policy of the New York City Industrial Development Agency' as approved on December 12, 2006.

Each district was assigned a different escalating schedule of the payment the recipient of financial assistance would have to make in lieu of real property, sales and mortgage recording taxes (PILOT program³¹). The programs provided a substantial discount for 19 years from property taxes to developers of commercial properties in the new Special Purpose District. For example, in Zone 2, in years 1-4 after the construction period, the PILOT amount would be equivalent to 75% of commercial property taxes plus other improvement taxes. In the following ten years, the PILOT amount would increase by 3% of the amount calculated for the previous fiscal period. It was estimated that the cost of the PILOT incentives, on a net present value basis, would be approximately \$650.5 million over 30 years.³²

It was estimated that the revenues generated by the IDA PILOT programs incentives would constitute 55% of the revenues assigned to a new Hudson Yards Infrastructure Corporation (HYIC) created under the ‘Not-for-profit’ New York State law³³. The new corporation would use the assigned revenues to make debt service payments on commercial paper (in the first years) and long-term bonds (interest only for 40 years) issued to finance certain property acquisition

³¹ Defined in Section, Appendix E as ‘Payment in Lieu of Real Property Tax ‘PILOT’’, Payments in Lieu of Sales Tax ‘PILOST’ and Payments in Lieu of Mortgage Recording Tax ‘PILOMRT’.

³² ‘A developer planning to build within the Hudson Yards district would have the option of entering a PILOT agreement with the New York City Industrial Development Agency (“IDA”). Under such an agreement, IDA would buy the land to be developed from the developer for a token amount, which would take the land off the property tax rolls, and the developer would then make PILOT payments to IDA for the term of the agreement. Generally, the developer would enter the PILOT agreement when making other financing arrangements. At the end of the term of the Agreement, the IDA would return the land to the developer for a token amount and the land would return to the City’s property tax rolls. The IDA would establish a uniform PILOT payment schedule for Hudson Yards.’(NYCA, 2007)

³³ It also recommended the creation of a ‘Hudson Yards Development Corporation’ (HYDC) to manage the development process.

and infrastructure work mostly related to the extension of the No. 7 subway line. It was estimated that HYIC would need to issue approximately \$3.5 billion in commercial paper and long-term bonds.

The financing strategy included several other financing programs in order to complement the ability of HYIC to service the interest payments on its debt with other sources of revenue and further incentive private investment. It estimated that another 40% of its revenue would come from direct property tax equivalency payments. The remaining 5% would be generated through various incentive zoning programs where developers would be given the opportunity to receive an FAR bonus in exchange for monetary contributions and provision of public spaces, affordable housing and performance arts space. If estimated revenues would prove to be insufficient, the gap would be covered by the city's Transitional Finance Authority through city wide income tax revenues.

In order to implement the incentive zoning programs, the regulations of the zoning districts proposed for the Special Hudson Yards district were changed in order to increase the maximum achievable FAR³⁴. For example, the C6-4 zoning district typically allowed for a FAR bonus of 2 above an 'as-of-right' base FAR of 10. Inside the Special Hudson Yards District, the bonus component was significantly increased up a permitted maximum as high as 23 in subareas A2 and A3.

³⁴ 'Special Floor Area Regulations', Section 93-30, Article IX, Chapter 3, New York City Zoning Resolution.

The first component of the FAR bonus permitted by the incentive zoning program was the ‘District Improvement Fund Bonus’³⁵. Developers of commercial projects in the Special Hudson Yards District (except Sub-district F) and in parts of the revised Special Garment Center District could increase the FAR up to a specified maximum in exchange for a monetary contribution to a District Improvement Fund. The contribution amount was initially set at \$100 per square foot, to be adjusted annually based on the percentage change of the Consumer Price Index (CPI). In addition, in a segment of 42nd Street, a Theater Bonus (TB) Program was also established where up to 3 additional FAR could be used in exchange for provision of performing arts space (3 square foot of bonus space in exchange for one square foot of performing arts space).

The second and most significant component of the FAR bonus could be obtained in designated ‘receiving sites’ through transfer of unused FAR from designated ‘granting sites’ where development allowed would be lower than the base FAR permitted³⁶. Particularly, the zoning amendments proposed would designate the ‘Hudson Boulevard and Park’ as well as the ‘Eastern Rail Yard’ as granting sites, meaning that the unused FAR could be transferred in exchange to a monetary contribution to the Hudson Yards District Improvement Fund. In addition the Hudson Yards proposal included a customized modification³⁷ to the Inclusionary Housing Program adopted in 1987. The original program, available in high-density R10 and

³⁵ ‘District Improvement Fund Bonus’, Section 93-31, Article IX, Chapter 3, New York City Zoning Resolution.

³⁶ Section 93-32 to 34, Article IX, Chapter 3, New York City Zoning Resolution.

³⁷ ‘Modification of Inclusionary Housing Program’, Section 93-23, Article IX, Chapter 3, New York City Zoning Resolution.

equivalent commercial districts allowed an increase in maximum FAR in exchange for provision of affordable housing on or off site.

The program made the use of public subsidies available optional. For publicly subsidized affordable housing, a FAR bonus of up to twenty percent could be earned at a rate of 1.25 square feet of bonus FAR per square foot of affordable housing. For privately financed affordable units, a higher bonus could be earned, up to 3.5 for new construction or substantial rehabilitation. In order to earn the bonus, lower-income units had to be affordable to households at or below eighty percent of the Area Median Income, and had to remain affordable for the life of the development receiving the bonus.

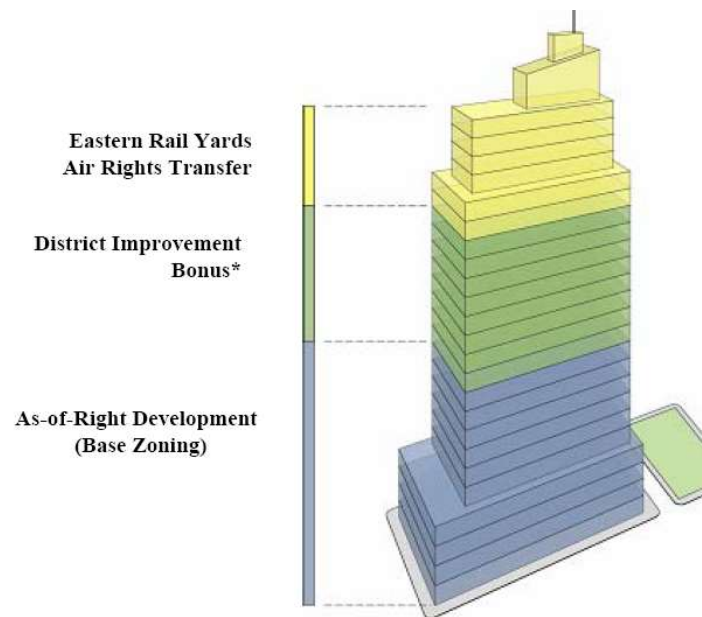
In the first significant expansion of the program since its inception, the Hudson Yards plan proposed modifications to the standard program in order to create two new inclusionary housing programs in designated sites within the new Special Hudson Yards District and Special Clinton District. In a departure from the original 'R10 program', the maximum 5.5 additional FAR bonuses available through the Hudson Yards/ Garment Center and Clinton Inclusionary Housing Programs could only be obtained if used in conjunction with DIB and TB programs. The rule tied the use of the inclusionary housing program to the other bonus programs, increasing the probability that affordable housing options would be provided.

In another innovation, it separated in different tiers the total additional 5.5 FAR bonus available through the inclusionary housing program. In the first tier, the FAR bonus used up to maximum of 2.5 would have to correspond to 5/11 of the DIB bonus value used. In the second tier, the remaining the FAR bonus up to a maximum of 3, would have to correspond to 6/11 of

the DIB bonus value used. In addition, in each tier, the inclusionary housing FAR bonus used should correspond to 10-15% of the entire building, depending of affordability. This requirement provided a strong disincentive against partial use of the bonus.

Finally, and most significantly, the program eliminated the ‘double-dipping’ prohibition of the ‘R-10’ program. Previously, affordable housing units provided through inclusionary housing bonus programs could not apply for subsidies through federal, state or city housing programs and could not be counted towards the 20 percent affordability set-aside required under the city’s 421-a tax exemption program. Known as the ‘80/20’ program, each of the city’s three sub-allocating agency of tax credits offers tax-exempt financing to multifamily rental developments in which 20% of the units are set aside for households with incomes at 50% of less of the local Area Median Income (AMI). During the annual funding rounds, developers apply competitively for allocation of tax credits. Once credits are allocated, developers typically sell them to private investors who supply private equity to cover a portion of the development costs. The investors often participate through pooled equity funds raised by syndicators such as the New York Equity Fund and the Enterprise Social Investment Corporation. Affordable units provided through the Hudson Yards/ Garment Center Inclusionary Housing Program could be used to qualify mix income projects to an ‘80/20’ program as well as a ‘420-c’ tax exemption, amongst other benefits.

Figure 31. Illustration of Incentive Zoning Programs available in the Special Hudson Yards District. Source. NYCDCP, 2005.



The expansion of the Jacob J. Javits Convention Centre and the New York Sports and Convention Centre multi-use facility on top of the John D. Caemmerer West Side Yard would be financed separately. The two projects were first presented to the public in March 2004 as part of the Olympic bid at an estimated cost of \$2.8 billion. At the time, the proposal still needed approval from the State legislature and the City Council for some of its elements. In order to finance the projects, the state and the city would put up \$1.3 billion, while the New York Jets sports team would invest \$800 million in the new stadium. The city's \$350 million share would come from reserve funds from the Battery Park City Authority. The remaining would be financed by private investors particularly through a new convention hotel and ballroom proposed on 42th street.

The release of the environmental impact study triggered the beginning of a seven-month public review process for each of the ten ULURP's necessary to adopt the zoning text and map

amendments proposed. After being certified by DCP, each application filed had to be reviewed by the respective Community Boards (60 days), Borough Board (30 days), City Planning Commission (60 days) and City Council Review (50 days) before being voted on by City Council.

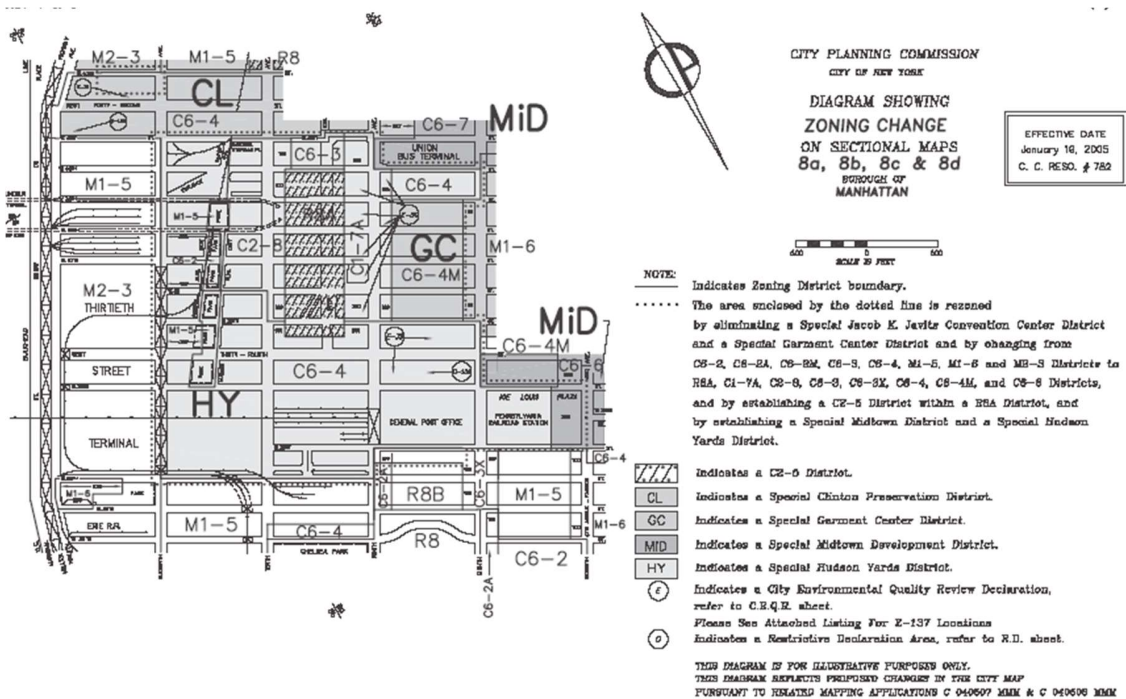
The multi-use stadium facility became the most controversial component of the proposal in spite of the significant overall increase in new development proposed and public financial assistance provided to developers of commercial projects in the Hudson Yards. The new stadium drew intense criticism from various community groups, city unions and public agencies. In two position papers, The Regional Plan Association argued that a mixed-use development on the stadium site would better serve the overall goals of revitalizing the Hudson Yards area. Specifically, the it contended that an alternative development would better connect the district to the waterfront, spur alternative development throughout the district and provide an increased economic return to New York City, New York State MTA (RPA, 2004).

Most notably, the stadium was opposed by Cablevision Systems Corporation, the owner of the Madison Square Garden, who feared the competition that the new facility would provide as an alternative venue for concerts and other events. It funded an aggressive campaign against the stadium including sponsoring an alternative development plan, offering to buy the site and placing a bid at the auction organized by the MTA to sell the development rights of the thirteen-acre site in April 2005.

The plan-wide critics focused on fiscal and procedural issues including the decision to pledge city income tax revenue through the Transitional Finance Authority as collateral for the bonds to

be issued by HIC as well as the administration’s decision to bypass the City’s Council’s review process for the plan. The intense public dispute over the multi-use component of the plan and the link to the Olympic Games bid permitted the ten uniform land use public review processes necessary to approve each zoning text and map amendments proposed to proceed in a record time without significant obstacles. All amendments were voted to be adopted by City Council in January of 2005.

Figure 32. Zoning map change (040499(A) ZMM) creating the Special Hudson Yards District. Source: NYCDPC, 2005.



As mentioned, two components of the stadium proposal required state approval. Specifically, \$300 million in the state funding and the MTA’s transfer of land had to be authorized unanimously by the state’s Public Authorities Control Board representing the New York state governor, assembly and senate. In an intensely political moment, in June 2005 two of the three representatives abstained to vote, denying the authorization necessary and consequently

defeating the stadium plan. A year later the same state entity would unanimously authorize \$350 million of state funding required for the planned expansion of the Jacob J. Javits Convention Center. A month later the stadium vote, the New York City Olympic bid was eliminated from the final round where the London bid would eventually beat Paris and be awarded the right to host the 2012 Olympic Games.

A year after seeing its stadium back plan defeated, the Bloomberg Administration submitted a proposal to the MTA to buy the development rights of the 26 acre John D. Caemmerer West Side Yard for \$500 million. In a two step transaction, the city would buy the western portion of the site for \$300 million, \$50 million more than what the New York Jets baseball team had offered to pay in order to build the stadium. The city would then devise a new zoning plan for the 13 acre property and submit it to the land use review process. The city also offered to pay \$200 million for the 3.4 million square feet of unused development rights in the eastern portion of the site.

Given the difficult fiscal position of the MTA, the city's initial proposal was disregarded in favor a new deal approved months later designed to ensure that the agency would get the maximum economic benefit from developing its site. Initially, the Western portion of the site had been exempted from ULURP by the city because of the Olympic Bid. Under the new deal, the site would be brought back to ULURP jurisdiction and an amendment to the Zoning Resolution would be requested changing the existent M2-3 zoning district to a high-rise mixed use zoning district. The new development rights would then be sold or leased in a bidding process, with all proceeds going to MTA.

In exchange MTA agreed to include the site within Zone 3 of the Hudson Yards UTEP area, and funnel all proceeds from established PILOT programs to the HYIC as an additional revenue source for debt service on its outstanding debt³⁸. In addition, the HYIC agreed to pay \$200 million for the acquisition of a fifty percent interest in all of the development rights attributable to the eastern portion of the MTA rail yard site as well as the right to negotiate the sale of one hundred percent of the interest. The site had already been rezoned in January 2005 as part of the Special Hudson Yards District process in order to accommodate approximately 6.6 million gross square feet of mixed-use development, including office, residential, hotel, retail, cultural and parking facilities; and public open space. The zoning controls for the site require approximately 7 acres of public open space, including a public plaza and a new cultural facility.

The agreement precluded a coordinated planning and development effort with respect to the entire site. Pursuant to that agreement, HYDC, together with the New York City Department of City Planning and in cooperation and consultation with the New York City Council and the MTA, should prepare a statement of planning and design guidelines, commission a technical feasibility study and issue a request for proposals (RFP) to select a master developer for the western portion of the site.

In the beginning of 2007, the Mayor's Office of Long Term Planning released 'PlanNYC' which formulated a sustainability plan for the City. It included policies to address

³⁸ MTA would retain most of the proceeds from the PILOMRT and PILOST defined in zone 3 of the Hudson Yards UTEP.

population growth, aging infrastructure and global climate change. It was organized into six categories – land, water, transportation, energy, air quality, and climate change – with corresponding goals and initiatives for each category. Local Law 17 of 2008 required the Mayor’s office to implement the plan and updated it every four years.

In July of 2007, MTA issued two separate RFP’s for the acquisition and/ or long-term lease of the air space and related real property interests for the East and Western portion of the rail yard site. The plan, based on the guidelines proposed, called for the construction of 12.4 million square feet of commercial, residential, recreational and cultural space in high rise buildings as high as 70 stories, including more than 4,600 apartments and 12 acres of open space. It also requested the winning bidder to erect a platform of the Long Island Rail Road Tracks on both sides of the 11th avenue without disrupting train service at an estimated cost of up to \$1.5 billion.

Five proposals were submitted in a first round by consortium of developers and financial partners³⁹. Four months after the initial submission, MTA asked for a new round of submissions in order to address the new requirements that the site be leased for ninety years and ability on have an ‘equity-type interest’ in any new commercial project built on the site. Four new proposals were submitted in February 2008 after Brookfield Properties failed to submit a revised offer. The \$1.004 billion offer by Tishman Speyer Properties was eventually declared the winner,

³⁹ Proposals submitted by (1) Brookfield Properties with architects Skidmore Owings & Merrill, Thomas Phifer & Partners, SHoP Architects and Diller Scofidio + Renfro, Kazuyo Sejima + Ryue Nishizawa, Handel Architects; (2) Durst Organization/ Vornado Realty Trust with architects FXFowle and Pelli Clarke Pelli; (3) Extell Development Company with architect Steven Holl Architects; (4) Tishman Speyer Properties with financial partner Morgan Stanley and architect Helmut Jahn Architects and; (5) The Related Companies with financial partner Goldman Sachs Group and architects Kohn Pedersen Fox, Robert A. M. Stern, Arquitectonica.

in spite of withdrawal of its financial partner and anchor tenant Morgan Stanley. The proposal included 8.1 million square feet of office space in four towers, nearly 3 three million square feet of representing 3,052 residential housing units in seven buildings including 379 units of affordable housing, nearly 500,000 square feet of retail space, a school and 13 acres of open space (figure 21, below).

Figure 33. Winning proposal for Hudson Yards. Tishman Speyer/ Morgan Stanley. Source: Helmut Jahn, 2007.



Six weeks after the MTA selected Tishman Speyer Properties as the winners, it announced that negotiations to reach an agreement with the developer had failed. Reasons pointed included the weakening of its financial position tied to the beginning of the 2008 financial crisis. Particularly, the ratings on several bonds tied to the 2006 acquisition of the 80-acre Stuyvesant

Town and Peter Cooper Village complex with partner BlackRock Realty for \$5.4 billion had been downgraded by rating agencies Standard & Poor's and Moody's Investors Service because of the difficulty to convert the rent-stabilized apartments into market units and consequential decline in value of over ten percent. In addition, the value of the real estate portfolio acquired in a partnership with Lehman Brothers Holdings Inc. in 2007 for \$22 billion from Archstone-Smith had been written down by at least twenty five percent. In response to the new challenging market environment, Tishman Speyer Properties insisted in changing the terms of the plan, which MTA refused. Particularly it tried to link closing the deal to the final approval of the zoning amendments necessary to implement its plan. The ULURP process was expected to take at least 18 months and a delay would have meant that MTA had to wait longer before beginning to receive payments. Two weeks after Tishman Speyer Properties officially withdrew from negotiations; MTA announced that it had reached a conditional designation agreement with one of the previous bidders, The Related Companies with financial partner The Goldman Sachs Group for the development of plans for the site.

In order to change the uses permitted by the existent zoning (M2-3 zoning district, with a maximum permitted FAR of 2) two new applications for zoning amendments had be prepared. As previously mentioned, because both were considered discretionary actions, they were subject to the City Environmental Quality Review (CEQR) process as well as the Uniform Land Use Review process (ULURP) before being adopted by City Council. The public hearing on the draft scoping document was held in November 2008, which led to the issue of the Final Scoping Document in May and the FGEIS in October 2009. In between MTA and the developer agreed to delay closing on the project for a year due to the deepening of recession and freeze of credit

markets. With the delay, the developer also avoided having to make a \$43.5 million down payment.

With its release of the FGEIS, the leading agencies, MTA and NYC Planning Commission submitted to environmental review various proposed actions to again amend the New York City Zoning Resolution. If approved, the site would become a new sub-district of the Special Hudson Yards District with an underlying zoning of C6-4 allowing for a mixture of commercial, residential and community facility uses a maximum 'as-of-right' base FAR of 10.

The proposed actions would allow for the construction of between 6.2 million to 6.4 million sf mixed use development, including residential, commercial (retail and office space), a public school, publicly accessible open space and enclosed accessory parking area. Residential development would range from approximately 3.8 million sf comprising 4,624 units to 4.8 million sf comprising 5,763 units. Twenty percent of all rental units would be affordable housing units under the terms of the applicable 80/20 program, with the provision of affordable housing units being subject (1) the allocation of sufficient tax-exempt bond cap credits and (2) the availability of other incentives such as the mentioned 420-a tax exemption pursuant to the 80/20 program. In December of 2009, the developer and the city announced having reached another agreement to preserve an additional 551 apartments (adding to total of 1,294 units) owned by the developer or to be acquired by the city in the area surrounding the site. The agreement was part

of a broader effort by the Bloomberg Administration to build or preserve 165,000 affordable housing units as part its 'New Housing Marketplace Plan'⁴⁰

The commercial development proposed would include approximately 1.5 to 2.2 million sf of Class A office space or a 1,200-room convention style hotel. In addition, there would be between 210,000 and 220,00 sf of retail space. The plan would also provide an approximately 120,000 PS/IS school with 750 school seats and approximately 5.45 acres of publicly accessible open space and accessory parking. The zoning amendments proposed⁴¹ were approved by City Council in December of 2009. As of March 2010, the ULURP process for the Eastern Rail Yards zoning text and map amendments were also under way. The Eastern Rail Yard project was expected to include 3.55 million sf of office space, 966,000 sf of retail space, 295 hotel rooms, 1,904 residential units, 200,000 sf of community facility space, 1,000 parking spaces, and approximately 7 acres of publicly accessible open space of which approximately two acres would be enclosed (figure 21).

⁴⁰ '2010 New Housing Marketplace Plan', NYC Department of Housing Preservation & Development, January, 2010.

⁴¹ Zoning Map Amendment (C 090430 ZMM) and Zoning Text Amendment (N 090434 ZRM), among others

Figure 34. Site Plan. Hudson Rail Yards. Source: Kohn, Pederson and Fox, 2010



In February 2010, the MTA and Related announced a decision to once again delay signing a formal contract for the project and making a down payment. The main reason was the decision by the Goldman Sachs group, Related's financial partner and 5% owner to withdraw from the deal. Nevertheless, Related renewed its commitment in the deal whether or not it would find a new minority partner.

In May of 2010, after several months of talks, the developer announced that it has secured a Canadian pension fund as its main equity partner. The fund, the Ontario Municipal Employees Retirement System, would provide up to \$475 million in equity through its real estate arm, Oxford Properties Group and replaced Goldman Sachs Goup Inc. as Related's lead partner.

Separately, the site's developer entered into a contract to lease the 26-acre rail yards from the Metropolitan Transportation Authority, putting a \$21.7 million payment in escrow.

With the equity in hand, the developer could now turn to raising funds from other partners and signing up tenants for the commercial space. Under an 'ideal case' scenario, Related said it would secure a tenant by the end of the year. Building construction would start 18 months later with 2015 as the earliest move-in date for corporate tenants. The total development of the site could take 10 years.

At the end of 2010, the Related Companies and Oxford Properties Group announced that they had closed on nearly \$1.4 billion in equity investments and debt financing for the first planned development the projects together with several institutional investors advised by J.P. Morgan and a sovereign wealth fund. Construction financing would be provided by a syndicate led by Starwood Property Trust and included members of the United Brotherhood of Carpenters and Joiners along with the Oxford Property Group. The South Tower encompassed a total of 1.7 million square feet of commercial office space in 51 stories of new Class A office space. Designed by Kohn Pedersen Fox Associates, the LEED Gold building will be located on northwest corner of 30th Street and 10th Avenue bridging the Chelsea and Hudson Yards.

The main tenants of the new South Tower included the fashion brand Coach, Inc., L'Oreal USA, enterprise software application SAP and Fairway Market a grocery super store. Coach's new global corporate headquarters would anchor the initial tower of the Eastern Rail Yards site within the 26-acre mixed-use Hudson Yards development site on Manhattan's far West Side. Coach's commitment to take over 600,000 square feet – more than one-third of the available

commercial space at the tower – would, together with the completion of the #7 subway line extension and the new Hudson Boulevard Park, kick-start the historic development of the entire Hudson Yards area, a 60-block and 300-acre neighborhood. Construction on the 1.7 million square-foot tower is started in mid-2012 and be ready for occupancy in 2015.

Figure 35. Rendering of Proposal for West Side Rail Yard, The Related Companies/ The Goldman Sachs Group, 2012.



During the announcement, Lew Frankfort, Chairman and Chief Executive Officer for Coach Inc mentioned that “The city is part of our DNA and its spirit is central to all that we do. We’re delighted to be staying in the area we have called home for more than 50 years and the fact that our global corporate headquarters will be adjacent to the top of the High Line is particularly exciting. The 10th Avenue spur, which will border our building, is the widest portion of the High Line and will become a focal point for cultural events.” Coach will occupy the lower one-third of the building where they will create a vertical campus with a vast atrium serving as

the visual anchor for the High Line. The South Tower comprises the first development of a planned 5.5 million square foot “superblock building complex” western section of the railyards bound by 10th Avenue, 33rd Street, Hudson Boulevard and 30th Street. When complete, it will be the largest commercial building in New York City.

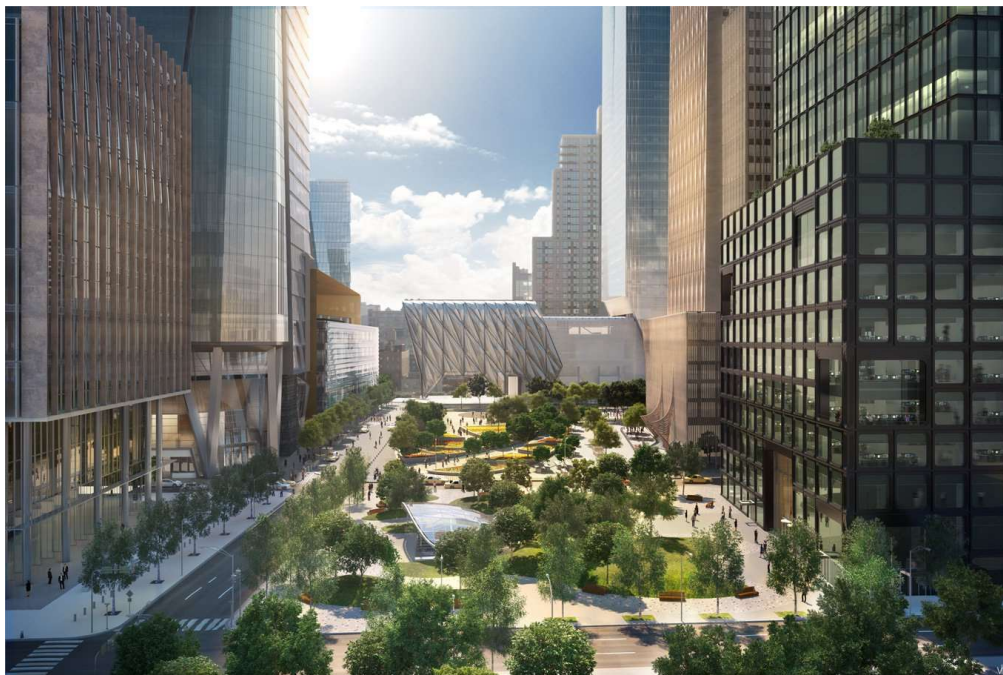
Also, by the end of 2012, the \$2.1 billion subway extension of the n.7 line was already fully funded and under construction. The subway tunnel was fully excavated, and the Hudson Yards Infrastructure Corp had issued the last \$1 billion in bonds required to finance the subway extension, and at the same rating as the original deal five years ago.

Crews had finished digging the tunnels and were already building the new station at the intersection of 34th Street and 11th Avenue that would be the front door of the Hudson Yards. The transit system testing will begin in 2013 and a grand opening is anticipated by the first quarter of 2014, at least a year before the first phase of Hudson Yards is opened. Upon full build-out in 2040, it was expected that almost 30,000 peak hour passengers will use the station. This will make it one of the busiest stations in the subway system.

Work is to begin early next year on a new tree-lined boulevard between 10th and 11th Avenues. The new Hudson Park & Boulevard – a sweeping 4-acre thoroughfare running north from West 33rd Street, The High Line, The Hudson River Park and the public space to be created by on the Hudson Yards site will create a network of parks and public plazas that weave throughout Manhattan's West Side, connecting Chelsea, Hudson Yards and the Times Square neighborhood. Plans are also underway to include a dramatic new cultural facility designed by Diller Scofidio + Renfro and David Rockwell. This facility, sited along the High Line at 30th

Street, dubbed Culture Shed, will welcome a range of activities spanning the worlds of art, design and performance. The multi-purpose venue will offer several floors of flexible gallery and performance space. Also, the complex will be structured around a public square, a large plaza with 6.5 acres of landscaped open space by Nelson Byrd Woltz Landscape Architects, to be connected to the High Line and featuring gardens, art exhibitions, fountains, and cafes. In addition, Hudson Yards will feature a dedicated elementary/middle school to serve the influx of families into the neighborhood. Schools are a resource sorely needed in this area.

Figure 36. Public Square, scheduled for completion in 2018. View south toward Culture Shed. Source. Nelson Byrd Woltz.



Recent school rezoning just changed the lines for schools in Chelsea and Greenwich Village, among them PS11, PS33, and PS51. Johnson said that when Hudson Yards is finished, the new school will mandate zoning lines changes once again. "While none of those plans have been finalized or fully determined, this would be a local, zoned school serving the neighborhoods

surrounding it, meaning Chelsea and Hell's Kitchen," said Johnson. "I haven't heard anyone talk about the school as a drawing point yet, but I think it's hard for folks to contemplate what's actually going on there. There will be more than 12 million new square feet of development, and once it's done, it will transform an area which for so long has been desolate." In September of 2013, the Independent Budget Office estimated that by 2040, roughly half of all new office space to be built in New York City would in Hudson Yards⁴²

By the end of 2012, the developers had also wrapped the site in nearly 30,000 square feet of new construction signage, one of the largest construction hoarding installations ever undertaken. In a ceremony attended by Mayor Michael Bloomberg and City Council Speaker Christine Quinn, the Related Companies and Oxford Property Group broke ground on the South Tower.

The early groundbreaking meant that the MTA could start collecting monthly lease payments of \$230,000 before the final closing on the 99-year lease. Developers agreed to pay the MTA close to \$1 billion to lease the site for 99 years. MTA agreed to amend its deal with the developers to allow \$50 million worth of site improvements to begin before a final closing.

Commercial development progressed more slowly. Even so, other developers such as Brookfield Properties, Sherwood Equities and other developers at Hudson Yards said they were optimistic that the first set of commercial buildings was only a few years off, especially with the

⁴² IBO (Independent Budget Office, New York City). 2013. "Is the City Making Way for More Office Space Than Needed over the Next Years?"

subway extension set to open in 2013. Although not officially part of the Hudson Yards plan, construction also started on the west side of Ninth Avenue. On January 14, Brookfield Properties launched a massive \$4.5 billion skyscraper project. The Manhattan West development will be built above part of the West Side Rail Yards, and will consist of two commercial towers along with a third residential building. It will span the area from Ninth Avenue and Dyer Avenue from West 31st to West 33rd Streets, across from the future Moynihan Station transit hub.

At the end of 2012 major developer, Avalon Bay, was also set to begin construction on its largest residential complex, with 700 rental apartments and a 30-story tower, at 11th Avenue and 29th Street. The Gotham Organization had just broken ground on a \$520 million residential complex on a block bounded by 44th and 45th Streets, between 10th and 11th Avenues. It will contain 1,232 apartments, including 682 units for poor and moderate-income families, mandated by the Hudson Yards rezoning. Related itself was also set to begin construction on begin work on a 32-story rental building, with 400 apartments, opposite the proposed Coach building. The first phase of Hudson Yards, which includes the entire eastern portion, was expected to be complete by 2017.

In total, the HYIC issued \$3 billion in bonds to pay for the extension of the MTA's subway line plus the boulevard planned between 10th and 11th Avenues. As mentioned, the financial structure was premised on incentives given to developers in the form of fees, air rights and taxes to pay back the \$3 billion in bonds. But when the City Council approved that plan in 2005, the Council also agreed that if revenues from private developers were not sufficient to pay debt service in the early years, the city would make up the shortfall. In fiscal 2012 alone, six

years after the project started, the city transferred \$79 million to Hudson Yards Corp. from the general budget to make up for developers revenues, nearly double the \$42 million it had paid in 2011. In June, in the midst of final budget negotiations with the Council, Bloomberg aides added another \$155 million to help Hudson Yards Corp. make up for even bigger revenue shortfalls expected for both 2013 and 2014.

Consistent with the city's general approach to managing its budget and debt service, the city decided to make a grant to HYIC at the end of FY (fiscal year) 2012 to pre-fund future (interest) costs," David Farber, spokesman for Hudson Yards Infrastructure Corp. said. In addition, the city's Independent Budget Office found nearly \$160 million of additional "infrastructure projects" related to Hudson Yards included in the budgets of other agencies. In the end, the capital structure used meant that tax-exempt bonds used to finance the required upfront investment will be paid using tax-payer's dollars.

Figure 37. One Hudson Yards 530 West 30th street. Source: Related Companies, 2012.



CHAPTER 5 : REVISING THE PLAN: THE CREATION OF THE ZONE

D'AMENAGEMENT CONCERTE 'CLICHY-BATIGNOLLES', PARIS, FRANCE

5.1 OVERVIEW

This chapter describes the planning and development process of the Clichy-Batignolles site. The objective is to study the how the changes in the articulation between the local land-use plan

and the special purpose districts influenced the subsequent modifications to the development program of the project. Particularly, it examines the ability of the system to adapt to changes in circumstances and policy intentions before and after the adoption of the new plan.

The chapter illustrates the complex articulation between the formal hierarchy of plans and the various mechanisms of flexibility used in the French land-use system to adapt zoning controls to changing circumstances. On one hand, there is an attempt to provide a continuum between the development program elaborated for the Clichy-Batignolles site and the strategic policies defined for the Ile-de-France region and the city of Paris as a whole. On the other hand, the system has incorporated different mechanisms and procedures that attempt to address the specificities of the project and need to change the development program during the planning process.

The project is based on the Parisian bid for the 2012 Olympic Games. The initial plan included in the Olympic bid required the creation of special purpose district in order to modify the uses and bulks permitted by the local land use plan enacted in 1989. With the loss of the competition to host the Games, a new development program was elaborated requiring the modification of the special purpose district previously approved and the creation of a new. The process was further complicated by the approval in 2006, while the revision to the development program was ongoing, of a new local land use plan which changed the relationship between the plan and special purpose districts. Following the requirements of an earlier reform to the national planning law, the new plan required that each special district should be integrated with the PLU so that it would no longer be a means to depart from the planning guidelines defined in the plan.

Therefore, all subsequent revisions to the development program had to be preceded by a revision to the plan before being approved.

Section two of this chapter provides a general introduction to the background and planning framework for the project. Section three introduces the case and describes the various phases of the planning process from first planning studies elaborated for the site in 2001 to the approval of the modifications to the ZAC program in 2010. Section discusses the impact of the new plan on the planning process and how it influenced the final development program approved.

5.2 PARIS URBAN SYSTEM

In rankings of global cities, Paris is often considered the ‘petit quatrieme’ (little fourth) together with New York City, London and Tokyo (Newman & Thornley, 2005). Its urban agglomeration is Europe’s biggest city economy. For overall city ‘brand’ it was ranked 1st in a recent 2009 study on global city image⁷ reflecting its status as the 1st tourist destination in the world. This unique position results from a concentration of political, cultural and economic functions within France. No other European metropolis has the same importance vis-à-vis its nation-state (Levefre, 2003). With over 11 million inhabitants, the urban area is eight times the size of its nearest contender, Lyon. In terms of employment, the region of Ile-de-France – the administrative region of Paris – concentrates 21 percent of the national workforce and as much as 40 percent of the highly qualified workers. It host the NYSE Euronext – Paris stock exchange as well some of the busiest transport hubs in Europe. Most national and international headquarters and related services are located in the Paris region which offers them an office capacity of over 40 million m² - the second in Europe, closely behind London (Halbert, 2006).

5.3 BACKGROUND AND PLANNING FRAMEWORK

The emphasis on certainty and articulation between government levels present in the French planning system is expressed through a hierarchical planning structure in which individual development decisions must function within a local and regional framework. Plans at the higher levels are administratively binding on the lower plans. Plans are supposed to be drawn from the regional level on down, and as the level of government decreases, plan detail increases. The Paris local land-use plan has to comply with or at least not conflict the plan for the Ile-de France region and so on. The system not only regulates development but also guides and integrates proactive public policies. The definition and modification of zoning controls is in theory a product of the cumulative guidelines defined in the higher-tier plans which are expressed in the zoning maps and text that form part of the local land use plan. Once adopted, the plan serves as the reference for administrative decisions such as issuing a building permit which attests the conformity of private intentions to public policy. Underlying such structure is an attempt to maximize certainty for landowners and investors through the prior definition of conditions in which development may take place, acknowledging only a subsidiary role for negotiation and for the use of contract.

The continuum provided between strategic plans and development decisions is complemented by a tradition of public intervention in land markets supported by an arsenal of mechanisms for public acquisition of land that overrides private law and a willingness to commit public funds to support redevelopment efforts that are considered to be in the ‘public interest’. In Paris there is an implied link between the planning system and the transfer of funds between

government levels formalized in financial plans know as 'Contrat de Plans' and several public agencies such as the 'Societe de Economie Mixte' responsible for initiating development and see it through its conclusion. There is an implication that there must be some control over the flow of funds into strategic public investments. Therefore, the planning process does not stop when a plan is produced but also includes the implementation and financing of the projects proposed. Most redevelopment efforts are elaborated and implemented by entities owned in its majority by the city and state. These entities often have a prevalent role the acquisition of land, elaboration of the development program and provision of public benefits. Typically, the private sector is only included in the planning process at the end of the 'supply-chain' when serviced lots are sold to developers through competitive bids.

The prevalent role of the public sector in development is an expression of a long tradition of centralism and reliance on a predefined system of rules based upon the codification of abstract principles exemplified by the Civil Code of 1804. In France, the state constitutes itself despite the initial handicap of a powerless monarchy facing a powerful feudality. This initial weakness both allowed for the fiscal exemption of the French nobility, the underdevelopment and lack of centralization of the judiciary; and the pluralism of customary laws applied throughout the French kingdom. That is why the historical development of the French state strongly relied, not on a centralized judiciary, but on a powerful and centralized administration, whose necessity was due to the difficulty of collecting scattered fiscal resources. Underlying this inheritance is an expression of a regime of administrative law molded by jurisprudence as a result of the separation of administrative and judicial authority. In this administrative law regime, the unilateral administrative act has been upheld as the symbol of the power of public authority,

whose base in theory is the definition and practice of the general interest. In this regime also, control by the courts of administrative decision-making is as much about the substance as the procedure.

The Fifth Republic (1958) and the 1804 Civil code are the legal bases of the French Constitution and the laws that emanate from it. Following a long tradition of centralism, it defines the nation as a unified non-federal republic, with uniform law applied to the whole country through two technical sources: *'lois'* and *'decrets'*. The former defines general principles for subjects outlined in the Constitution, including property rights and land policy. The latter details these principles through the provision of guidelines binding to public agencies and individual entities. Once a statute is published in the official bulletin (after having passed by a majority in both parliamentary chambers), its legality and its constancy with the Constitution are difficult to challenge.

Regarding property rights, the French Constitution emphasizes the protection of private land and property rights. The Civil Code states that ownership is the 'right to the use and abuse of property in an absolute way, except if it is in contradiction with the law and regulations' (Article 544). At the same time, the system includes a growing body of regulations especially with regards to land policy that constrain this legal guarantee. As article 545 of the same Code states 'nobody can be obliged to give up his property, except for reason of public interest and then only under the condition of fair compensation'. There thus in the French system an implicit tension between on the one hand, private ownership rights which are considered sacred and inalienable and, on the other hand, a notion of 'public interest' which often subordinates such rights.

The French planning system is defined by a national planning law – 'Code de l'Urbanisme et de l'Habitat' – which specifies the role of each government level in land development and the various

public mechanisms and instruments available to implement policy. After its adoption in 1954, the Code has been subject to successive reforms and modifications of specific articles. The latest comprehensive reform was implemented at the end of 2000 with the enactment of Loi 2000-1208 (Law SRU)⁴³. It was intentionally seen as part of a trio of reforming statutes that linked spatial planning to institutional reform of local government⁴⁴ (Booth P. , 2009). It represented a desire of public policy to make planning genuinely prospective and strategic, with an accent placed upon sustainable development. The previous comprehensive reform implemented in 1967 '*Loi n. 76-1253 d'orientation fonciere*' had been concerned primarily with land. By contrast, the Loi SRU presented a radical restructuring of the hierarchy and instruments of planning. In addition it carried new sections that dealt with housing policy and urban transportation. The law explicitly linked the planning process to the development and implementation of urban policy. It also expressed an intention to promote joint work between 'communes'⁴⁵ and to make plan preparation an instrument of cooperation.

One of the main innovations of the new law was the introduction of a new form of strategic planning document '*Schema de Coherence Territoriale*' (SCOT, Strategy for Territorial Coherence). Every large urban area was required to prepare it and in addition could also be

⁴³ '*Loi n. 2000-1208, du 13 decembre 2000 relative à la solidarité et au renouvellement urbains*' [Law n. 2000-1208, December 13th 2000 relative to solidarity and urban renewal].

⁴⁴ The other two statutes are '*loi n° 99-533 du 25 juin 1999 d'orientation pour l'aménagement et le développement durable du territoire*' [Law n. 99-533, June 25th, 1999 Strategy for regional planning and sustainable development] and '*Loi n°99-586 du 12 juillet 1999 relative au renforcement et à la simplification de la coopération intercommunale*' [Law n. 99-586, July 12th, 1999, renforcement and simplification of district cooperation].

⁴⁵ The base unit of local authority in France

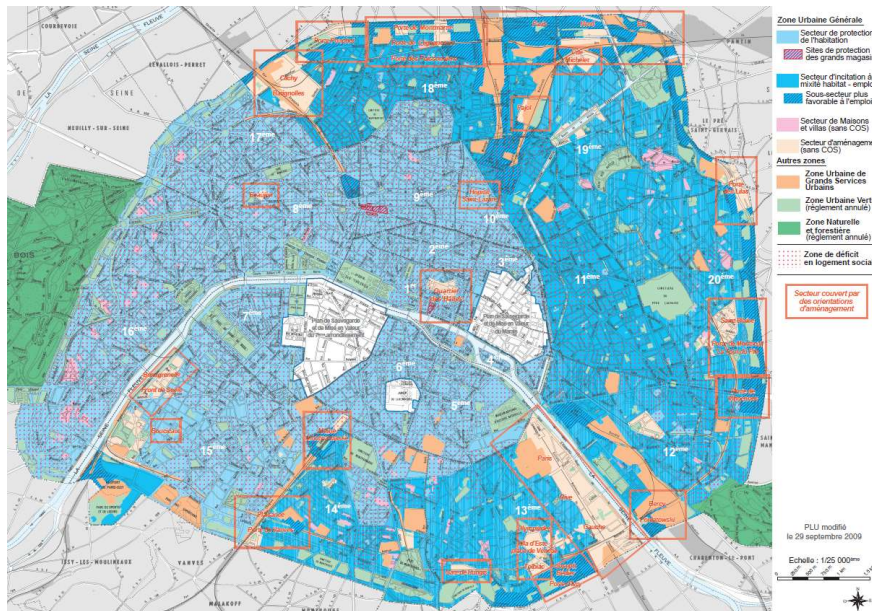
prepared for other areas. The intention was to go beyond the land use strategies of the '*Schema Directeur*' (SD, Planning Strategy) that the SCOT replaced, covering economic development, social housing policy as well as transport policy and environmental protection. In Paris, a new SCOT for the Ile-de-France region was approved in September of 2008. Until then, the Paris local land-use plans and the various publicly-led redevelopment efforts were required to follow the planning guidelines contained in the previous '*Schema Directeur Ile-de France*' (SDRIF, Regional Development Plan of the Region Ile-de-France) adopted in 1994.

Another innovation at the local level was the replacement of the old '*Plan d'Occupation des Sols*' (POS; Local Land-use Plan) by a new '*Plan Local de Urbanisme*' (PLU, Local Master Plan). One of the main differences between the two instruments was the requirement that the new plan include a program of objectives for sustainable development and measures to implement those objectives through a '*Projet d'aménagement de developpement durable*' (PADD; Plan for Sustainable Development). In addition, the new plan was required to cover the whole of a commune as opposed to the old POS which cover only parts of it.

In Paris, the new PLU was adopted by the City Council on the 12th and 13th of June of 2006 while the planning process for the Clichy-Batignolles site was ongoing. The adoption of the new plan concluded a five year process initiated with a deliberation on November 12th 2001 to

completely revise the 1989 POS, following the requirements of the Loi SRU. The new plan covered the entire city of Paris with the exception of areas under different public jurisdiction⁴⁶.

Figure 38. 'Summary Map', Paris PLU. Source: APUR, 2006.



The new PLU revised and updated existent zoning districts. The vast majority of the city was zoned ‘Zone Urbaine Generale’ (Basic urban district, ZUG). The basic zoning district was divided in four districts⁴⁷. The first two sub- districts which represented the vast majority of the ZUG district permitted a maximum ‘global’ FAR of 3⁴⁸ lowering the 3.25 FAR permitted by the

⁴⁶ The areas inside the Paris city limits not covered by the new PLU were the Maris and Ministers Districts on the 17th district, and the Luxembourg Park which was placed outside of the PLU jurisdiction by the ‘Loi Urbanisme et Habitat de 2 Julliet 2003’.

⁴⁷ (1) ‘Secteur de protection de l’habitation’ (District of housing preservation) with a sub-layer for large retail (‘Sites de protection des grands magasins’); (2) ‘Secteur d’incitation à la mixité habitat – emploi’ (District to promote mixed uses and employment), with a sub-layer for areas particularly favourable for economic activities (Sous-secteur plus favorable à l’emploi); (3) Secteur de Maisons et Villas (Residential District) and; (4) Secteur d’aménagement (Special planning districts)

⁴⁸ Article U.G. 14.2 ‘Coefficient d’occupation du sol (C.O.S.) global’, Règlement du PLU, Tome 1, Zone UG.

previous POS. In addition it introduced two other urban districts for urban services '*Zone urbaine de grands services urbains*' and urban green spaces '*Zone urbaine verte*' as well as a zoning district for the parks of Boulognes and Vincennes '*Zone naturelle et forestière*'. It also defined for the entire city the location of all new public amenities and public parks to be implemented.

The new PLU was complemented in 2007 with the approval of 'Climate Protection Plan' as well as a draft for a new 'Transport Plan' adding to the Urban Transport Plan (PDUIF) adopted in 2000 for the Ile-de-France region. Following the indications of the new planning instruments, at the end of 2008, there were 940ha of land being developed representing about 10% of the total area of the city of Paris (Subra & Newman, 2008).

One of the main differences between the old POS and the new PLU was the repeal of the '*Plan d'Aménagement de Zone*' (PAZ, local urban design plan) a detailed planning document which typically replaced the POS inside a '*Zone d'Aménagement Concerté* (ZAC, special zoning district). With the enactment of the new national planning law, ZAC's would now have to be fully integrated in the PLU so the declaration of a ZAC would no longer be a means of using a PAZ in order to depart from the land use policy defined in the POS for the municipality as a whole⁴⁹ (Booth P. , 2005).

⁴⁹ Particularly the Loi SRU modified article L123-3 of the 'Code de 'Urbanisme' (CU, National Planning Code), giving the new PLU the legitimacy to define for each ZAC: (1) the location and characteristics of the public spaces to be implemented, modified or preserved in each ZAC; (2) the location of the main public infrastructure, public amenities and open-space amenities; and (3) uses and bulks permitted for all new development proposed.

In France, the possibility of establishing a ZAC was first introduced in 1967 with the reform to the '*Code de Urbanisme*' implemented by the '*Loi n. 76-1253 d'Orientation Fonciere*'. The new planning instrument substituted the previous 'Priority Development Areas' (*Zone a Urbaniser en Priorite – ZUP*) (Booth, 1996). The adoption of a ZAC allowed majority of the development regulations inside the new districts to be exempted from the controls defined in POS for the municipality as a whole. Instead, planning controls and infrastructure requirements within the ZAC perimeter would take over from POS in the designated area once a PAZ was approved. The adoption of a ZAC entitled local agencies to buy all land within the new district, realize all public investments and sell the developed lots to recover costs. In Paris, close to 50 ZAC's have been implemented since the enactment of the mechanism in 1967 (Subra & Newman, 2008). Most of the emblematic Parisian 'Grands Projects' of the 70's and 80's like *La Defense*, *Paris Rive Gauche* and *Cite de la Musique* were implemented through ZAC's.

This change of direction responded to political pressures, but also as a reaction to the issues encountered with the main urban development projects ongoing at the time, particularly in Paris (e.g. ZAC 'Paris Rive Gauche') (Newman & Thornley, 2005). As most commentators united in observing, all too frequently often in a damaging way, the creation of a ZAC become a way of departing from the regulations established by the POS. In addition, ZAC's replaced the local development tax with a negotiated agreement about the public facilities to be provided by the new development as well as contributions that developers and builders had to pay. All too often, the trade-off between additional FAR and public benefits would result in excessive densities and inadequate open space amenities. In addition, the public benefits to be provided would typically be under-assessed. In response to such problems, Loi SRU required that ZAC's be fully

integrated with new PLU through the PADD which would contain planning guidelines that the ZAC program was required to follow. In addition, if there was a subsequent change to the ZAC program, it could only be implemented if the PLU was also revised to accommodate it, following a period of public enquiry and approval by City Council (Renard, 2003).

The ZAC instrument was the mechanism of the implementation chosen by the city to redevelop the Clichy-Batignolles site. Given the timeline imposed by the Olympic bid, the city opted to divide the development area in two separate ZAC's ('Cardinet-Chalabre' and 'Clichy-Batignolles') in order to focus on the implementation of the first phase of the plan which included most of the proposed Olympic facilities and part of the new proposed public park. The PADD of 2006 PLU included specific planning guidelines and requirements which had to be followed by both ZAC's. As the 2006 PLU was published after the first ZAC 'Cardinet-Chalabre' was adopted, only the subsequent changes to the ZAC program required the revision of the PLU.

Another of the main innovations of the Loi SRU was the requirement that every commune with at least 3,500 inhabitants had a minimum of 20% of affordable housing (as a proportion of total housing). Given the critical lack of affordable housing in city of Paris, the new 2006 PLU identified in a specific map (*Logement Social et Protection du Commerce et de l'artisanat*) the areas that had a deficit of affordable housing. For such areas, the PLU defined that in order to be granted a building permit any new development project had to include 25% of affordable

housing. Most importantly, the same article also defined that for a ZAC, the 25% requirement should be applied to the total new development area planned for the site⁵⁰.

In order to meet this requirement, the Paris City Hall set itself a target of constructing or converting 57,000 new affordable housing units over fifteen years, in order to achieve the 20% threshold by 2020. This target was complemented by a series of obligations on the city's wealthiest districts (mainly in the centre and West) in order to incentivize the production of affordable housing and increase social integration. ZAC's such as Clichy-Batignolles presented a substantial opportunity for the city to meet its targets for affordable housing. Although the Paris PLU required a minimum of 25% of affordable housing, the development program for the Clichy-Batignolles site ended up including 55% of affordable housing units.

The use of the ZAC instrument also permitted the city to increase the control over the planning process and sign several concession contracts with the *Société d'économie mixte de l'aménagement de la Ville de Paris* (SEMAVIP, Public private partnership for planning and development of the city of Paris) in order to implement the development program approved. SEMAVIP is one of the nineteenth types of entities that have operated in Paris in areas such as planning, real estate development and service provision. It is majority owned by the city of Paris (77.47%) with private investors owning the remaining minority stakes. It was created in 1985 with the mission to plan and develop public sites in the North and East areas of the city of Paris.

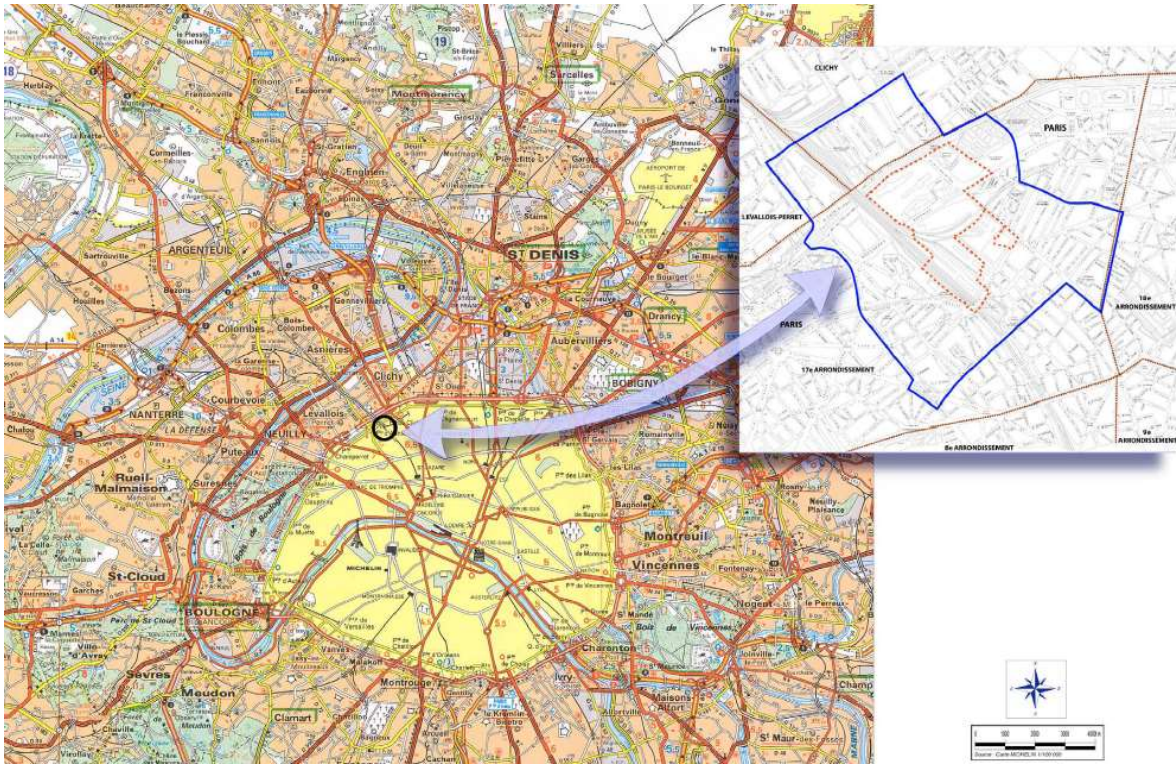
⁵⁰ 'Lorsqu'un projet fait partie d'une opération d'aménagement (ZAC, lotissement), l'obligation d'affecter 25% de la surface au logement social s'applique globalement aux surfaces d'habitation prévues dans l'opération.' Article UG.2.3 , Règlement du PLU – tome 1 – Zone UG.

Acting as the public developer, the public-private entity was given the responsibility to manage the process of planning and implementing the development program approved for the Clichy-Batignolles site.

SEM's are widely used in Paris and throughout France to implement development programs elaborated for ZAC's such as redevelopment projects and business parks. Some such as SEMAVIP are linked to a single commune or specific neighborhoods while others cover several communes or entire regions and departments. SEM's were initially introduced in 1926 with the overall aim to improve the quality of public services and reduced the financial risks to local authorities. From 1995, SEM's shifted its activities towards urban development and transport. Although SEM's may involve private sector partners they are generally non-profit entities which are commissioned to managed the redevelopment process of new ZAC's, including the ability of acquire land within the ZAC perimeter, elaborate planning guidelines, realize the public investments, and sell the new developed lots in order to recover costs.

center leading to the construction of permanent train station *Gare St. Lazare* further South which opened in 1841.

Figure 40. Location Map. Clichy-Batignolles' Development Site, 17th District, Paris. Source: APUR, 2006.



Throughout the 20th century the site retained its public ownership and logistical function as rail yards. The most relevant development since then was the construction in 1970 of a new highway '*Boulevard Peripherique*' in the North end which replaced the old city walls following the indications of the 1965 *Schéma Directeur d'Aménagement et d'Urbanisme de la Région Parisienne* (Strategic Development Plan for the Paris Region – SDAU).

From the 1970's, the development of the surrounding area was structured around the implementation of various ZACs, following the introduction of the planning mechanism by the new national planning law '*Loi n. 67-1253 d'Orientation Fonciere*' enacted in 1967. The use of

the ZAC instrument allowed public agencies to redevelop various adjacent sites belonging to the *Société Nationale des Chemins de Fer Français* (French National Railways - SNCF), including: (1) ZAC *Saussure* adopted in 1977; (2) ZAC *Champeret* adopted in 1978 and; (3) the more recent ZAC *Porte d'Asnieres* adopted in 1997. Cumulatively the successive public-led urban redevelopment projects implemented through ZACs converted the vast majority of the large sites in the district with obsolete manufacturing and rail yard uses into mixed used urban districts with public amenities integrated with the surrounding neighborhoods. At the beginning of the 21st century, the *Clichy-Batignolles* site was the last large undeveloped site in the district and one of the few remaining within the City of Paris.

Figure 41. Aerial View of the 'Clichy-Batignolles' Development Site, 17th District, Paris. Source: APUR, 2006.



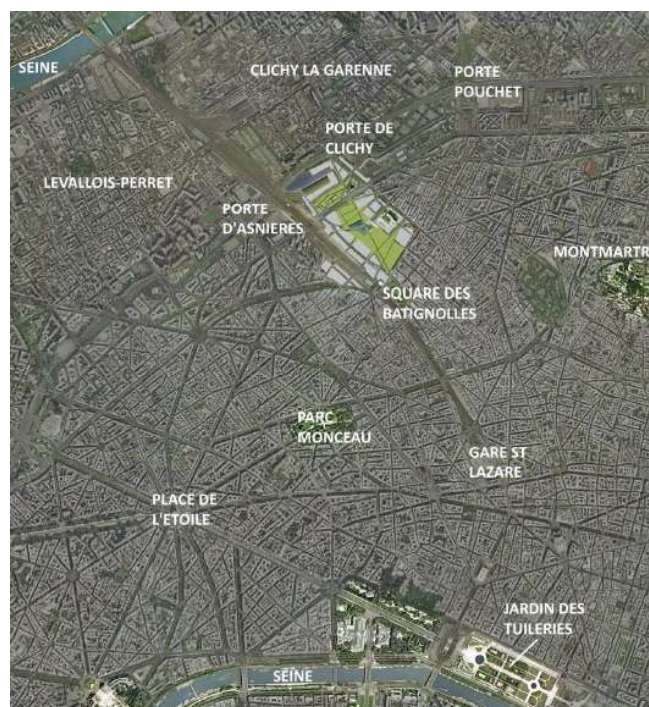
The initial public decision to implement a large scale urban redevelopment project in the Clichy-Batignolles site was officially made in 2002 by the Paris City Council⁵¹. As part of earlier studies by the *Atelier Parisien d'Urbanisme* (Paris City Planning Department – APUR), the site had already been identified as a possible location for the Olympic Village in the 2008 Games bid, for which another site known as Aubervilliers was eventually selected. Further studies motivated by the preparatory studies for the new Paris *Plan Local d'Urbanisme* (PLU, local master plan) confirmed the adaptability of the site.

The majority of development area was owned by public agencies including the national government, the city of Paris, the SNCF and the *Réseau Ferré de France* (RFF, French Rail Network). The site also included a 4,3 hectare undeveloped site dedicated to the railways owned

⁵¹ *Deliberation 2002 DAUC 27 Secteur "Clichy-Batignolles" (17e).*

by a semi-public railway contractor (*Société GEODIS-BM*) and various built-out privately owned sites, including three hotels (Campanile, Ibis and Iberis) and various residential buildings. The site also included one building registered as a national historical monument ‘*Ateliers de Décors de l’Opéra et Costumes*’ also known as ‘*Ateliers Berthier*’ on the *Berthier Boulevard* used to build the sets and costumes for the opera plays at *L’Opéra Garnier*.

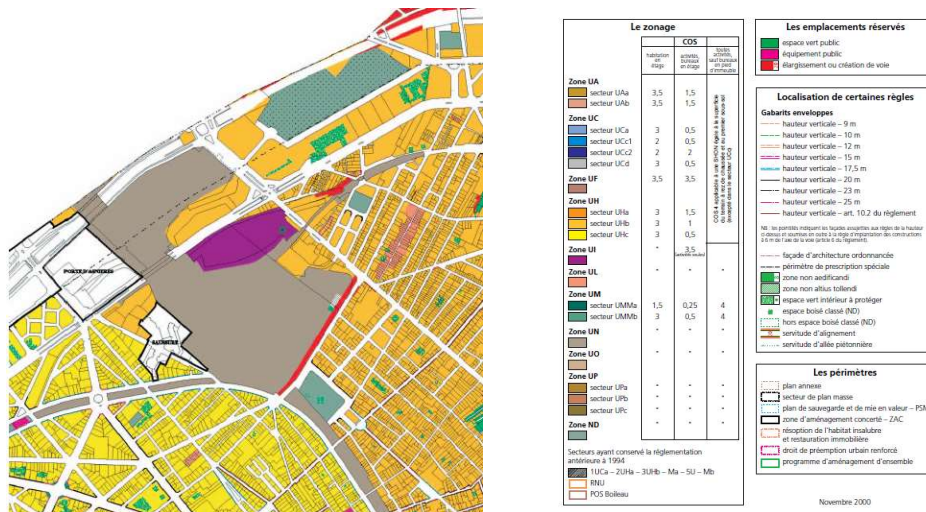
Figure 42. Urban Context. Clichy Batignolles Development Site. Ville de Paris. Source: APUR, 2006.



In the *Schema Directeur Ile-de France* (SDRIF, Regional Development Plan of the Region Ile-de-France) adopted in 1994 the development area was already identified as developable, following the indication of the *Charte d’Aménagement de Paris* (Paris Planning Document) adopted in 1992. The development site was zoned as a ‘new urban district’ (*espaces d’urbanisation nouvelle*) and further defined as a ‘Technical area dedicated to transport

infrastructure which presents a new development opportunity’ (*Espace technique lié aux infrastructures de transports présentant une opportunité d’urbanisation nouvelle*). For such spaces, the SDRIF defined five main development goals: (1) to accommodate part of the new residents and economic activity to be located in the region; (2) limit the conversion of green spaces; (3) new development should be integrated with its surroundings; (4) balance residential and commercial activities and; (5) promote mixed-uses and residential quality. In addition, under a section dedicated to ‘Challenges for sites to be redeveloped’, the SDRIF stated that it would be in the public interest for the government to ensure diversity in housing supply in the redevelopment of public land.

Figure 43. 2002 Existent Zoning Districts – ‘Clichy-Batignolles’ Development Site, POS 1989. Source: APUR, 2006.



In the 1989 POS still valid in 2002, the sites owned by the SNCF, RFF and GEODIS which represented the vast majority of the development area were zoned as ‘UN’ which meant that they were outside of the city’s jurisdiction and were regulated by different statutes specific to the

functioning of the railway system. The remaining undeveloped portions were zoned for industrial and manufacturing uses (zoning district UI)⁵².

Following the guidelines of the preliminary studies elaborated by APUR, the 2002 deliberation by the Paris City Council defined as the main planning objectives for the site: (1) enhance the connectivity with the surrounding neighborhoods; (2) implementation of a new public park and improvement of the existent public and open space amenities; (3) improvement of mass transit infrastructure and use of railways for transportation of goods; and (4) mixed use development, commercial activities, public amenities and heritage preservation.

The 2002 City Council deliberation also authorized the City of Paris to commission the *Société d'économie mixte de d'aménagement de la Ville de Paris* (SEMAVIP, Public private partnership for planning and development of the city of Paris) to realize the necessary preliminary studies in order to plan and implement the redevelopment of the Clichy-Batignolles site. Acting as the public developer, the public-private entity was given the responsibility to manage the process of planning and implementing the development program approved for the Clichy-Batignolles site. The cost of the studies (estimated at 1,442, 376 euros) would be supported by city's investment budget, and SEMAVIPs compensation for leading the planning and implementation process (485,576 euros) would be supported by the city's operating budget. Based on the objectives defined by the City Council following APUR's planning studies, the

⁵² Atelier Parisien d'Urbanisme'Secteur des Batignolles – Paris 17^e Arrondissement : Donnees Generales sur le Site', Novembre 2001.
Available online at <<http://www.apur.org/etudes.php?visu-etudes.php?id=56>>

City of Paris invited 4 teams of urban designers and landscape architects in 2002 to submit proposals for a master plan for the site⁵³.

The participation in the competition to host the 2012 Olympic Games

In May 2003, while the planning process was still ongoing, the city announced its decision to submit a bid to host the 2012 Olympic Games. In the preparatory studies leading to the submission of a bid, the Clichy-Batignolles was identified by the City Planning Department as the preferred location for a new Olympic Village, which would house all participating athletes, as well as officials, athletic trainers and other staff. It would also include part of the new sports facilities that would have to be built because of the Olympic Games. The previous reserves that the International Olympic Committee had with the logistical suitability of the Aubervilles site proposed in the 2008 bid for the Olympic village, coupled with the results of the competition convinced the bid team to choose Batignolles for the 2012 bid.

The proposal to locate the Olympic village in the Clichy-Batignolles site required changes to the development program for the master plan previously elaborated. The new development program required the inclusion of a sequential implementation process in three phases: (1) acquisition and development of the site; (2) planning and construction of the Olympic Village; and (3) conversion into a new mixed-use district integrated into the surrounding

⁵³ Group 1: Architect Pierre Gangnet, and landscape architects Michela et Claire Corajoud with AEP Normand as technical consultants; Group 2: Architect Christian De Portzamparc and landscape architects Michel Pena with Setec Batiment; Group 3: Architect Francois Grether and landscape architect Jacqueline Osty with Omnium General and; (4) architect Bruno Fortier and landscape architects Agence Ter with Setec TPI as technical consultants.

neighbourhoods⁵⁴. The proposal submitted by group 3 led by Architect Francois Grether with Landscape architect Jacqueline Osty (Grether-Osty-OGI) was chosen in January 2004 and awarded a commission to design the Olympic Village and the first phase of the new urban park.

Figure 44. 2003 Master Plan 2012 Olympic bid. Source: Grether-Osty-OGI, 2001.



The Grether-Osty-OGI master plan proposed a new urban park with close to 10 hectares located in the centre of the site surrounded by mixed-use buildings with a maximum height of 37 meters. It included close to 3,500 residential units with 50% being affordable, and 800 hundred reserved for student housing and youth hostels. It also included more than 100,000 m² of office space, 12,000 m² of retail in the ground floor of buildings and various public amenities such as schools and sports facilities. The competition jury justified its decision based on, among other factors, the centrality given to the new park and two-step implementation incorporated in the

⁵⁴ SEMAVIP (2003) 'Clichy-Batignolles: Un projet ambitieux de requalification du territoire'

design, limited height of the new residential buildings (maximum of 37 meters) and relationship between the new construction and open space amenities proposed.

Figure 45. Rendering of the new urban park proposed for the Olympic Village. Source: Grether-Osty-OGI, 2001.



Based on the master plan chosen, the City of Paris started the formal planning process leading to the adoption a new ZAC. The use of the ZAC instrument established the ‘public interest’ in the redevelopment of the area which would give the city access to additional public funds and the right to acquire all land inside its perimeter. Given the timeline imposed by the Olympic bid, the city opted to divide the development area in two separate ZAC’s in order to focus on the implementation of the first phase of the plan which included most of the proposed Olympic facilities and part of the new proposed public park. It also started the formal process required to acquire the sites within the development area necessary to implement the first phase of the project. The initial acquisitions included the site owned by GEODIS (4.3 hectares) and part of the sites owned by RFF and SNCF (5.5 hectares) necessary to start the implementation of

the proposed Olympic village facilities and first phase of the public park planned to include the portion planned on top of the existent rail yards⁵⁵.

The planning and implementation of the first phase of the plan was closely associated with the Olympic bid. It involved a participatory process between the City of Paris, the City Planning Department, RFF, SNCF and various other public and private actors. It included three public meetings held in the Paris City Hall on in June, October and December of 2004 and a final public presentation of the various Olympic projects in May 2005. The process led the Council of Paris to approve in June 2005 the results of the public meetings and the creation of a first public ZAC ‘*Cardinet-Chalabre*’ with 7.3 hectares.⁵⁶ Following the Grether-Osty master plan, the development program approved included 35,000 m² of additional development divided between 24,500 m² of new residential space, 8,000 m² for an hotel and retail spaces and 2,500 m² for a public school and a underground parking lot. The total public investment required estimated by SEMAVIP was 62.4 million Euros.

To implement the development program approved, the City Council authorized the City of Paris to sign another public planning contract (*Convention Publique d’Aménagement*) with the *Société d’économie mixte de la Ville de Paris* (SEMAVIP, Public/ Private Partnership of the City of Paris). In addition to selecting SEMAVIP as the public developer, the public contract also established that within the new district, builders would be exempt from paying local property

⁵⁵ The final sales agreements between RFF and SCNF with the City of Paris were signed on November 30th, 2005.

⁵⁶ *Deliberation* 2005 DU 105-1, 2 and 3

taxes (*taxe locale d'équipement*). Instead, builders within the new district were required to make a payment covering part of the building costs of the new public amenities proposed. In addition, the contract identified a list of buildings within the new ZAC district where the City of Paris would have preemption rights (*droit de préemption urbain*) meaning that it would have priority to buy a property once an owner declared his intention to sell it.

The modifications to the development plan

In July 2005 the Olympic Committee announced its decision to select the city of London as the host of the 2012 Olympic Games. With the loss of the Olympic bid, the French State and the City of Paris agreed to rethink and update the project around the previous objectives of developing a new residential district around an urban park on the selected site and without the funding associated with the Olympic Games. The need to rethink the development program was formalized in a new deliberation by the City of Paris on April 3rd and 4th of 2006 authorizing SEMAVIP to elaborate comprehensive new planning and economic feasibility studies with the winners of the previous planning competition for the site, the Grether - Osty - OGI team.

On the 12th and 13th of June, two months after the initiation of the new planning studies for the site, the new Paris PLU was adopted by the Paris City Council. The adoption of the new plan concluded a five year process initiated with a deliberation on November 12th 2001 to completely revise the 1989 POS, following the requirements of the Loi SRU. The new plan covered the

entire city of Paris with the exception of areas under different public jurisdiction⁵⁷. In the plan's basic zoning map '*Plan de Zonage*', the entire Clichy-Batignolles development area was rezoned to urban, with the vast majority zoned as *Zone Urbaine Générale* (ZUG, Basic Urban Area). In addition, smaller portions were zoned as *Zone Urbaine de Grands Services* (ZUGSU, Urban Area for Urban Services) as well as *Zone Urbaine Verte* (ZUV, Urban Green Area).

The PLU included also a map of planning easements within the site that had to be considered by any future development proposal. For example, it established the need to enlarge a portion of one of the main streets crossing the area (*Rue Cardinet*). In addition, there were several other easements concerned with existent public infrastructure and services such as the electrical and gas grids, public hospitals and railways. There were also several other restrictions associated with heritage preservation because portions of the site fell inside the perimeter of protection of several listed building located in its surroundings.

The PLU summary map ('*Carte de Synthèse*') qualified the majority of the ZUG zoning district within the development area as a district where mixed uses should be incentivized '*Secteur d'incitation a la mixite habitat-emploi*'. In addition, two additional layers were added to parts of it. In the northern portion of site, a further layer was added '*Sous-secteur plus favorable a l'emploi*' identifying that area as particularly favorable to the location of economic activities. In the southern part of the development area, another layer was added to the ZUG sub-district

⁵⁷ The areas inside the Paris city limits not covered by the new PLU were the Marais and Ministers Districts on the 17th district, and the Luxembourg Park which was placed outside of the PLU jurisdiction by the '*Loi Urbanisme et Habitat de 2 Julliet 2003*'.

used, qualifying it as having a deficit of social housing. The remaining portions of the ZUG district used was qualified as a ‘planning district’ ‘*Secteur d’aménagement*’ where the bulk requirements and particularly the mandatory COS (FAR ratio) of 3 used in basic ZUG districts did not apply⁵⁸.

In addition to the elements of the plan regulating the uses permitted in the development site, other maps and regulations were also particularly relevant to the planning process. In its map of maximum permitted heights for urban areas (*‘Plan des Hauters’*), the maximum height permitted for the site was 37 meters⁵⁹, the highest allowed by the PLU. This limit was generally applied throughout the city to areas surrounding transport nodes, subject to large scale redevelopment efforts or already defined as such in the previous POS⁶⁰. Regardless of the FAR ratios to be defined inside the new ZAC, the height of the new buildings could not in any case surpass 37 meters.

In addition, the PLU also identified in a specific map (*Logement Social et Protection du Commerce et de l’artisanat*) the areas that had a deficit of affordable housing as well as retail subject to specific preservation measures and incentive programs. Most of the consolidated areas surrounding the development area were identified as having a deficit of affordable housing. For

⁵⁸ Particularly Article UG 14 ‘*Coefficients d’occupation du sol* (C.O.S.) - règles de densité*’, Règlement du PLU – tome 1 – Zone UG

⁵⁹ In conjunction with Article UGSU.10 – ‘*Hauteur des constructions*’ Règlement du PLU – tome 1 – Zone UGSU

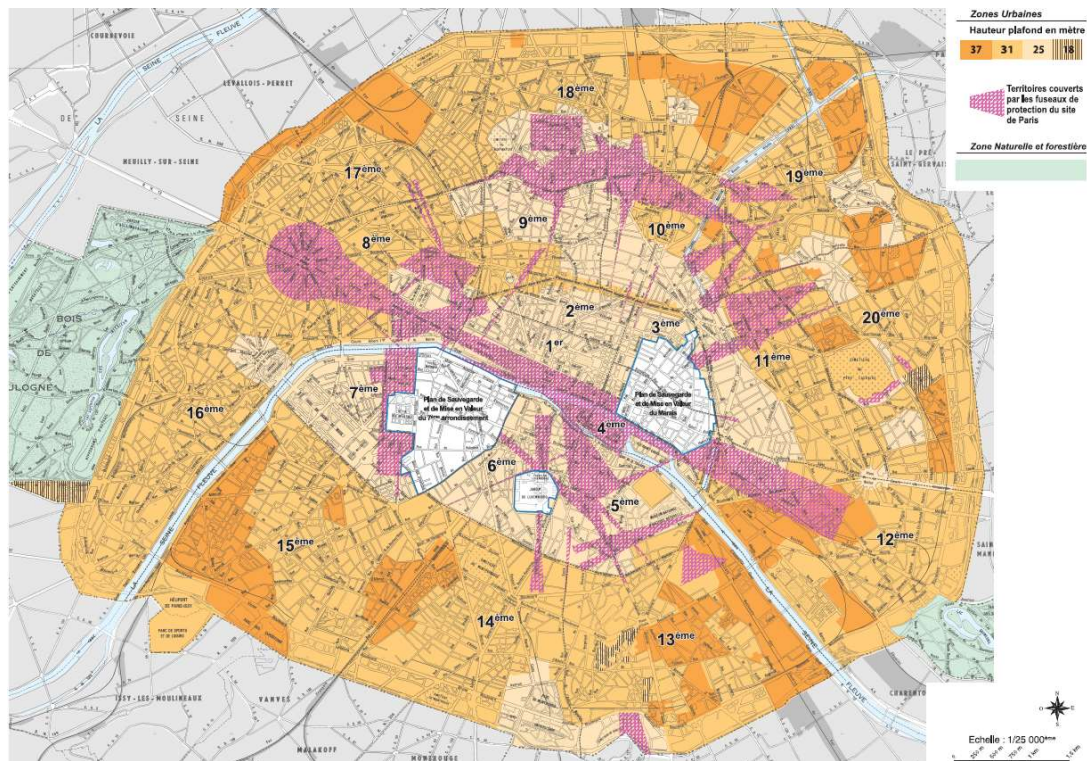
⁶⁰ Règlement du PLU, Troisième partie : Les choix retenus pour établir le projet d’aménagement et de développement durable et la justification des règles.

such areas, article UG.2.3⁶¹ of the PLU defined that in order to be granted a building permit any new development project had to include 25% of affordable housing. Most importantly, the same article also defined that for a ZAC, the 25% requirement should be applied to the total new development area planned for the site⁶².

⁶¹ Article UG.2.3 – ‘*Conditions particulières relatives à l’habitation et à la création de logements locatifs sociaux*’, Règlement du PLU – tome 1 – Zone UG

⁶² ‘Lorsqu’un projet fait partie d’une opération d’aménagement (ZAC, lotissement), l’obligation d’affecter 25% de la surface au logement social s’applique globalement aux surfaces d’habitation prévues dans l’opération.’ Article UG.2.3 , Règlement du PLU – tome 1 – Zone UG.

Figure 46. Map of Maximum Permitted Heights, Paris PLU. Source: APUR, 2006.



Following the requirements of the Loi SRU, the PADD that accompanied the Paris PLU included specific planning guidelines for each of the special sectors identified in the PLU summary map. The PLU used several spatial and text reference mechanisms to define general planning intentions and identify the desired location of new public amenities, public streets and public infrastructure. Acknowledging the ongoing planning process for the development site, the guidelines for the Clichy-Batignolles site were generally flexible and broad, as they were meant to be changed once a development proposal was completed by SEMAVIP.

The guidelines identified the boundaries of the ZAC ‘*Cardinet-Chalabre*’ previously approved and according to the revised article L. 123-2 of the national Planning Code, it also qualified the remaining of the site as a ‘District requiring a general planning project’ (*Secteur en*

attente d'un projet d'aménagement global). Within the perimeter of the ZAC '*Cardinet-Chalabre*', the planning guidelines contained in the PLU matched the development proposal elaborated and already being implemented by SEMAVIP. Particularly it identified the location of the public open park to be created, as well a public educational facility and a public parking. It also marked several streets and axes to be created or improved. Within the new planning district identified, few planning guidelines were defined. Following the acknowledged future need to change the document in order to incorporate SEMAVIP's proposal, there was only a general indication applied to the entire site to 'develop or reconstitute the urban structure' and 'promote economic activity' as well as the identification of the location of the new public park linked to the ZAC '*Cardinet-Chalabre*'.

In addition to the general requirements of the basic zoning districts used and the PADD guidelines, the PLU summary map identified the entire development area as one of the various special sectors within the city (*'Secteur couvert par des orientations d'aménagement'*) subject to additional planning guidelines beyond what was defined in the new '*Projet d'Aménagement et de Développement Durable*' (PADD, Project for Planning and Environmental Sustainability) for the basic zoning districts used throughout the city.

Within the general flexible structure provided by the PLU, the ongoing planning process to elaborate a new development program for the Clichy-Batignolles site proceeded without having to make significant adjustments. On the contrary, it was the PLU that mostly adjusted to the master plan previously elaborated for the site and allowed for enough flexibility to accommodate the new proposal. The planning process started with a technical analysis elaborated in

conjunction with RFF and SNCF focused on the restructuring of the railways connecting with *Gare Saint-Lazare* and associated logistical functions in order to release the sites to be redeveloped. The study recommended the optimization of the railways distribution along the main path and North of Boulevard Berthier.

The publication of the recommendations of the initial technical study led to a negotiated agreement between the French State, SNCF, RFF and the City of Paris on the general objectives for the redevelopment of the site⁶³. With the signing of the public contract, all parties signaled their agreement with the development program proposed and committed themselves to providing the public funds and resources to necessary to implement it. The agreement stated that the new plan should allow for a maximum of 385,000 m² of additional development divided between 246,000 m² of new housing, 100,000 m² of new office space, 27,000 m² of public amenities and 12,000 m² of retail space as well as an urban park with a minimum of 10 hectares. It also stated that the residential space should include at least 3,500 residential units, of which 50% should be affordable including 800 units dedicated to student housing and youth hostels.

In order to compensate RFF and SNCF for the sites to be redeveloped, the City of Paris agreed to finance the construction of facilities with similar functionalities to the ones transferred to the City through SEMAVIP as well as a negotiated list of railway materials⁶⁴. The agreement

⁶³ *'Convention global d'objectifs d'aménagement du site ferroviaire dit des Batignolles'*

Available online at <<http://isabellegachet.unblog.fr/files/2009/10/conventionbatignolles.pdf>>

⁶⁴ The conditions of the sale were regulated by several public laws and statutes including the *'Code General de la Propriete des Personnes Publiques'* [General Code of Public Property], *'Loi d'Orientation sur les Transports Interieurs'* [Law of National Transports] as well as various statutes focused on the RFF and SNCF.

also defined a specific time schedule binding all parties involved. It established that the transfer of the sites necessary to implement the plan should be concluded by the end of 2007 and the all planned residential units should be completed by the end of 2013. In order to start the redevelopment process, the City of Paris committed itself to start the formal administrative procedures necessary to modify all relevant planning documents in order to accommodate the revised plan.

With a new development program approved for the Clichy-Batignolles site, the Grether - Osty - OGI team, together with SEMAVIP and the Paris city planning department engaged in a comprehensive multidisciplinary planning effort from July to December of 2006, in order to complete all studies required to modify the PLU and adopt a new ZAC for the development area. The process included various formal meetings '*réunions de concertation*' between the various public agencies involved. The various studies were completed in January of 2007 and integrated in an environmental impact study '*Amenagement du Site Clichy-Batignoles: Etude d'Impact*' published by the Paris City Planning Department⁶⁵. The study included various analyses assessing the environmental, economic and social impact of the additional development proposed at the local and municipal level. It also included a detailed analysis of the guidelines of all existing planning documents with jurisdiction of over the site.

⁶⁵ '*Amenagement du Site Clichy-Batignoles: Etude d'Impact*', Janvier 2007, Mairie de Paris, Direction de L'Urbanisme.
Available online at <<http://www.clichy-batignolles.fr/espace-doc?width=1000&height=788>>

The final development proposal followed the program previously approved and adapted the basic structure of the project used for the Olympic submission. The large urban park with 10 hectares was maintained and complemented with a new park with 8,000m² located in the Northern section of the site as indicated by the PLU. The facilities dedicated to the Olympic Village were replaced by mixed-use urban blocks placed between the new park and the consolidated urban surroundings following the existent urban grid.

Figure 47. Urban Design plan for 'ZAC - Clichy-Batignolles'. Source: SEMAVIP, 2007.



Following the development program defined in the agreement previously negotiated, the final proposal for the Clichy-Batignolles site included 3,000 residential units, of each 50% would be affordable and another 800 would be dedicated to student housing and youth hostels. The program included 100,000 m² of office space, corresponding to 6,000 new jobs and 10,000 m² of

retail space. The public amenities proposed for the site included one elementary school, one or two high schools, a public sports center and one or two kindergartens. In addition, the new overall plan also detailed the development proposed for the western portion of the site owned by SNCF/ RFF. It proposed 50,000 m² of additional development divided between 31,000 m² of residential space (approximately 400 units), 12,000 m² of office space, 2850 m² for a new high-school and gymnasium and 2850 m² of retail space. The studies elaborated assumed that SNCF as the land owner would have responsibility for the redevelopment of the ‘Pereire’ site and implementation of the development program defined.

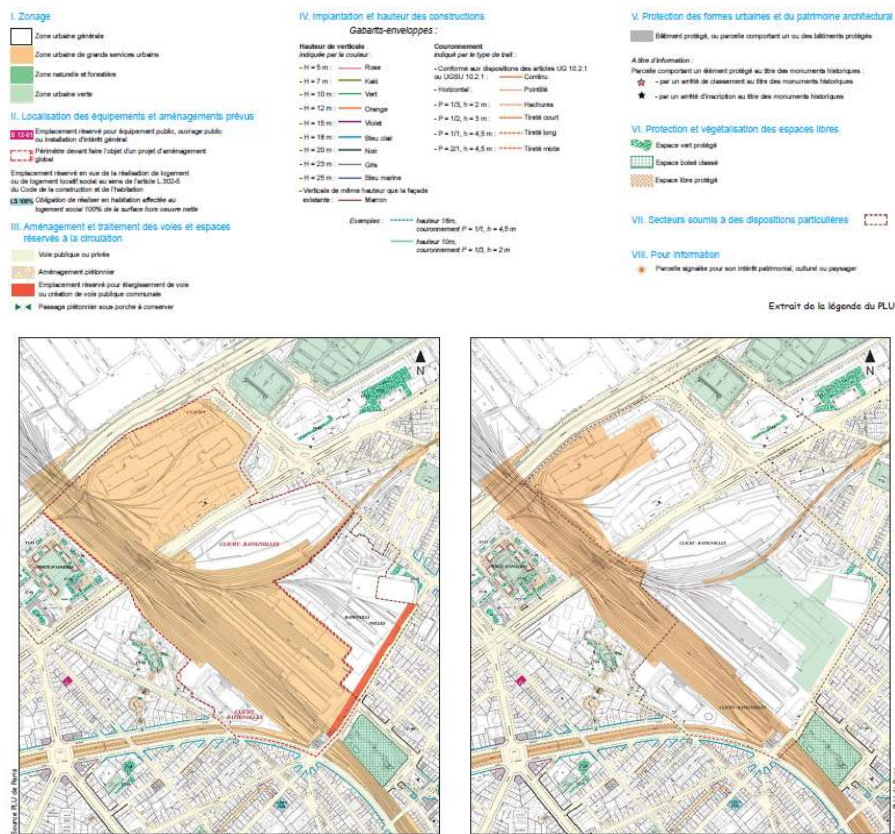
The completion of the studies led to the formal adoption by the Paris City Council of the ZAC ‘Clichy-Batignolles’ on February 23rd 2007⁶⁶. The initial deliberation included a preliminary approval of 350,000 m² of new development without specifying how much would be allocated to each new use approved. The final development program could only be approved after modifying the PLU guidelines previously approved. Following the implementation strategy used for ZAC *Cardinet-Chalabre*, builders within the new special district would be exempt from paying local property taxes and could be required to make a payment covering part of the costs of the new public investments proposed.

The implementation of the new ZAC approved required the modification of existent zoning districts and the additional planning guidelines for the Clichy-Batignolles site included in the

⁶⁶ Conseil de Paris, 2007 DU 50-1° - Secteur “Clichy Batignolles” (17e). - Bilan de la concertation. M. Jean-Pierre CAFFET, rapporteur. 2007 DU 50-2° - Secteur “Clichy Batignolles” (17e).- Création de la Z.A.C. “Clichy Batignolles”. M. Jean-Pierre CAFFET, rapporteur.

PLU in order to allow the City Council to approve the final development program. The modifications required included rezoning portions of the areas zoned as ZUGSU (reflecting existent uses) to ZUG and changing the ZUG zoning district to ZUV in the site where the new urban park would be located. In addition, the portions of the ZUG zoning district where the bulk requirements and particularly the mandatory COS of 3 used in basic ZUG districts should be changed to the global density objective used in the remaining portions zoned as ‘planning district’ in order to allow for additional flexibility in articulating building volumes.

Figure 48. The zoning regulations included in the 2006 PLU for the ‘Clichy-Batignolles’ planning district before and after the 2007 revision. Source: APUR, 2009.



In addition to the revised general guidelines, the PLU also identified in its 1st annex, the articles that contained regulations specific to that sector and whether it was subject or not to the

mandatory COS of 3 defined in article UG. 14. The additional guidelines specific to the ZAC Clichy-Batignolles that required changes to the general requirements defined by the PLU included: (1) changing the required minimal distance between public parks and buildings from 6 meters (UG.7.1) to 2 meters (UG.7.4); (2) replacing the maximum heights permitted for different street widths defined in articles UG.10.2.1 and UG.10.3 for heights limits and building envelopes based on the urban design intentions of diversity of scales and volumes defined by the Grether-Osti-OGI master plan⁶⁷; (3) and requiring the continuity of public spaces surrounding the new park in order to guarantee the visual continuity between the park and the surrounding residential buildings (U.G 13.1.2.)⁶⁸.

Also the various additional planning guidelines for the Clichy Batignolles site included in the PADD (that were already defined for the ZAC ‘*Cardinet Chalabre*’) needed to be added to the new ZAC ‘Clichy-Batignolles’ and the Sausurre development area. The planning guidelines required by Loi SRU to be included in the PADD included among others: location of public amenities, roads to be created or modified and pedestrian paths. In order to modify the PLU, the City of Paris opted for the ‘simplified revision’ procedure included in article L123-13 of the National Planning Code which required a six month process of several ‘public enquiries’

⁶⁷ Particularly, following the intentions of Grether-Osti-OGI master plan, the maximum height permitted for new construction inside the ZAC perimeter would be 37 meters for building facing the new public park, 28 meters for buildings facing other proposed green spaces and 20 meters for all remaining new buildings

⁶⁸ Modification du PLU approuvée les 12 et 13 Novembre 2007 sur le Secteur Clichy Batignolles - Rapport de présentation.

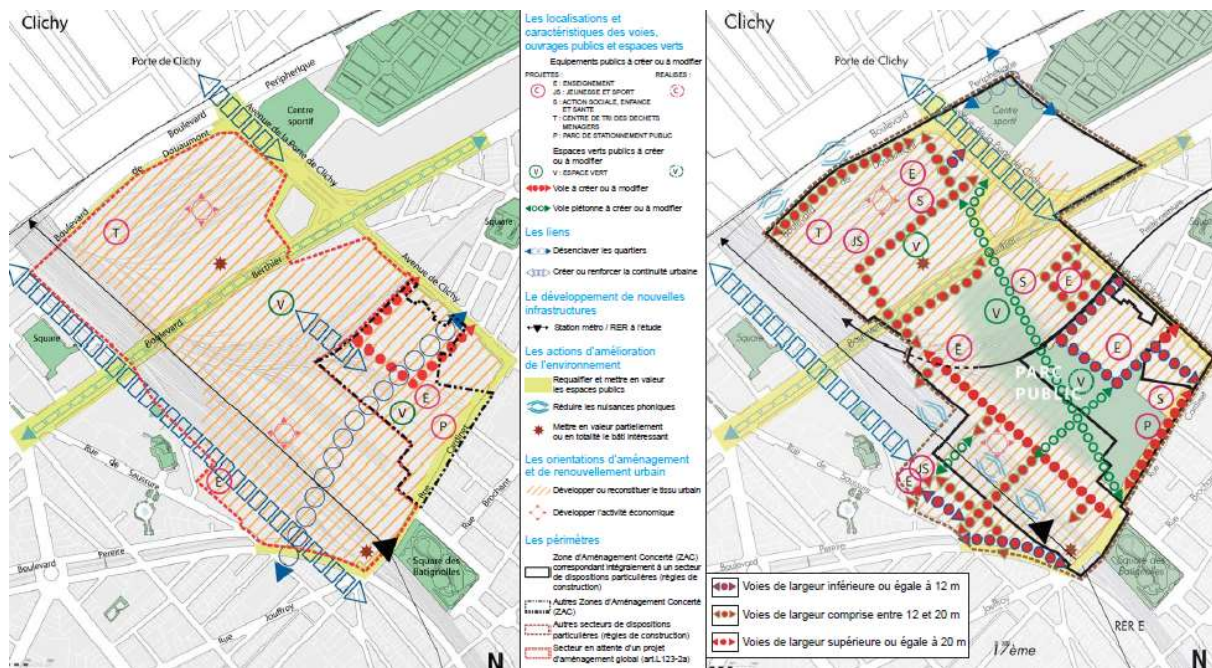
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(‘Enquête publique’) as defined by the national environmental code⁶⁹. The successful conclusion of the formal process of public enquiry led to the formal request to City Council to approve the modifications to the PLU in October of 2007. All modifications required were approved on the 5th of December⁷⁰.

⁶⁹ Article L123-1, Section 1 : Champ d'application et objet de l'enquête publique, Chapitre III : Enquêtes publiques relatives aux opérations susceptibles d'affecter l'environnement, Titre II : Information et participation des citoyens, Livre Ier : Dispositions communes, Code de l'environnement.

⁷⁰ 2007 DU 196 - Secteur “Clichy-Batignolles” (17e). Approbation de la modification du PLU après enquête publique.

Figure 49. The additional planning guidelines included the PADD of the 2006 PLU for the ‘Clichy-Batignolles’ planning district before and after the 2007 revision. Source: APUR, 2009.



The changes to the PLU in the Clichy-Batignolles development site allowed the City Council to also formally approve the development program previously defined⁷¹ and designate SEMAVIP as the ‘public developer’ responsible for its implementation⁷². Its responsibilities included among others, the planning and construction of all proposed public infrastructure and amenities, right to buy or expropriate all public and private land within the perimeter of the ZAC at indexed prices; and right to issue building permits. The contract would have a duration of ten

⁷¹ 2007 DU 198-1° - ZAC “Clichy Batignolles” (17e). - Approbation du dossier de réalisation de la Zone d’aménagement Concerté. 2007 DU 198-2° - ZAC “Clichy Batignolles” (17e). - Approbation du programme des équipements publics.

⁷² 2007 DU 199-1° - ZAC “Clichy-Batignolles” (17e). - Désignation du concessionnaire. - Approbation du traité de concession. - Autorisation à M. le Maire de Paris de signer le traité de concession. - Autorisation à M. le Maire de Paris de signer un avenant au marché de maîtrise d’œuvre urbaine en vue de l’aménagement du secteur “Clichy Batignolles”. 2007 DU 199-2° - ZAC “Clichy-Batignolles” (17e). Autorisation à la SEMAVIP de déposer les permis de construire et de démolir.

years and for its services, the City of Paris would pay SEMAVIP 179.4 million Euros out of its municipal investment budget.

For both ZAC's, SEMAVIP estimated that the total cost of the operation would be approximately 1.63 billion euros split between SEMAVIP (740 million euros) and the City of Paris (890 million euros). The City's share included, besides the payment to SEMAVIP, 233M for land acquisitions, 268M for the railways and 221m for the planned public amenities. SEMAVIP's share included 410M for land acquisitions and 330M for studies and land development SEMAVIP's investment would be balanced through land sales and the payment received from the City. A month later the City also sold to SEMAVIP two public properties located inside the ZAC 'Cardinet-Chalabre' with a combined area of 9,871 m2 and for a price of 18.25 million Euros ⁷³.

Implementation

With the formal approval of the development program and signing the contract with the city of Paris to act as 'public developer' of the Clichy-Batignolles site, SEMAVIP proceeded with its development work. It included realizing all planned public investments as well acquiring the private properties within the area using eminent domain if necessary, realizing all required

⁷³ 2007 DU 239-1° - Vente à la SEMAVIP d'emprises dans la ZAC "Cardinet-Chalabre" (17e). - Autorisation à la SEMAVIP de déposer les demandes d'autorisations administratives nécessaires à la mise en œuvre de l'opération. - Autorisation à la SEMAVIP de constituer toutes les servitudes nécessaires à cette opération. 2007 DU 239-2° - Vente à la SEMAVIP de lots de copropriété dans la ZAC "Cardinet-Chalabre" (17e). - Autorisation à la SEMAVIP de déposer les demandes d'autorisations administratives nécessaires à la mise en œuvre de l'opération. - Autorisation à la SEMAVIP de constituer toutes les servitudes nécessaires à cette opération.

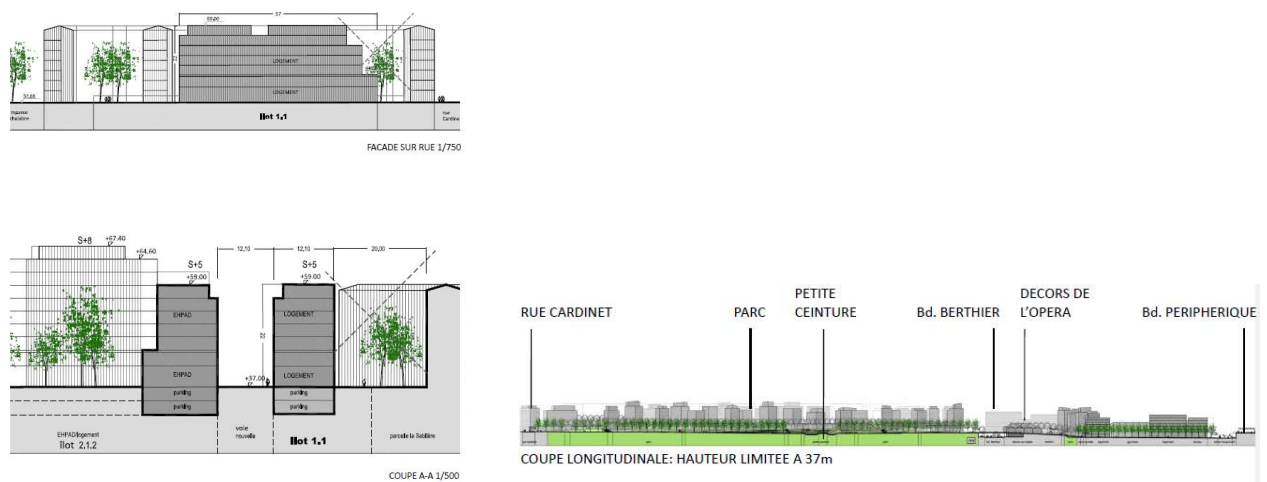
technical studies and selling back the developed lots to builders through public competitions. In July of 2007, the first section with 4.3 hectares located inside the ZAC 'Cardinet-Chalabre' with the new public park opened to the public. The section completed corresponded to the site acquired by the City of Paris from RFF/ SNCF in 2005 and transferred to SEMAVIP. Immediately after gaining control of the site, SEMAVIP had started the demolition of the existent infrastructure and preparation of the site which lasted until April 2006. From July of 2006 until July of 2007, the new platform above the existent railways was built and the first section of the park was implemented.

After signing the contract with the City of Paris, SEMAVIP constituted its own technical team and engaged in the coordination of the various public agencies responsible for parts of the project including: (1) SNCF, responsible for the reconstruction of the raila yards; (2) DEVE responsible for the implementation of the second tranche of the Martin Luther King park; (3) DVD responsible for the renovation of various urban streets as well as the new planned bridge over the rail yards; and (4) DASCO and DPE for the various educational facilities planned for the site.

In addition SEMAVIP proceed with the acquisition of the private properties within the development area at indexed prices (referenced to average land prices within the City in the previous years) through direct sale or eminent domain. The acquisition of the sites enabled SEMAVIP to reorganize the plot structure to match the urban design plan approved. In coordination with the Grether team, SEMAVIP commissioned several architectural and engineering teams to elaborate the required technical studies for each new lot to be sold to public

agencies responsible for building the affordable housing units and the part of the public amenities and well as the general design guidelines for the lots to be sold to private builders through public competitions. In addition to several urban design guidelines applicable to the new network of public spaces, the Grether team elaborated a specific dossier of urban design and architectural requirements for each lot to be sold⁷⁴.

Figure 50. Example of urban design requirements elaborated for a lot zoned for commercial uses (Lot 1.1). Source: APUR, 2011.



Further evolutions

After the approval of the modifications to the PLU at the end of 2007 and start of the development work by SEMAVIP, two additional changes in circumstances again compromised the development program previously approved requiring further modifications. The first change was originated in the decision in July of 2008 by the City Planning Department to initiate a series

⁷⁴ For an example of the guidelines prepared for a specific lot see: Grether (2009) 'ZAC Clichy Batignolles: cahier des orientations et des prescriptions urbaines, architecturales et paysagères: Fiche du Lot 1.1. SEMAVIP.

of studies and debates about the evolution of the urban landscape in the periphery of Paris. The main objective of the studies was to examine the possibility to increase the maximum permitted height from 37 to 50 meters in some sites including most ongoing ZAC's⁷⁵ and allow for even higher buildings around its main transport nodes (*portes*).

The decision had its origins in a study group '*Les Hauteurs*' created by the Paris Council in June 2006 with the approval of the PLU. The maximum height of 37 meters permitted by plan was the result of a comprehensive questionnaire made in November of 2003 to 120,000 Parisians in which the vast majority said to be against an increase in the maximum permitted height. Respecting the results of the questionnaire, the PLU maintained the limit of 37 meters but through the PADD incentivized further studies and discussions, particularly for undeveloped areas around the periphery subject to ZAC's⁷⁶.

The study group included the members of the strategic commission of the City of Paris that had participated in the elaboration of the PLU, the representatives of the various political groups present in the Paris Council and the members of the 1st and 8th Commissions of the Council. Between September of 2006 and September of 2007 the group met nine times. The representatives of the Green Party and UMP decided to stop participating in February of 2007. In

⁷⁵ DU-2008-0142. '*Lancement d'un processus d'études, de débat et de concertation portant sur l'évolution du paysage urbain parisien sur sa couronne – Projet de Deliberation*'. Direction de l'Urbanisme Sous Direction des Études et des Règlements d'Urbanisme

⁷⁶ '*(...) un groupe de travail constitué notamment d'élus représentant les groupes politiques du Conseil de Paris puisse examiner à partir de projets concrets, la pertinence et les modalités d'analyse de la question de la hauteur en termes de vocation des immeubles et de formes urbaines, de condition de vie et de travail, ainsi que de qualité architecturale et de consommation énergétique*'.

addition to the meetings, the group commissioned a detailed study of three development areas in Paris in order to test the validity of its recommendations⁷⁷.

Based on the urban design studies elaborated for the three selected sites, the group concluded that it would be desirable to increase the maximum permitted height from 37 to 50 meters in certain areas around the periphery of Paris. The new maximum would allow the City to meet its housing targets, particularly for affordable housing and help control the increase in housing prices observed in the last few years. The new maximum height would also optimize construction costs as it would still be below the limit above which fire regulations and technical requirements would make construction significantly more expensive. The study group estimated that the new limit would decrease construction costs per housing unit by 20% to 30%. In addition, the group recommended that in specific sites subject to large redevelopment efforts, particularly around urban nodes, it would be desirable to allow for punctual buildings with heights up to 150 to 200 meters for office and commercial uses. Such buildings would create new urban centralities and serve as the focus point of the redevelopment efforts. Based on the group's recommendations, the City Planning Department and the City Council decided to conduct a series of debates with various stakeholders involved and expand the urban design studies previously elaborated to other areas of the city's periphery including Porte de Montreuil (20th District), Porte de Versailles (15th District) and ZAC Clichy-Batignolles.

⁷⁷ The three sites chosen were Masséna-Bruneseau (13th District) studied by Yves Lion, Bercy-Charenton (12th District) studied by the City Planning Department and Porte de la Chapelle (18th District) studied by François Leclercq.

The second major change was the decision by the French Government announced in April of 2009 by President Sarkozy to locate the new '*Palais de Justice de Paris*' (Paris High Court) and the '*Direction Régionale de Paris de la Police Judiciaire*' (Regional Headquarters of the Paris Police) in the northern section of the ZAC Clichy-Batignolles. The announcement concluded a long and difficult process started in 90's to relocate and aggregate the various courts and judicial buildings located throughout Paris in one location in order to increase efficiency, decrease operating costs and address functional needs that the old '*Palais de la Justice*' located in an historical site in the Ile de la Cite could no longer address⁷⁸.

The process had gained a new impetus with the creation of a governmental agency EPPJP in February 2004 with the purpose of assessing the current and future needs of the institution, realize all required technical studies and finding a new location for the project within the City of Paris⁷⁹. In February of 2005, based on the studies realized by the agency, the government announced its preference for a site known as 'Tolbiac' in the 13th district. The Paris Mayor Bertrand Delanöe and the City Council disagreed with the decision and in November of 2005 proposed the site 'Massena-Rives de Seine' also in the 13th district as an alternative. The agreement of the City was crucial because the new complex could not be implemented unless the PLU was modified to accommodate it. Nevertheless the board of directors of EPPJP maintained

⁷⁸ For a detailed account of the process see: LUART, M. (2009) '*Rapport d'Information fait au nom de la commission des finances sur l'implantation du tribunal de grande instance de Paris*', SENAT N.º 38.

Available online at:

⁷⁹ Décret n° 2004-161 du 18 février 2004 '*Etablissement public du palais de justice de Paris*'.

its preference for the 'Tolbiac' site. The disagreement motivated a politically charged exchange of letters between the Paris Mayor, the French Prime-Minister Dominique de Villepin and the Prefect of the region in the first months of 2006.

In order to strengthen its position, in June 2006 the EPPJP decided to organize an international design competition with the objective of elaborating a layout of the new complex in the 'Tolbiac' site. The competition was a huge success with over 275 entries and some highly acclaimed design solutions. Nevertheless, in February of 2007, the Paris Mayor in a meeting with the Minister of Justice Pascal Clément again restated its preference for the 'Massena-Rives de Seine' site. In spite of the lack of support, the Prime-Minister decided to move ahead with its decision and in March of 2007 asked EPPJP to commission the technical studies and public competitions necessary to implement the winning solution in the 'Tolbiac' site. Still the City Council was not convinced and for over two years the project was at a standstill until the announcement by President Nicolas Sarkozy in April of 2009 of the Clichy-Batignolles site as an alternative that pleased both sides.

The program for the complex elaborated by EPPJP defined that it should have about 128,500 m² of floor area covering 66% of the site and estimated a total investment budget of 632 million euros. The functional program included 88,500 m² dedicated to the various court buildings in order to accommodate 540 magistrates and 1130 civil servants. The remaining 30,000 m² would

be occupied by the judiciary buildings⁸⁰. In order to accommodate all the space required in 66% of the site, the program recommended that the complex included a tower with a maximum height of 130 meters. In order to implement the project, the City and the State signed two conventions on the 20th and 30th of November 2009 defining the payments that the State should make to acquire the site and compensate the City for the payments made to SNCF and RFF. In addition the State would also participate in the cost of the public amenities planned for the ZAC as well as in the required reconstruction of railways. The complex is planned to be inaugurated in 2015.

Following the deliberation by City Council, SEMAVIP and the Grether-Osty-OGI team were commissioned to elaborate an adaptation of the project previously elaborated in order to accommodate buildings with 50 meters, particularly around the perimeter of the new urban park as well as the Palais de la Justice. The study concluded that the plan could accommodate 8 to 10 buildings with 50 meters. The additional floors should represent an increase in affordable housing from 50% to 55% of the planned new residential units. The new study also included a preliminary layout of the new judiciary complex in the northern section of the site and indicated the preferential location of the new 130 meters towers at the end of an urban axis crossing the new Martin Luther King Park.

⁸⁰ For a detailed description of the program, see: EPPJP (2010) *'Le future Palais de justice de Paris Quartier des Batignolles: 2009 – 2015'* Minister de la Justice et dès Libertes. Available online at <<http://www.eppjp.justice.fr>>

Figure 52. Master plan for the Clichy-Batignolles site after 2009 modifications to the ZAC program and PLU. Source: APUR, 2009.



In order to accommodate the proposed changes, the development program formally approved in 2007 had to be modified and the PLU again revised. The decision to engage both procedures was formally approved in October of 2009⁸¹. The two deliberations required the formal changes to the ZAC program and PLU: (1) increasing the maximum permitted height from 37 to 50 meters of 8 to 10 buildings located inside the perimeter of the ZAC; (2) increasing in 115.000 m²

⁸¹ 2009 DU 171 – 1^o: Modification de la ZAC ‘Clichy Batignolles’ – Objectifs poursuivis, definition des modalites de la concertation.

2009 DU 171 – 2^o: Engagement de la procedure de revision simplifiee du PLU – Objectifs poursuivis, definition des modalites de concertation.

the previous 341.450 m² of new construction area allowed and expanding the perimeter of the ZAC to incorporate Porte de Clichy in order to accommodate the new Palais de la Justice; and (4) increasing total percentage of residential space dedicated to affordable housing from 50% to 55%. In order to modify the PLU, the City opted again for the ‘simplified revision’ procedure included in article L123-13 of the National Planning Code which required a six month process of several ‘public enquiries’ (‘Enquête publique’) as defined by the national environmental code. All modifications were planned to be approved in the second semester of 2010.

The implementation of the Clichy-Batignolles District started with the construction of the first 4.5 hectares of the 10 hectare Martin Luther King Park in 2007 financed with public funds and ahead of any building construction. It featured high-quality landscaping and sports facilities. The second phase of the park with 6.5 hectares was scheduled to open in 2014.

Figure 53. Construction of the Martin Luther King Park. Source: SEMAVIP, 2011.



At the end of 2012, work was already underway in building the elevated platform on Boulevard Berthier to required for the RER line and to extend the number 14 line from the Saint-Lazare station to Saint-Ouen, via Pont Cardinet and Porte Clichy, to provide a rapid direct link to major Paris transport hubs. In addition the T3 tram line will also be extended to Porte d'Asniere by 2017 and a Saint-Lazare-La Défense Transilien line with a new stop at Port Cardinet was planned to open by 2020. By the end of 2012, construction was finished on three buildings along Rue Cardinet on the Northern section of the site including a new residential parking building with 600 spaces, the first residential building with a mix of market units and low-income units, and student housing with a kindergarten and street-level retail. All projects required an preliminary public competition where any architect could participate. At the end of 2012 proposals had already been approved for the majority of the residential lots, 140,000 sqm of office space, 31,000 sq.m. of retail, and 38,000 sq.m. of public amenities as well as the new 'Palais de la Justice' won by Renzo Piano.

The building, scheduled to open in 2017, consists of three receding blocks set atop a grand podium. It will house the Tribunal de Grande Instance, or lower court, as well as district courts now attached to each arrondissement. The French builder Bouygues Construction, a subsidiary of the Bouygues Group, will be the developer of the 575 million-euro project, in a so-called public-private partnership. In conceiving the building, Mr. Piano said he thought of it as a "machine of justice" serving all parts of society. Nearly full-floor windows and an active system of blinds will give the courthouse a crystalline and luminous aspect, he said, in contrast to a typical monolithic hall of justice. "The idea," he said, "is to create trust, not by intimidation but by a sense of light and openness."

Figure 54. Paris Courthouse. Source: Renzo Piano Workshop, 2017.



Developers delayed building in Clichy Batignolles, hoping that the market will improve. By the end of 2012, no large commercial tenants had yet committed to the project. Tishman Speyer invested 200 million euros in two office buildings before work started and any tenants had signed on. The project, called Pont Cardinet will offer a total of about 25,000 square meters of office space and is expected to be finished early 2014. Michael P. Spies, the head of European operations for Tishman Speyer mentioned that “One thing we like about the Cardinet project is that these are low-rise buildings that can be delivered in a very short time and really suit the marketplace. Risk grows the further out you look.”

Emerige, a developer of two residential buildings on the site, has taken steps to minimize risk, said Laurent Dumas, the chief executive. One building will have 48 units of subsidized

housing, and will be sold to a company that will manage it and rent it out. The other, a market-rate building, will have 79 apartments for sale. The project was designed jointly by the firm of the French architect Christian Biecher, and MAD, a Chinese firm. The choice of MAD was an effort to tap the lucrative Chinese market, Mr. Dumas said. He added that he had fielded many calls from potential Chinese buyers, even though construction had not yet started. The units are expected to sell for an average of 12,000 euros per square meter, or about \$1,450 per square foot.

Figure 55 Residential Building. Biecher + MAD. Source: Emerige, 2011.



CHAPTER 6 : PLANNING BY EXCEPTIONS: THE CREATION OF THE ‘OPERAÇÃO URBANA ÁGUA-BRANCA’, SAO PAULO, BRAZIL

6.1 OVERVIEW

This chapter describes the planning and development process of the Agua-Branca site Agua-Branca development site in West Sao Paulo, Brazil. The objective is to study how the change in the articulation between the 1995 Agua-Branca special district and the 2004 zoning controls influenced development of the site until 2010. Particularly, it compares the capacity of the incentive structure in place to attract private investment and finance public investments before and after the approval of a new strategic plan.

The chapter illustrates the complex articulation between the formal system of land-use plans and regulations present in the Brazilian system; and the incentive structure created through special districts (OU's - '*Operacoes-Urbanas*') to encourage the redevelopment of large-scale urban sites. The system introduced in 2001 by the new national planning law attempts to provide a continuum between the policies and guidelines defined in the Sao Paulo Strategic Plan and the uses and bulks permitted by the Zoning Resolution. Special districts are part of a broad array of public planning instruments available to municipalities to implement policy defined in the strategic plan. Once adopted, special districts create situations of exception to the underlying zoning controls which can be used by landowners and investors in exchange for a specified contribution. But as the existing zoning controls are not modified, the articulation between both instruments can be challenging.

The initial special district was enacted in 1995 to provide incentives to private investors to help finance road and infrastructure improvements in one of the largest sites in central Sao Paulo. The limited success of the initial incentive structure originated a rethinking of the plan which used the Sao Paulo bid to host the 2012 Olympic Games and a subsequent international design competition '*Bairro Novo*' to elaborate a master plan to provide guidelines to the revision of the special district. During the revision process, a new Zoning resolution was approved based on a new Strategic master plan for the city. The entire development area was rezoned and the articulation between the special district and the underlying zoning controls was modified. As the special district was not revised, all new private development took place under the new articulation between the 1995 special district and the new 2004 zoning controls.

Section two of this chapter provides a general introduction to the background and planning framework for the project. Section three introduces the case and describes the various phases of the planning process from the first planning studies elaborated to the final approval of the modifications to the special district program in 2010. Section four discusses the impact of the new plan on the planning process and how it influenced the subsequent development proposals approved.

6.2 SAO PAULO URBAN SYSTEM

São Paulo is the largest and wealthiest city in Brazil and the 7th most populous in the world with close to 20 million people. As the financial capital of Latin America, it is the home of the Sao Paulo Securities, Commodities and Futures exchange '*BM&BOVESPA*'. It hosts the most largest foreign-owned companies in Latin America as well as headquarters of the largest

commercial foreign banks in Brazil. Sao Paulo is also the focal point for the Mercosur regional bloc, the Southern Cone regional trade agreement that has resulted in its becoming a recipient of major national investment in regional infrastructure for transportation and digital networks (Buechler, 2006). Sao Paulo does not yet play a major role in the emerging global economy, but nonetheless holds a dominant position at the regional level.

6.3 BACKGROUND AND PLANNING FRAMEWORK

In Sao Paulo, land-use regulations are defined in the Sao Paulo Zoning Resolution (LZ - '*Lei de Zoneamento* ') enacted in 2004⁸². The LZ includes city-wide planning guidelines complementary to the PDE (part one), a strategic regional plan for each of the thirty one sub-prefectures of Sao Paulo (part two) and zoning controls regulating permitted uses and bulks as well as subdivisions (part three). The first part of the Zoning Resolutions details and complements the city wide guidelines defined in the 2002 PDE. It is divided between (1) structural elements, (2) elements of inclusion, (3) uses and bulks; (4) planning instruments; (5) public participation and (6) urban management. The second defines several objectives and policies for each region of Sao Paulo as well a strategic plan for each of its 31 sub-prefectures. Each plan proposes specific objectives and public interventions for each sub-prefecture as well a detailed program of public investments. Part three defines the uses and bulks permitted through zoning districts. The system is based on two main macro-zones each subdivided in three

⁸² Law n. 13885, August 25th, 2004.

standard zoning districts⁸³ and various special purpose districts (*ZE - 'Zonas Especiais'*) targeting a particular objective such as environmental preservation or social integration. Each district permits a specific combination of uses based on the various sub-groups allowed within two main use categories⁸⁴.

The 2004 LZ complements and details the planning objectives and guidelines defined by the Sao Paulo Strategic Master Plan (PDE - '*Plano Director Estratégico do Município de São Paulo*') enacted two years earlier⁸⁵. The new plan was based on the new national planning law 'City Statute' enacted the previous year⁸⁶. The new national planning law regulated articles 182 and 183 on urban policy of the 1988 Brazilian Constitution. Subject to a long period of discussion, it marked a turning point in Brazilian land policy by acknowledging the 'social function' of property and institutionalizing several instruments to implement planning policy. The Constitution required for specific legislation of national scope that could regulate the new public instruments of development control and mandatory formulation of master plans for municipalities with more than 20,000 inhabitants. The 'City Statute' addressed these

⁸³ District of Environmental Protection (*'Macrozona de Proteção Ambiental'*) which includes three subdistricts and several ZE's; and District of Urban Qualification and Structuring (*'Macrozona de Estruturação e Qualificação Urbana'*) which is subdivided in four main groups: (1) District of Urban Restructuring and Renewal (*Macroárea de Reestruturação e Requalificação Urbana*), District of Consolidated Development (*'Macroárea de Urbanização Consolidada'*), District under consolidating development (*'Macroárea de Urbanização em Consolidação'*), and District of Development and qualification (*'Macroárea de Urbanização e Qualificação'*). Each sub-district allows for various combinations of each of the three standard zoning districts permitted (Residential 'ZER', Industrial 'ZIR', Mixed-Use 'ZM') overlaid by several ZE's. See Law n.13,885. Part III, Title II, Chapter I together with Law n. 13,430, Chapter II, Section I – IV.

⁸⁴ Residential (R) and Non-Residential (NR)

⁸⁵ Law n. 13430, September, 09th, 2002.

⁸⁶ Federal Law 10251 of July 10th, 2001.

Constitutional requirements by defining the content of planning instruments for expressing urban policy at the national, regional and local levels as regulating the public instruments of development control. The 2002 Sao Paulo PDE was one of the first strategic plans to be published according to the requirement of the new national law.

The control of uses and bulks in Sao Paulo was originally part of the 1866 Municipal Code (*'Código de Posturas'*) which regulated a wide range of city matters, including partial controls on maximum permitted building heights, setbacks and incompatible uses such as slaughterhouses. With subsequent expansion in development and technological advances in construction methods permitting higher buildings, a new code was introduced in 1929⁸⁷ regulating building heights in relationship to street widths based on the 1916 New York City Zoning Resolution. The new Code permitted building heights 2.5 times the width of the street facing the building in the central area of the city. The ratio between building height and street width decreased progressively as one got further away from the center. In 1957, as part of the studies for a new strategic plan, a new law⁸⁸ introduced for the first time a floor to area ratio (FAR) control based on permitted uses. The new law permitted a maximum FAR of 4 for residential buildings and 6 for commercial buildings.

In 1972 with the enactment of a new Zoning Resolution (LPUOS – *'Lei de Parcelamento de Parcelamento, Uso e Ocupação do Solo'*) the city of Sao Paulo implemented its first city-

⁸⁷ Municipal law n.3427 *'Codigo de Obras'*, known as Artur Saboia Code later integrated in the 1934 Municipal Act n.663.

⁸⁸ Law n. 5,261, of July 4th, 1957 known as 'Anhala law' proposed by Anhala Melo in 1954.

wide comprehensive zoning controls⁸⁹. The law regulated the planning guidelines proposed by the 1971 Sao Paulo Development Plan (PDDI - '*Plano Diretor de Desenvolvimento Integrado*')⁹⁰ enacted with Law n. 7,688 of December 30th, 1971. The plan was elaborated in response to a federal law which required states and cities to elaborate regional and local plans in order to qualify for federal funding to be provided by the Federal Housing and Urban Development Agency (SERFHAU – '*Federal Housing and Urban Development Agency*') created in 1965 by the military government. In order to implement the new plan the city created a specific municipal planning agency (COGEP – '*Cordenadoria Geral de Planejamento*') which would later become the Sao Paulo Secretary of Development (SEMPLA – '*Secretaria Municipal de Planejamento*').

The 1972 LPOUS, influenced by the 1961 New York City Zoning resolution, divided the city in eight standard zoning districts⁹¹ each its own maximum permitted FAR, lot coverage and required setbacks; and five use categories each subdivided in several subcategories⁹². The central section of the city permitted a maximum FAR of 4, corresponding to approximately 10% of its area. The remaining sections permitted a maximum FAR of 1 (4% - low density high-income residential areas) or 2 (the remaining 86%). Even though each standard zoning district was associated with maximum permitted base FAR, it could be increased up to the overall maximum

⁸⁹ Law n. 8,805 '*Parcelamento de Parcelamento, Uso e Ocupação do Solo*', November 1st 1972.

⁹⁰ Law n. 7,688 of December 30th, 1971

⁹¹ Z1: low density, exclusively residential (FAR 1); Z2: low density, predominantly residential (FAR 1-2); Z3: medium density, predominantly residential (2.5-4); Z4: medium/high density, mixed use (FAR 3-4); Z5: high density, mixed use (FAR 3.5-4); Z6: predominantly industrial (FAR 1.5); Z7: industrial (FAR 0.8); Z8: special use (e.g. institutional, recreational, conservation areas) (Article 21).

⁹² Residential (R1, R2, R3), Comercial (C1, C2, C3), Industrial (I1, I2, I3), Services (S1, S2), Institutional (E1, E2, E3, E4) (Article 20).

of 4 if the lot coverage was reduced⁹³. Such possibility induced the construction of high-rise isolated residential towers that constituted the vast majority of new developments in Sao Paulo since the enactment of the 1972 LPOUS.

During the 1970's and 1980's, the LPOUS was amended several times in order to add specific uses not included in the original categories and create exceptions to the base controls. Twelve new zoning categories were added and the existing ones changed. Most of the changes were implemented to address development pressures. One of the most significant amendments was introduced the following year⁹⁴ allowing for the development of 'R3' residential buildings in 'Z2' districts through the use of the 'Adiron's formula'. While in 1972, 'Z2' districts accounted for 86% of the city's area, in the beginning of the 90's they were down to approximately 50% (Nobre, 2004).

In the 1980's, in response to the inability of the zoning system to address the individual intentions of public and private stakeholders and the constrained fiscal conditions of the Brazilian state, new mechanisms were introduced to grant exceptions to existing controls and create alternative mechanisms to generate revenues and provide public benefits. A new law enacted in 1984 during the tenure of Mayor Mario Covas, introduced the possibility to transfer unused developments of buildings zoned as 'Z8-200' (for listed buildings with historical

⁹³ Through a formula known as 'Adiron's formula' based on the similar New York City incentive zoning mechanism.

⁹⁴ Law n. 8,001/73.

significance) and exempt them from paying property taxes⁹⁵ in order to compensate owners and promote heritage preservation.

In 1985, the new Sao Paulo Master Plan (PD – *‘Plano Director de Sao Paulo’*)⁹⁶ introduced during the tenure of Mayor Mario Covas introduced the possibility to use special districts (OU – *‘Operacoes Urbanas’*) in order to promote the redevelopment of 35 large underserved urban areas throughout the city of Sao Paulo⁹⁷. Based on the American experience with special purpose districts and the French experience with *‘Zones d’Aménagement Concerté’*, OUs were regarded as innovative instruments to promote growth and extract public benefits from redevelopment projects in a context of constrained fiscal conditions (Nakano, 2007). In order to implement an OU, the city should act as ‘public developer’ with the objective of providing developed lots, housing units and public facilities and help finance the provision of public benefits.

The 1985 strategic plan of Sao Paulo was revised after three years by the new mayor Jânio Quadros. The plan added the objective to include the private sector in the redevelopment efforts implemented through urban operations. In order to achieve it, the municipality should establish incentive mechanisms that would compensate developers willing to deliver public benefits such as affordable housing, infrastructure, public amenities, heritage preservation and

⁹⁵ Law 9,725, July 2nd 1984

⁹⁶ Secretaria Municipal de Planejamento – SEMPLA. 1985. Plano Director do Município de São Paulo: 1985 - 2000. São Paulo: PMSP – SEMPLA.

⁹⁷ Figure 15 ‘Urban Operations’, Chapter 6 ‘Municipal Finances’, Sao Paulo Strategic Master Plan

services⁹⁸. Already in 1986⁹⁹ the administration of Mayor Jânio Quadros had introduced the possibility of exempting planning controls for OU's - particularly maximum achievable FAR and approval by City Council - from the standard zoning districts through a 'Interconnected Operation' (OI – '*Operacao Interligada*'). The new plan proposed to expand the use of such possibility beyond '*favelas*' in order to provide incentives to the private sector to participate in large scale urban redevelopment efforts of underserved urban sites throughout the city in exchange for specified public benefits.

In 1990, that possibility was further expanded with the enactment of the City Charter ('*Lei Orgânica do Município*') which expanded the possibility to use private funds to improve infrastructure and provide public benefits. From the adoption of the 1988 strategic plan until 1992, there were 230 rezoning applications (50% located in Z2 districts) submitted to the city requiring an increase in FAR in exchange for a specific contributions (Rolnik, 1992).

The planning studies for the first OU's adopted in Sao Paulo only began to be elaborated by the Sao Paulo Development Agency (EMURB - '*Empresa Municipal de Urbanização*') after the new Mayor Luiza Erundina was elected in 1989. The studies were motivated by the preparatory studies for a new strategic plan for Sao Paulo which aimed to completely revise the 1972 LPUOS. The plan proposed to replace existing zoning districts with two new categories: districts where densities should be increased (mostly the undeveloped central section) and

⁹⁸ Article 27. Municipal Law n.10676 of November 8th, 1988 'Plano Diretor do Município de São Paulo', São Paulo, Secretaria Municipal do Planejamento, Diário Oficial do Município, n.137, Suplemento Especial, 24/07/88.

⁹⁹ Law 10209 of December 9th, 1986 known as 'Slum removal law' (*Lei do Desfavelamento*) and 'Interconnected Operations Law' (*Lei das Operações Interligadas*).

districts where they should not. The plan also proposed a comprehensive differentiation between base FAR and maximum achievable FAR. If owners wished to exceed the bases FAR up to the new maximum they would have to buy it from the city through the planning instrument of onerous concession of development rights (*'outorga onerosa do direito de construir'*). The instrument was based on the concept of created space (*'solo criado'*) influenced by the French experience¹⁰⁰. The plan proposed a citywide base FAR of 1, to which owners would be entitled 'as-of-right'. If owners wished to build above the base FAR, any additional development rights would have to be bought from the municipality or through transfer of development rights programs¹⁰¹.

As part of the planning studies for the new strategic plan, EMURB also elaborated studies for four of the OU's identified in the previous plans: Anhangabaú¹⁰², Água Espraiada, Pariásopolis¹⁰³ and Água Branca. A fifth operation Faria Lima – Berrini was later incorporated based on a proposal from the private sector. The selection of the four OU's was based on preliminary transport studies elaborated by the Sao Paulo Secretary of Development (SEMPLA – *'Secretaria Municipal de Planejamento'*) during the tenure of Mayor Jânio Quadros for the areas surrounding five major transport works.

¹⁰⁰ Particularly the introduction of a country wide base 'as-of-right FAR (*'Plafond legal de densite'*) and the need to acquire from the city the authorization to exceed it (*'Versement pour dépassement du plafond légal de densité'*) introduced in 1975 in France with the Loi no 75-1351 du 31 Décembre.

¹⁰¹ The plan was only published as a project on March 16th of 1991 in the *'Suplemento Especial no Diário Oficial do Município'* and was never enacted.

¹⁰² The Anhangabaú special district had a duration of three years from 1991 to 1994.

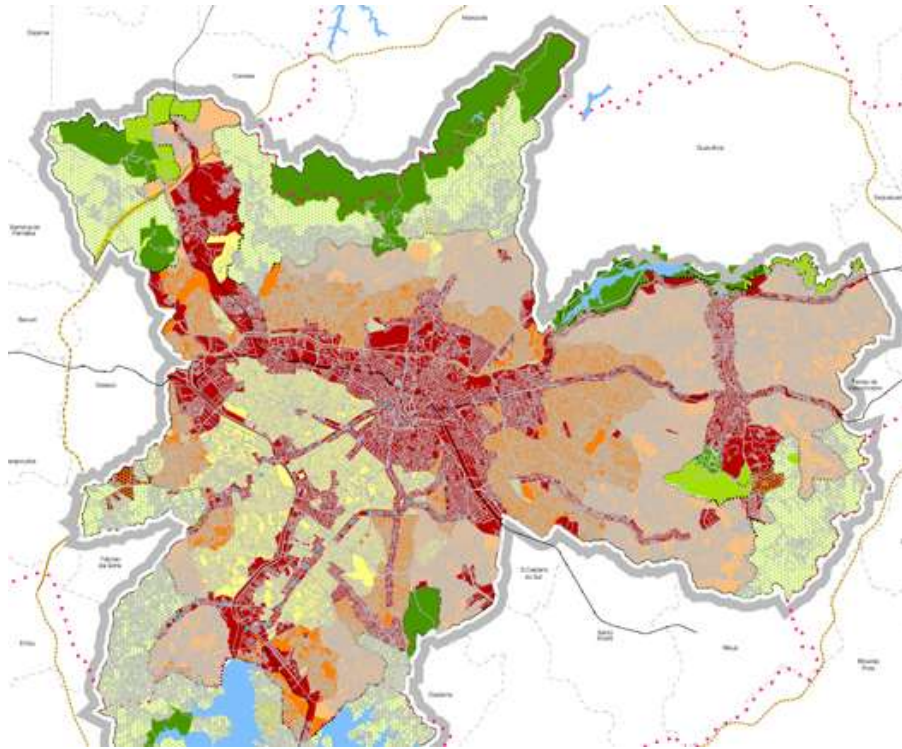
¹⁰³ The Pariásopolis special district did not pass the study phase.

In the 2002 PDE, OU's are included in the Areas of urban interventions (AIU - '*Áreas de Intervenção Urbana*') where, because of its special significance, the city can use additional incentive mechanisms to promote redevelopment and finance the provision of public benefits¹⁰⁴. OU's overlay existing zoning districts with alternative planning controls and propose a specific program of additional infrastructure improvements and public benefits such as affordable housing, public facilities, and open space amenities. OU's enable the city to modify existing zoning controls (e.g. maximum achievable FAR can be increased up to 4, regardless of existing zoning) and 'capture' part of the incremental land value in order to fund the development program proposed. The new PDE incorporated existing four and proposed nine new ones¹⁰⁵.

¹⁰⁴ Law n. 13,430, Chapter II, Section I, Article 146 – VI,

¹⁰⁵ The new OU's proposed by the Sao Paulo PDE were: Diagonal Sul, Diagonal Norte, Carandiru-Vila Maria, Rio Verde-Jacú, Vila Leopoldina, Vila Sônia e Celso Garcia, Santo Amaro e Tiquatira; in addition to four existing OU's: Faria Lima, Água Branca, Centro e Águas Espraiadas.

Figure 56. Sao Paulo PDE. Map of Policies of Urban Development. Source: Sao Paulo DPU, 2002.



The 2004 LZ modified existing zoning controls and changed some of the perimeters of existing OU's. The adoption of an OU enables the city to sell part of the additional development rights directly to owners through a mechanism known as '*outorga onerosa do direito de construir*' (onerous concession of development rights) priced accordingly to a specific formula. The plan also provides the possibility to anticipate such revenues through the issue of Certificates of additional development rights (CEPAC's - '*Certificados de Potencial Adicional de Construção*') in private auctions and public markets to finance the required public

investments, following the regulation of its issue in 2003¹⁰⁶. CEPAC's can trade in secondary public markets but can only be converted inside the OU perimeter. The city can also require direct contributions from developers (*Contribuições de melhoria*) which may be paid in kind, cash or through realization of part of the program of improvements proposed.

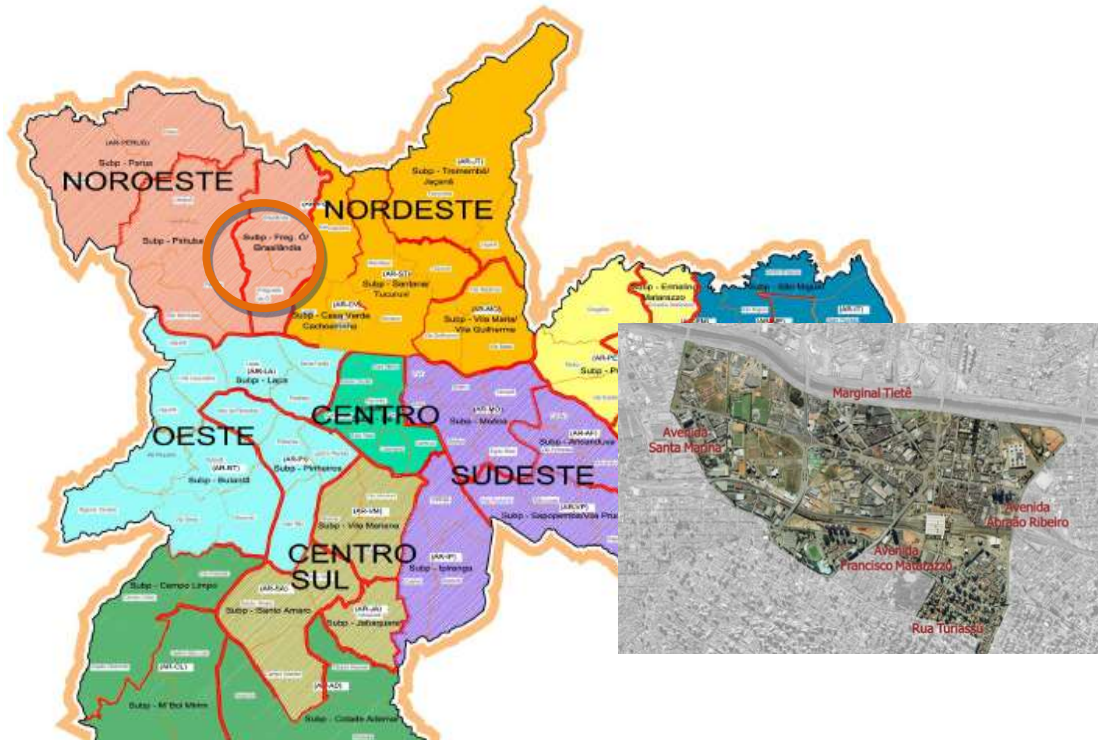
6.4 THE PLANNING PROCESS OF THE 'OPERAÇÃO URBANA ÁGUA BRANCA'

The Agua-Branca development area is located in the central area of the metropolitan region of Sao Paulo, West of the city center. It includes parts of the Lapa and Barra Funda districts, two of the six districts that compromise the Lapa sub-prefecture, one of the thirty one sub-prefectures of Sao Paulo. It includes approximately 550 hectares located between the Avenue Presidente Castelo Branco and the Tiete River to the North, the Pacaembu and Abraao Ribeiro Avenues to the east, Turiassu Street and Francisco Matarazzo Avenue to the South and Santa Maria Avenue to the West¹⁰⁷.

¹⁰⁶ Instruction n.401, 'Comissão de Valores Mobiliários' (Securities Exchange Commission), December 29th, 2003.

¹⁰⁷ This section will focus on the planning process of the largely undeveloped central section of the special district Agua Branca with close to 100ha.

Figure 57. The Agua Branca Development Site, Sub-prefectures of Lapa, Sao Paulo. Location Map. Source: Sao Paulo DPU, 2002.



Throughout the 19th century, most of the development area constituted a unique property known as *'Fazenda Iguape'* owned by the Iguape Baron. From the second half of the century, its development was structured by the construction of several railways and respective stations. The first railway *'Santos to Jundiaí'* was inaugurated 1867 by the São Paulo railway – known as *'the Englishwoman'* - with a new station *'Estacao Agua Branca'*. The company later moved its offices close to the new station, attracting new residents and commerce to the area. In 1875, the São Paulo Metropolitan Railway Company (CPTM – *'Companhia Paulista de Trens Metropolitanos'*) also inaugurated a new train station *'Barra Funda'* for the *Sorocabana* railway followed by another station *'Estacao da Lapa'* inaugurated in 1898. The new railway cut

through existing neighborhoods and contributed to the segregation of the area. As a result, the area attracted mostly small and medium-size industrial activities looking to take advantage of the access to the new railway lines and residential buildings for its employees. The largest was the '*Industrias Reunidas Matarazzo*' owned by Brazil's wealthiest man Francesco Matarazzo, which located along the rail lines, in the highest section of the site.

Another significant event was the public works undertaken in the first half of the 20th century to restructure the Tiete River and drain the surrounding sites which added new developable land previously occupied by the riverbed. As most of the work was executed by the city, the vast majority of the site became publicly owned which permitted the construction in the 50's and 60's of several public buildings such as a new Tiete bus terminal, new highways as well as several bridges and viaducts crossing the river. Some of the new public sites were progressively transferred back to the private sector (e.g. Anhembi Convention Center) through private deals where the public interest was not always adequately protected.

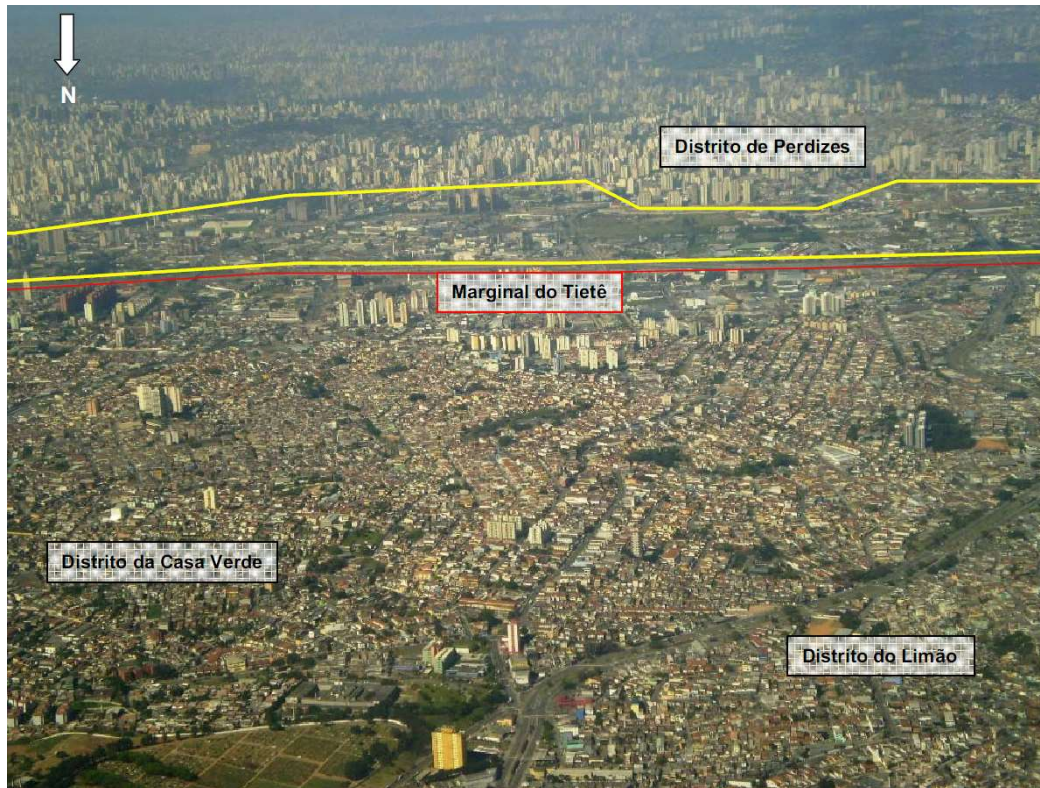
Drainage problems which originated frequent flooding together with the physical barriers created by the railways and new highways hindered development in the lower central sections. The area was also affected by the construction in 1970 a new elevated highway ('*Elevado Costa e Silva*' , known as '*Minhocao*') which because of its excessive proximity to existent buildings contributed to depress real estate prices. Such problems, together with increased locational flexibility of industrial activities and public policies promoting decentralization kept further industries from locating in the area throughout the 60's and 70's. They also helped promote

existing industries to relocate further from the city center in order to access new highways built within the metropolitan region of Sao Paulo¹⁰⁸.

The surrounding higher areas benefited from the increased accessibility to attract mostly residential uses. While initially most of the new residential development was comprised of buildings with three or four floors, from the 70's there was an intense process of verticalization and densification with new high-rise residential buildings located close to the new subway, rail and bus stations surrounding the development area. At the end of the 1980's, further public investments in a new inter-modal transport terminal 'Barra Funda' and a Latin America memorial commissioned by the state governor Orestes Quercia to the architect Oscar Niemeyer contributed to further consolidate the surrounding areas and increase the development pressure over the largely empty central section of the site with close to 100 ha, one of the last large undeveloped sites in the city of Sao Paulo.

¹⁰⁸ Such as highways Presidente Dutra, Regis Bittencourt and Castelo Branco. Other industrial areas located along the railways such as Mooça and Ipiranga also suffered a similar relocation of its industries.

Figure 58. Aerial View of Agua-Branca site. Source: Sao Paulo DU, 2009.



As a result of the transfers of public sites made by the city to the private sector, at the end of the 80's the vast majority of the central area belonged to private owners. The largest private site with 27 ha was owned by the Sao Paulo Telecommunications Company (TELESP – *Telecomunicações de São Paulo S.A.*) which had bought it from the Federal Railway Network (RFFSA – *Rede Ferroviária Federal Sociedade Anônima*) in order to build its administrative headquarters¹⁰⁹ The Materazzo industries, which had located in the area in the 20's, declared

¹⁰⁹ Due to technological changes, the need to build a new administrative center decreased and the site remained empty. When the state owned telecommunications monopoly Telebras was demerged and privatized in 1998 its

bankruptcy in the middle of 80's leaving its site largely undeveloped. There were also several sites owned by the city ceded to the private sector, particularly to the sports teams of '*São Paulo Futebol Clube*' and '*Sociedade Esportiva Palmeiras*'. In addition, the RFFSA had also ceded the property it owned to '*Nacional Atlético Clube*', another local sports team.

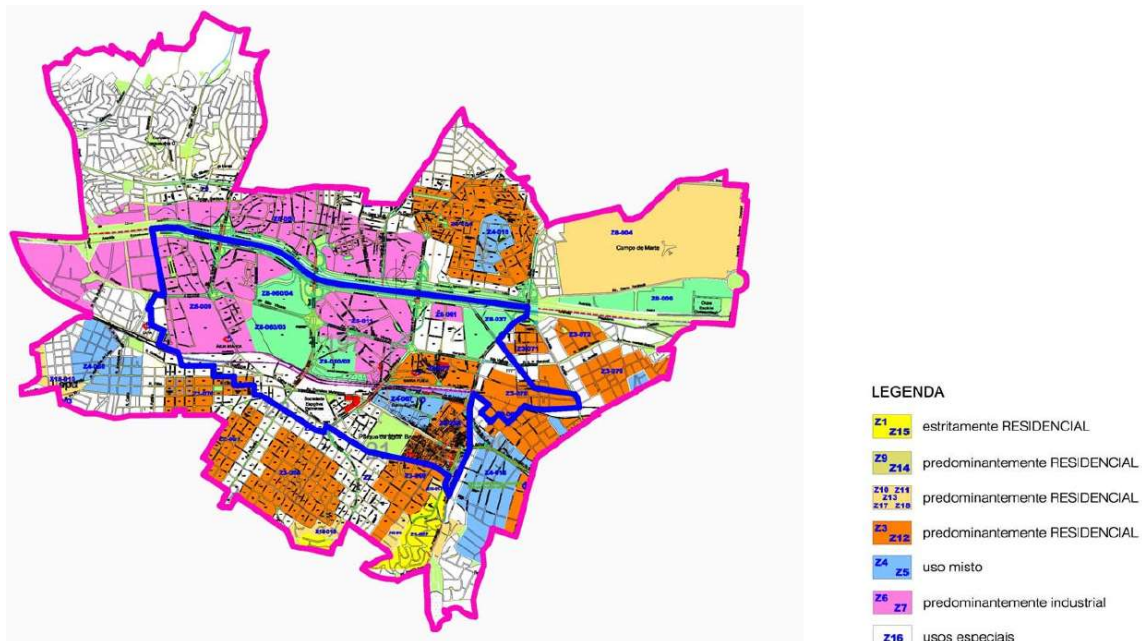
The planning process of the 1995 'Operação Urbana Água Branca'

The Água Branca development site was first identified as an area with potential for a special district (OU - '*Operação Urbana*') in the 1985 Sao Paulo Master Plan (PD – '*Plano Director de Sao Paulo*')¹¹⁰ introduced during the tenure of Mayor Mario Covas. The initial planning studies for the UO 'Água Branca' only began to be elaborated by the Sao Paulo Development Agency after the new Mayor Luiza Erundina was elected in 1989. The studies were motivated by the preparatory studies for a new strategic plan for Sao Paulo which aimed to completely revise the 1972 LPUOS.

subsidiary TELESP was bought by one of the Brazilian subsidiaries of the Spanish telecommunications giant Telefonica who became the new owner of the site.

¹¹⁰ Secretaria Municipal de Planejamento – SEMPLA. 1985. Plano Director do Município de São Paulo: 1985 - 2000. São Paulo: PMSP – SEMPLA.

Figure 60. Existing zoning districts in the Agua Branca special district.1991. Source: Sao Paulo DPU, 2002.



Following the general objectives of new strategic plan under elaboration, EMURB defined eight planning guidelines for the Agua Branca development site: (1) promote the redevelopment of the area through the establishment of commercial and residential uses in order to increase the provision of housing units, tertiary activities and financing of affordable housing; (2) provision of mass transit infrastructure and public facilities; (3) redevelopment of large empty sites through subdivisions; (4) improve the drainage system; (5) restructuring of existing roads; (6) provision of urban design guidelines; (7) use of specific legal and administrative instruments of ‘public-value’ capturing in order to finance the required public investments; and (8) provide opportunities for public participation during the planning process¹¹¹.

¹¹¹ EMURB. 1991. *Operação Urbana Água Branca*. Pag . 2-3. São Paulo: PMSP/ SEMPLA/ EMURB. With the exception of the guideline n. 7, all the other guidelines defined by EMURB were replicated almost exactly in

Based on a detailed SWOT analysis, the EMURB study proposed 11 sub-districts each with its own set of planning guidelines and controls including: (1) permitted uses and bulks; (2) urban design requirements; (3) public infrastructure; and (4) required percentage of social housing units. The new planning controls modified permitted uses in the vast majority of the development site in order to allow for mixed use development. Maximum achievable FAR in the vast majority of the development site was increased to 4 independently of the existing zoning. In addition, a new maximum of 6 was proposed for the areas that already allowed for a maximum achievable FAR of 4 (sector 1A zoned as Z3).

The sub-districts were then grouped as either ‘Granting areas’ (1,2,3,7 and 8) meaning they would generate most of the revenues necessary to pay for planned public investments; or ‘receiving areas’ which required more investment in infrastructure and public amenities in order to attract private investment. The undeveloped central section was classified as a receiving area. In addition, the plan proposed two ‘special projects’: a new subway station ‘Água Branca’ and a new subdivision for the undeveloped central section including both the public and privately owned sites.

The plan was based on the concession of several planning benefits such as increase in maximum achievable FAR and exemption from statutory procedures in order to attract private investment to the area. Those benefits would be conceded mostly in ‘granting sites’. It was

article 4. ‘*Diretrizes urbanísticas gerais*’ of the law 11.774 of May 18th of 1995 which enacted the urban operation Água Branca.

assumed that the city would then be able to ‘capture’ part of the resulting increment in land values through several instruments such as onerous concession of development rights (*‘Outerga Onerosa de Direitos de Construir’*) and direct contributions from developers (*‘contribuições de melhoria’*) which would allow it to fund the necessary road improvements and new public infrastructure planned for the ‘receiving sites’ as well as other public benefits such as social housing, open space amenities and public facilities.

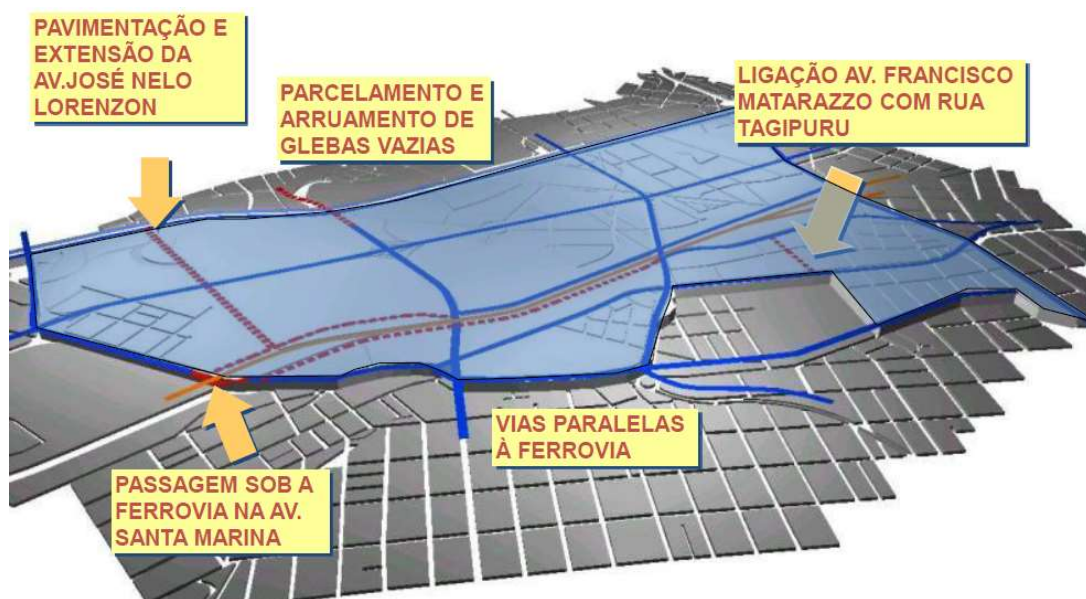
The EMURB study calculated that the total area already built within the development site was approximately 1.5 million m². There was still an additional 1.1 million m² that could be built ‘as-of-right’. The increase in maximum achievable FAR to be introduced with the enactment of the special district *‘Água-Branca’* would add an additional 1.2 million m² above what was permitted ‘as-of-right’ with 300,000 m² and 900,000 m² for non-residential uses.

The individual proposals submitted by investors would be evaluated by a new group (*‘Grupo Intersectorial’*) to be constituted with members from various municipal agencies and led by EMURB which would then forward the proposals to the Commission of Planning Law (CNLU - *‘Comissão Normativa de Legislação Urbanística’*). The evaluation of the proposals should take into account the planning guidelines defined for the new district as well as the Sao Plano strategic master plan. The impact studies typically required such as the environmental impact study (*‘Relatório de Impacto sobre o Meio Ambiente’*) and neighborhood impact study (*‘Relatório de Impacto de Vizinhança’*) would only be necessary for proposals with more than 10 hectares. The study also recommended limited opportunities for public participation. Public hearings would only be necessary in situations where existent public spaces would be sold to

private investors (*cessão onerosa de espaços públicos*). In all other cases, the CNLU would provide the only mechanism of public participation available to the various stakeholders involved.

In order to implement the plan, EMURB defined four phases, each with 3 years. The total cost of implementing the plan was estimated at R\$137.7 million spread throughout the 4 implementation phases (1- 22%, 2 – 40%, 3 – 23% and 4 – 15%). The bigger share of the costs (R\$71 million) referred to road improvements, which were divided into to 8 specific projects. The study included R\$34 million for improving the drainage system, R\$13 million for 630 new social housing units, with the remaining R\$19 million allocated for new public facilities and open space amenities.

Figure 61. Infrastructure improvements: Source: EMURB, 1992.



The financing program proposed by EMURB included several financing mechanisms. The most relevant was the use of the instrument known as onerous concession of development rights

(‘*Outerga Onerosa de Direitos de Construir*’) which required investors to make a payment to the city in order to use the additional development rights permitted by the OU above the base FAR permitted ‘as-of-right’ by the existing zoning. Based on estimates of total revenues to be generated by the program, EMURB recommended that the mechanism should apply to 1.2 million m² (300,000 m² of housing and 900,000 m² of other uses) of the total 2.5 million m² of additional development rights permitted by the plan. In order to calculate the price to be paid by investors, EMURB proposed several formulas referenced to the market price of the type of building being developed. For the base case assumptions, it was estimated that the use of the mechanism ‘onerous concession of development rights’ would generate R\$124.9 million of revenues.

The EMURB also introduced a transfer of development rights program to promote the preservation of listed buildings located within the perimeter of the operation (classified as ‘Z8-200’). Unused development rights floating above ‘Z8-200’ buildings could be transferred outside of the perimeter of the OU¹¹². The city would only approve the transfer after evaluating the environmental impact of the resulting bulks in the receiving sites which had to be located within certain zoning districts¹¹³. Transfers of development rights would only be accepted if the

¹¹² Article 9. Section I. Lei Municipal 11.774 ‘*Operação Urbana Água Branca*’ of May 18th of 1995

¹¹³ Receiving sites could not be zoned as ‘Z8-CR1, Z8-CR2, Z8-CR4, Z9, Z14, Z15, Z16, Z17, Z18, Z8-100’ Article 9, Section III, 2nd Paragraph. Lei Municipal 11.774 ‘*Operação Urbana Água Branca*’ of May 18th of 1995.

resulting FAR would not exceed by 50% the maximum FAR permitted by the existing zoning in the receiving site¹¹⁴.

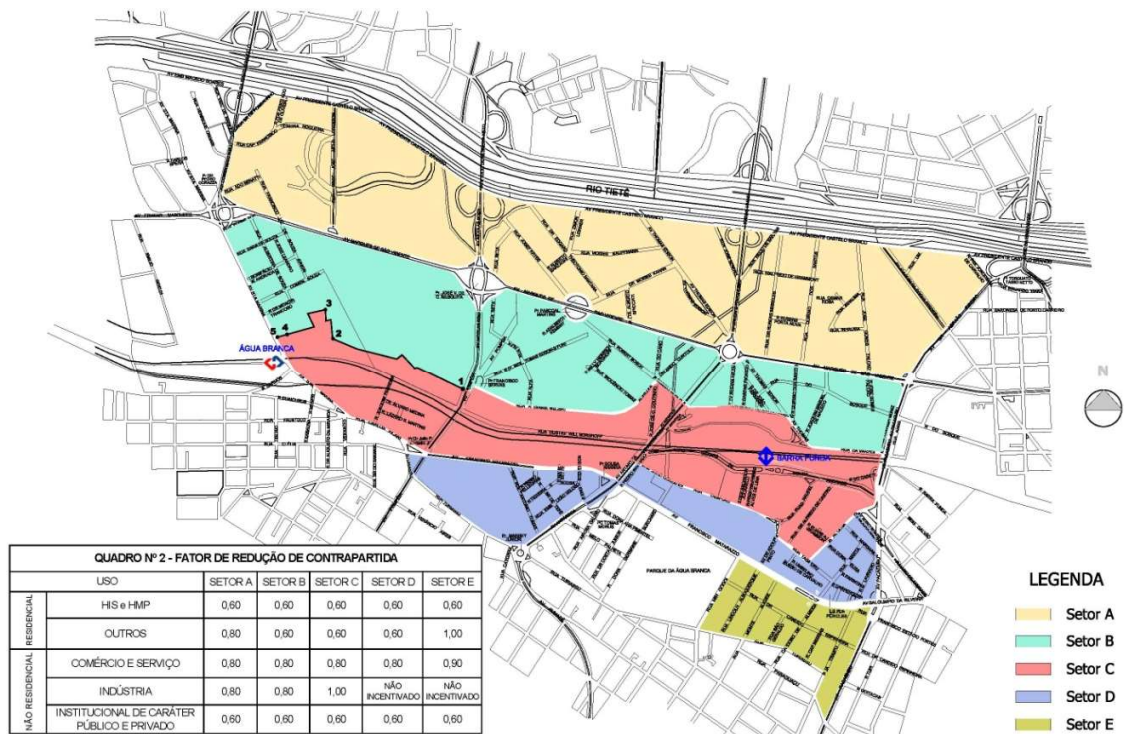
The implementation of the operation was heavily reliant on the private sector. Private investors should request from the city the exemptions to existing zoning permitted by the operation in individual lots or could respond to requests for proposals submitted by the city¹¹⁵. In addition to the sale of additional development rights, the approval of individual proposals was also dependent of contributions (*Contribuição de melhoria*) that developers would have to make to the program of public works proposed by EMURB¹¹⁶. The contributions could be paid in cash, real estate property or direct execution of the proposed infrastructure improvements.

¹¹⁴ Article 9, Section III, 1nd Paragraph. Lei Municipal 11.774 ‘Operação Urbana Água Branca’ of May 18th of 1995.

¹¹⁵ Article 6, Section I,II and III, 1nd Paragraph. Lei Municipal 11.774 ‘Operação Urbana Água Branca’ of May 18th of 1995.

¹¹⁶ Article 11, Section I,II and III, 1nd Paragraph. Lei Municipal 11.774 ‘Operação Urbana Água Branca’ of May 18th of 1995.

Figure 62. Agua Branca Special District. Map of sectors for calculation of required contribution. Source: EMURB, 1995.



The value of the contributions would be determined in relation to the appraised benefit generated from the additional development rights granted by the city. In the vast majority of cases, the contribution would have to represent 60% of the increment in land values generated. The formula used to calculate the minimum required contribution was¹¹⁷:

$$\text{Minimum Required Contribution} = 0.6 \times (V2 - V1) \times A1$$

where:

$V1$ = Appraised initial value of m^2 of land

$V2$ = Appraised value of m^2 of land after benefits

¹¹⁷ Article 17, Section II, 2nd Paragraph. Lei Municipal 11.774 'Operação Urbana Água Branca' of May 18th of 1995.

Ap = Area of lot

The resulting contribution from using the formula would be subject to a 40% discount during the first year of the program. The determination of the contribution was dependent of an independent appraisal which should determine the value of the land before and after the benefits conceded by the city. The study estimated that the city would generate an additional USD\$30.2 million from direct contributions.

In order to manage the implementation of the plan, a new Special Fund of the Agua Branca Special District (FEAB - '*Fundo Especial da Operação Urbana Água Branca*') would be created, managed by EMURB with representatives from SEMPLA and the city. In order to increase revenues, the fund was allowed to invest its unused capital in low risk fixed-income investments. The returns from such investments would add an estimated R\$2.6 million to the revenues generated by the operation – a total of approximately R\$157.8 million in revenues. The difference between the estimated total revenues and costs would correspond to EMURB's compensation for the planning and implementation of the operation.

The law was submitted for approval to the city in 1992, together with other proposed OU's while the revision to the Strategic Plan was also under way. After a long period of discussions, the law was enacted in 1995¹¹⁸ already with the new Mayor Paulo Maluf in office. In relationship

¹¹⁸ Lei Municipal 11.774 '*Operação Urbana Água Branca*' of May 18th of 1995.

to the project proposed by EMURB, the final law excluded from the perimeter of the OU the existing public park Fernando Costa and surrounding consolidated blocks. In addition, the increase in maximum achievable FAR proposed for zoning districts 'Z3' and 'Z4' - which already permitted a base 'as-of-right' FAR of 4 - to 6 was vetoed, leaving the entire site within the perimeter of the OU with a maximum achievable FAR of 4.

Implementation of the 1995 'Operação Urbana Água Branca'

The incentive structure proposed by the new OU had limited success in attracting private investment to the area in its first nine years of implementation. EMURB's proposed budget estimated that the OU would generate approximately R\$100 million of revenues between 1995 and 2003. The largest portion would correspond to the sale of additional development rights which would generate approximately R\$79 million in revenues. The study also estimated that during the same period there would be direct contributions from private investors worth approximately R\$19 million and that the FEAB financial investments of its unused capital would return approximately R\$2 million.

From the enactment of the OU in 1995 until 2003 the implementation of the plan generated approximately R\$18 million, less than 20% of the projected R\$100 million. The revenues generated corresponded to close to 17,000 m² of additional development rights granted for residential uses (4 proposals) and approximately 110,000 m² for other uses. The largest share of the revenues generated by the plan was paid by '*Ricci Engenharia*', a large developer and builder based in Sao Paulo.

Already in 1988, the developer had acquired a large property with close to 9.4 ha zoned as 'Z2' and 'Z4' within the area from 'Banco do Brasil' which had received it as a payment from 'Industrias Materazzo' as part of its bankruptcy procedure. The enactment of the OU 'Água Branca' increased the maximum achievable FAR within the plot from 1 to 4 and the maximum permitted lot coverage from 50 to 70%. In exchange for taking advantage of the benefits provided by the OU, the developer had to cede part of the property to the city for open-space amenities and public buildings (approximately 2ha). In the remaining portion, the developer was required to pay approximately R\$11 million calculated according to the mentioned formula proposed by the OU, in order to use the additional 220,000 m² that the OU allowed on top of the 74,000 m² permitted 'as-of-right' by the base zoning.¹¹⁹ All contributions would be made in road improvements and heritage preservation. The increase in maximum achievable FAR allowed 'Ricci Engenharia' to plan a new business center with 13 office towers 'Centro Empresarial Água Branca' of which four had been built by 2003. In exchange, the developer paid for the extension of the Avenue 'Auro de Moura Andrade'¹²⁰ and the refurbishment of the 'Casa das Caldeiras', a listed historical building which belonged to 'Indústrias Materazzo' located within the development area.

Of the four towers built, two were sold to the pension fund of the employees of the Banco do Brasil (Previ – *Fundo previdenciário dos funcionários do Banco do Brasil*) which leased 60%

¹¹⁹ The appraisal estimated that, because of the benefits granted by the OU, the property value had increased approximately R\$250 m². For a detailed description of the process see Sandroni (2000).

¹²⁰ The new street served directly the new office complex. When completed, it did not have sidewalks.

to the international auditor Price Waterhouse Coopers. The other two towers were sold by Ricci Engenharia to the first real estate fund created in Brazil '*Fundo Imobiliário Projeto Água Branca*' by the investment bank RMC with Ricci as the fund manager. During the first 8 years of operation, the towers always had significant vacancy levels as it was hard to convince tenants to relocate into the area. As a measure of its limited success, the financial publication '*Isto e dinheiro*' reported that of the eight largest real estate funds operating in Brazil, the Agua Branca fund was the only not able to achieve a return equivalent to the annual average overnight rate for interbank transactions (Neto, 2005)¹²¹.

¹²¹ ISTEÉ Dinheiro. May 16th 2005. In Neto, 2005.

In Brazil, the typical benchmark for fixed-income and alternative investments is the average monthly and annual rates of all inter-bank overnight transactions known as Certificate of Interbank Transaction (CDI - '*Certificados de Depósito Interbancário*')

Figure 63. Aerial view of the development site with the new 'Centro Empresarial Agua Branca' (bottom right). Source: Neto 2005



Revision of the 1995 special district Agua Branca - preliminary studies

The failure to attract significant private investment originated a rethinking of the process within SEMPLA. In May of 2001, as part of the preparatory studies for new Sao Paulo Strategic plan, the city decided to create a new study group (GTI – ‘*Grupo de Trabalho Intersecretarial*’)¹²² with members from different city departments coordinated by the Department of Urban Projects (DPU – ‘*Diretoria de Projectos Urbanos*’) of SEMPLA with the

¹²² Created by Portaria n° 132/2001

purpose of studying the revision of the 1995 plan ¹²³. The creation of a department of urban projects within SEMPLA during the tenure of Mayor Marta Suplicy was an acknowledgment of the importance of urban development projects as a catalyst for urban renewal and a response to the necessity to revise unsuccessful special districts previously approved. The recommendations of the new study should be based on an evaluation of the reasons for its limited success and adapt it to the guidelines provided by the new Sao Paulo Urban Transport Plan (PITU – *‘Plano Integrado de Transportes Urbanos 2020’*) as well as the new strategic master plan of Sao Paulo under elaboration.

Based on several studies and analyses the group identified the absence of a unifying master plan as one of the main reasons for the lack of success of the special district in attracting private investment. It argued that the absence of an integrated document to coordinate public investments and provided certainty to private investors, leaving the development initiative to the private sector was one of the main reasons why it had failed to spur new development and provide the expected public benefits. It also argued that the passive implementation structure adopted by the city based on the FUNAPS fund managed by EMURB – which was supposed to evaluate proposals put forward by the private sector - had inadequate funding and lacked public instruments to realize public investments, initiate development and coordinate private investors¹²⁴.

¹²³ SEMPLA. 2002. Operação Água Branca – Relatório de reavaliação crítica e proposição de elementos para elaboração de resolução normativa. São Paulo: PMSP/ SEMPLA.

¹²⁴ DPU – SEMPLA. (2002a). *Operacao Agua Branca – Relatorio de reavaliacao critica e proposicao de elementos para elaboracao de resolucao normativa*. Sao Paulo: PMSP/ SEMPLA.

Based on its findings, the study recommended a comprehensive revision of the 1995 special district planning controls and implementation structure based on a new master plan to be commissioned¹²⁵. The study defined as the main objectives for the new master plan a rezoning of the area with new uses and bulks in order to promote its redevelopment into a vibrant mixed-use district. The new plan should be based on an entirely new subdivision with a new structure of roads and public spaces decreasing the excessive size of existing properties and improving the articulation with the surrounding consolidated areas. It also recommended that in order to implement the plan, the city should substitute the FUNAPS fund managed by EMURB by a new development corporation with a greater ability to initiate and execute the program of public works to be proposed.

The study also argued that the proposal to revise the OU was articulated with the recommendations of the new strategic plan under elaboration. For example, the public ownership of a significant percentage of the site's area followed the plan's indication to use public land as a catalyst for urban development (Article 93). Also, the intention to reduce the size of the existent large plots followed the objective of the plan to use public interventions to promote the compulsory subdivision of large properties (Article 130).

The 2002 Sao Paulo Strategic Plan

¹²⁵ DPU – SEMPLA. (2002a). *Operacao Agua Branca – Projeto de Operacao*. Sao Paulo: PMSP/ SEMPLA.

In September of 2002, the City Council approved the new Sao Paulo Strategic plan (PDE – ‘*Plano director estrategico*’)¹²⁶. In the map of macro zoning districts (Map Five – ‘*Macrozoneamento*’), the perimeter of the special district Agua Branca was included as part of the macro district of urban qualification and restructuring (‘*Macrozona de Estruturação e Qualificação Urbana*’). In its map of guidelines for permitted uses (Map Six – ‘*Diretrizes de Uso e Ocupacao do Solo: Zonas de Uso*’) most of the development area was zoned as mixed-use (ZM – ‘*Zona Mista*’) with the undeveloped central section zoned as ‘Industrial District under Restructuring’ (ZIR – ‘*Zona Industrial em Reestruturacao*’). In the map of policies for urban development (Map Ten - ‘*Políticas de Desenvolvimento Urbano*’), the most of the area was zoned under the sub-category of macro district of restructuring and urban requalification (‘*Macroarea de Reestruturacao e Requalificacao Urbana*’) with the surrounding consolidated residential areas zoned as macro districts of consolidated development (‘*Macroarea de Urbanizacao Consolidada*’).

Districts zoned for restructuring and urban requalification referred to areas that had been developed in the industrial boom of the first half of the twentieth century and occupied with secondary and tertiary activities. Such areas had gone through a process of disinvestment and delocalization in the second half of the century and as a result were currently underserved relative to the levels of urban infrastructure and accessibility meaning that they could support higher densities. For such areas, the PDE defined as general objectives: (1) promote urban

¹²⁶ Municipal Law n. 13430, September, 09th, 2002.

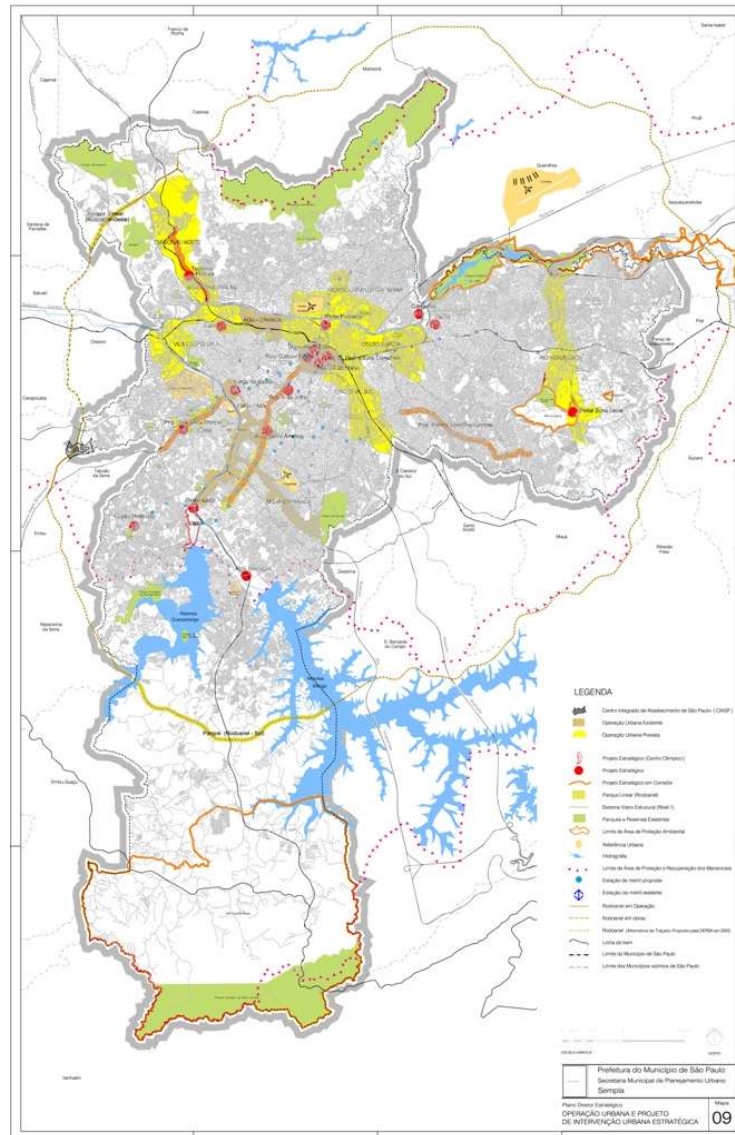
development geared toward higher density residential uses; (2) improve the quality of public spaces and urban environment; (3) promote commercial uses; (4) preservation and refurbishment of cultural heritage; (5) restructuring of urban infrastructure and mass transit systems. In order to implement the objectives defined, the PDE recommended the use of several public instruments including: (1) special districts; (2) mandatory subdivisions; (3) escalating property taxes¹²⁷; (4) eminent domain; and (5) transfer of development rights.

In addition, in its map nine ‘Special Districts and Strategic Urban Projects’ (*Operacao Urbana e Intervencao Urbana Estrategica*) the PDE incorporated the 1995 perimeter of the Agua Branca special district. For existing and proposed OU’s, the plan permitted the modification of uses and bulks permitted by existing zoning districts as well as exceptions to the building code and the use of several instruments in order to promote development, attract private investment and capture part of the increment to finance public investments (Articles 225 – 229). It introduced a differentiation between the base FAR, which corresponded to the FAR permitted by the zoning districts currently in place; a minimum permitted FAR of 0.2 and maximum permitted FAR of 4 (Article 226). For areas located within 600 meters of a transport terminal, the plan allowed the FAR in individual lots to exceed 4 as long as the gross FAR for the perimeter as a whole did not exceed 4¹²⁸.

¹²⁷ Through the application of a new mechanism implemented with the City Statute (article) know as ‘progressive property and land tax’ (IPTU – *Imposto sobre a propriedade predial e territorial urbana progressiva no tempo*) through which the city could progressively increase the property taxes to be paid by the owners of underdeveloped urban properties.

¹²⁸ Article 226. Section III, 2nd paragraph .

Figure 64. Special Districts and Strategic Urban Projects. Source: Sao Paulo DPU, 2002.



All of the planning instruments introduced by the City Statute allowed in districts zoned for restructuring and urban requalification could also be used inside the OU perimeter. In addition, as previously discussed, the PDE also introduced the possibility to use CEPAC's (Article 230) to anticipate the revenues to be generated in order to finance the required upfront public

investments. CEPAC's could trade freely in secondary markets but could only be converted back into development rights inside the OU perimeter. On the other hand all buildings located within the OU could not receive additional unused development rights from building outside the OU perimeter through transfer programs. Similarly, the PDE stated that all revenues to be generated by the application of the various instruments introduced could also only be used inside the OU perimeter (Article 229).

In order to guarantee an adequate articulation with the existent OU's the PDE required the strategic regional plans to be elaborated for each sub-prefecture to follow the regulations already approved in each existent OU. In addition any of the new planning instruments introduced by the plan could not modify the controls defined the existent regulations, which meant for example, in order to introduce the possibility to use CEPAC's in the Agua Branca special district the 1995 law would have to be revised.

The participation in the competition to host the 2012 Olympic Games

The competition to host the 2012 Olympic Games provided an opportunity to jumpstart the planning process and elaborate a new master plan for the Agua Branca special district, as recommended by the 2001 study by DPU. The submission by the city of Sao Paulo to the competition to host the 2012 Olympic Games was based on a strategic plan also elaborated by DPU which proposed to combine the various Olympic facilities in five different sites located along the Tiete and Pinheiros river, zoned in the PDE as districts for restructuring and urban requalification and most of them subject to an OU. The plan proposed to locate the Olympic village and the Olympic stadium in the Agua Branca special district.

The plan for the new Olympic village was commissioned to the Brazilian architect Paulo Mendes da Rocha¹²⁹. The plan divided the site in two macro zones (residential and international) through five functional districts (housing, training facilities, Olympic Pavilion, Service towers and entertainment). The housing district was based on a modernist design privileging vertical buildings and open space amenities. The plan was supposed to form the basis of a master plan for the undeveloped central section which should revise the 1995 regulations for the Agua Branca Branca special district.

¹²⁹ Winner of the Mies van der Rohe Prize in 2000 and chosen as the 2006 Pritzker Architecture Prize Laureate.

Figure 65. Proposal for a new Olympic Village in the Agua Branca site. Source: MMPP Architects, 2001.



The 'Bairro Novo' international design competition and further studies

The loss of the Olympic bid, still in the national phase of the competition¹³⁰ originated a necessity to modify the proposal for a new Olympic Village. As result, a new study was published in 2004 by the DPU¹³¹ with the objective of providing guidelines for the intended revision of the 1995 special district regulations. The study proposed a new division of the site in 11 new districts each with its own set of planning guidelines and controls. It also proposed the revision of the formula used to calculate the required contributions from developers and the densification of the street fronts along the main structural roads crossing the site.

In addition, the study also mentioned the need to articulate the OU regulations with the PDE published in 2002 and the new zoning districts that would result of the strategic regional plans under elaboration for the sub-prefectures of Lapa and SE. Particularly, the new special district regulations should incorporate the possibility implemented by the PDE to anticipate the revenues to be generated by the OU through the issue of certificates of additional development rights (CEPAC's - '*Certificados de Potencial Adicional de Construção*') in private auctions and public markets. The proceeds from the issues would allow the agency responsible for managing the implementation of the plan to finance the proposed program of public works without having to wait for requests for proposals from the private sector.

Finally the study suggested the realization of an international competition 'New Neighborhood' ('*Bairro Novo*') to select a new master plan for the undeveloped central section

¹³⁰ Won by Rio de Janeiro.

¹³¹ SEMPLA – DPU. (2004). Projecto de lei Operacao Urbana Consorciada Agua Branca. Sao Paulo: PMSP/ SEMPLA

of the area. The idea was well received among the site's various public and private owners which signed a protocol signaling the intention to create a new development corporation (*'sociedade de proposito especifico'*) with the objective to implementing the new plan. The ownership of the new corporation would be divided amongst the sites owners proportionally to the area of its properties.

The request for proposals for the *'Bairro Novo'* design competition was issued in April of 2004 by the city together with the Brazilian Institute of Architects (IAB – *'Instituto dos Arquitetos do Brasil'*) for a new master plan for the undeveloped central section of the Agua Branca special district with close to 100ha¹³². Based on the 2004 DPU study, it defined as the main objectives for the plan: (1) new urban design plan for the site; (2) improvement of environmental conditions; (3) inclusion of the private sector in the implementation of the plan; (4) inclusion of open space amenities and public buildings for recreational, educational and cultural activities, (5) definition of planning guidelines for the revision of the 1995 Agua Branca OU and articulation with the 2002 PDE and 2004 PRE-Lapa. The RFP required the following land use allocation: (40% for roads and open space amenities, 5% for institutional uses, 7.5% for existing uses (corresponding to the site of the sports team *'Nacional Clube'*) and the remaining 47.5% for new development with 80% for residential uses and the 20% for office and retail uses

¹³² SEMPLA/ EMURB/IAB-SP. (2004). Concurso Bairro Novo. Termo de Referencia, Regulamento, Edital e Ata de Julgamento. In Portal Vitruvius.
Accessible online at < <http://www.vitruvius.com.br/revistas/read/projetos/04.044/2398>>

for a total of approximately 2.7 million m². It also required the inclusion of 600 units of social housing as previously defined in the 1995 regulation for the Agua Branca special district.

The competition attracted significant national and international attention with close to 130 entries, of which 58 were validated. In July of 2004 the jury announced as the winner the proposal submitted by a team led by Brazilian architect Euclides de Oliveira. It also awarded two additional prizes and seven honorable mentions¹³³. The winning proposal was based on a ‘Barcelona’ type chamfered block with a ground floor for retail and six floors of residential uses laid out to form a compact street grid articulated with a carefully designed system of streets, plazas, public buildings and urban parks.

The jury argued that the proposal represented a substantial departure from the typical Sao Paulo block based on isolated high-rise condominiums. Instead it proposed a homogeneous neighborhood with continuity in street fronts typically found in European capitals, which previous strategic plans in Sao Paulo had been unable to promote. The social housing units required by the competition were integrated with the new development. In addition, the subdivision proposed based on small lots permitted a diversity of architectural styles and enabled small and medium development companies to participate in the development process.

¹³³ The 2nd prize was awarded to architects Jaime Cupertino, José Paulo de Bem e Joan Villà. The 3rd prize was awarded to architects Francisco Spadoni, Lauresto Esher e Selma Bosquê. The honorable mentions were awarded to teams led by the following architects: Bruno Padovano, Christian de Portzamparc, Décio Amadio, Décio Tozzi, Fábio Zappellini, Héctor Vigliecca e Pedro Nitsche.
Accessible online at <<http://www.vitruvius.com.br/revistas/read/projetos/04.044/2398>>

Figure 66. Winning proposal for the ‘Bairro Novo Competition’. Source: Andrade Neto, 2004.



The 2004 strategic regional plan for the Lapa sub-prefecture and the rezoning process

One month after the selection of the winning proposal for the ‘Bairro Novo’, the new Sao Paulo Zoning Resolution (LZ – ‘Lei de Zoneamento’)¹³⁴ was adopted by the city council. The Agua Branca special district was included the regional plans of the sub-prefectures of Lapa and Se. The LZ defined general planning guidelines for the West region of Sao Paulo as a whole which included recommendations to be followed by the city and sub-prefectures such as the need to rezone industrial areas in order to permit mixed-use development and attracting additional industrial activities. For the Lapa and Se sub-prefectures it established specific guidelines such

¹³⁴ Municipal Law n. 13885, August 25th, 2004

the need to (1) promote the development of tertiary activities in the area; (2) restructuring of roads and public spaces; (3) new cultural and sports and facilities; and (4) promote tourism through the redevelopment of the Latin America memorial¹³⁵. As strategic actions it proposed among others, the revision of the controls and perimeter of the 1995 Agua Branca special district in order to incorporate the new planning instruments introduced by the City Statute and the PDE, such as CEPAC's.

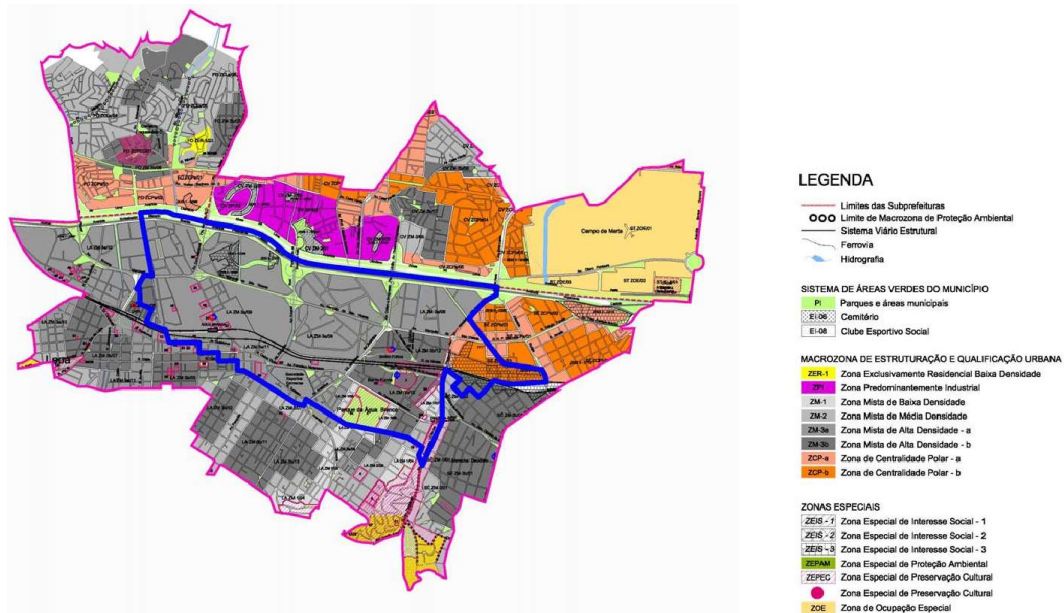
The new zoning districts introduced with the Lapa PRE represented a substantial increase in base FAR permitted by the previous zoning. Particularly, most of the various sub-categories of Z8 districts where the maximum achievable FAR could vary between 0.05 and 0.15; covering a maximum of 2.5% to 7% of the respective lot were changed to Mixed-use Districts (ZM) under the new categories introduced with the PDE. ZM districts allowed for both residential and non-residential uses, including in the lot and building. The new ZM district was subdivided in three subgroups according to permitted densities: ZM-1, ZM-2, ZM-3a and ZM-3b¹³⁶. In addition, the eastern section of the site which is part of the strategic regional plan for the 'Se' sub-prefecture was zoned as district of polar centrality (ZCL – '*Zona of Centralidade Linear*') used to promote densification along main roads¹³⁷.

¹³⁵ Article 85. Section I, Chapter VI, Volume 2. Municipal Law n. 13885, August 25th, 2004

¹³⁶ The permitted FAR for each zoning districts was ZM-1 (minimum: 0.2; base: 1, maximum: 1); ZM-2 (minimum: 0.2; base: 1; maximum 1-2), ZM-3a (minimum:0.2; base: 1; maximum: 1-2.5); ZM-3b (minimum: 0.2; base: 2; maximum: 2-2.5)).

¹³⁷ The ZCL zoning district was subdivided in two sub-categories with the following permitted FAR: ZCL-a (minimum: 0.2; base: 1, maximum: 1-2.5); ZCL-b (minimum: 0.2; base: 1, maximum: 2-4);

Figure 67. Strategic Regional Plan for the Sub-Prefectures of Lapa and SE. Map of Permitted Uses. Source: Sao Paulo DPU, 2004.



The new districts represented a substantial increase in base ‘as-of-right’ FAR allowed. In addition, the new standard zoning controls also gave the possibility to owners to build above the base FAR up to a maximum achievable FAR applied uniformly throughout the city in exchange for a payment to be calculated through the onerous concession of development rights instrument. The possibility to build above the base FAR up to a maximum achievable FAR permitted by the new zoning was independent from the exemption to the existent zoning permitted by the 1995 Agua Branca special district. As such the new zoning districts not only increased substantially the base FAR permitted ‘as-of-right’ but also permitted an increase in maximum achievable FAR without having to use the procedures available through the 1995 OU regulations.

At the end of 2004, with approval of the new Sao Paulo Zoning Resolution and respective strategic regional plans for the sub-prefectures of Lapa and Se, the development site was subject

to several planning studies and regulations with overlapping objectives and poorly articulated guidelines. The planning controls and implementation mechanisms implemented by the 1995 Agua Branca special district were still valid after the 2004 rezoning, as the law had not yet been revised. This meant that regardless of the base FAR permitted ‘as-of-right’ by the existing zoning, owners could increase it up to a maximum of 4 in exchange for a contribution calculated by the formula provided by the OU.

The increase in base FAR introduced by the new Zoning Resolution decreased the ability of the OU to generate revenues to finance the proposed program of public works, as the difference between the maximum achievable FAR of 4 and base FAR decreased substantially. For example, in a site previously zoned as ‘Z8’, with a permitted base FAR of 0.02, if the owner wished to increase the FAR to the maximum of 4 permitted by the OU, the required contribution would be calculated based on the 3.92 FAR increase. In sites that were rezoned from ‘Z8’ to ZM-3a, the base FAR was increased to 2. If the owner of the site still wished to take advantage of the possibility provided by the OU regulations to increase the FAR to 4, the required contribution would only be calculated on the 2 FAR increase, instead of the 3.92 difference with the old zoning. In addition, that same owner now had the possibility to increase the FAR up to 2.5 without having to use the OU mechanisms.

The new zoning districts adopted enabled the implementation of the ‘*Bairro Novo*’ proposal which would have conflicted with the prior zoning. The proposal did not have any legal standing and was supposed to provide guidelines to the revision of the Agua Branca special district. But the proposal was poorly integrated with the study previously elaborated by the DPU to guide the

revision of the special district. For example, the intention to increase the densities along the main roads such as Avenue Marques de Sao Vicente conflicted with the urban design and structure of public spaces proposed by the Oliveira team (see figure 51 below).

Figure 68. 'Bairro Novo' proposal and the increase in densities proposed for the Avenue Marques de Sao Vicente 2004. Source: Sao Paulo DPU, 2004.



Further evolutions

In order to revise the 1995 Agua Branca special district, the Oliveira team was required by the terms of reference of the '*Bairro Novo*' competition to elaborate a detailed urban design plan which would serve as the basis for the revision. The team had already been paid for the preliminary studies elaborated for the competition and was now expecting to proceed with the

studies as defined by the contract signed with EMURB. In the beginning of 2005, with the election of a new Mayor Jose Serra, the planning process was halted. Considered by the new Mayor as a political project of the previous Mayor Marta Suplicy, Jose Serra ordered EMURB to suspend the contract with the Oliveira team and declared that the proposal would not be implemented.

Even without the new plan, from 2003 to 2009 the development site increasingly attracted more investment by private developers resulting in a significant increase in land and property prices. According to the Brazilian consulting firm '*Contacto Consultores Associados Lda*', the price per square meter of a new apartment increased 36% from 2004 to 2006. Already in 2002, the construction on a new Shopping mall Bourbon by the Zaffari Group located close to the Barra Funda transport terminal was approved, increasing substantially the retail space available in the area¹³⁸. The approval of the new shopping mall together with the increased accessibility provided by the Barra Funda terminal, which handled close to 500,000 daily passengers, generated an increase in requests submitted to EMURB for building permits for new residential and office buildings.

¹³⁸ The Bourbon Shopping with 184,000 m² representing an investment of R\$180 million was inaugurated in 2008. In exchange the developer was required to pay R\$6 million. In the same year the Wall-Mart Supercenter Pacaembu was also inaugurated. Previously, the only shopping mall located in the area was the Shopping West Plaza, inaugurated in 1991 by the Victor Malzoni Group. The shopping was part of Rede Plaza Shopping, a portfolio of five shopping malls sold in 2007 to Brookfield Brazil Real Estate Partners, a retail fund managed by the Brazilian subsidiary of Brookfield Asset Management Inc. the Canadian asset manager for R\$1.8 billion, the largest transaction ever in the retail sector in Brazil (disclosure: from 2007 to 2009 the author held an associate position at Brookfield Asset Management Inc. based in New York City and Sao Paulo, as part of the team responsible for investing close to R\$3 billion in the acquisition and subsequent management of 17 shopping malls in Brazil, including the Rede Plaza portfolio).

From 2001-2009, there were 37 proposals submitted to EMURB, of which 27 were approved (10 commercial and remaining residential), 4 were rejected and 7 were under analysis as of June of 2009. The majority of the proposals consisted of high-end residential condominiums¹³⁹ and some office buildings following the typical Sao Paulo typology of individual towers isolated from the street¹⁴⁰. The request from proposals spiked in 2006 and 2007 as the Brazilian economy and the Sao Paulo real estate market went through a period of strong growth. According to a Brazilian consulting firm¹⁴¹, between 2004 and 2006 the price per square meter of a new apartment increased 36%. The number of proposals decreased with the uncertainty and flight of foreign capital provoked by the financial crisis of 2008-2009 but resumed quickly as the Brazilian economy was able to shield most of worst consequences of the crisis¹⁴².

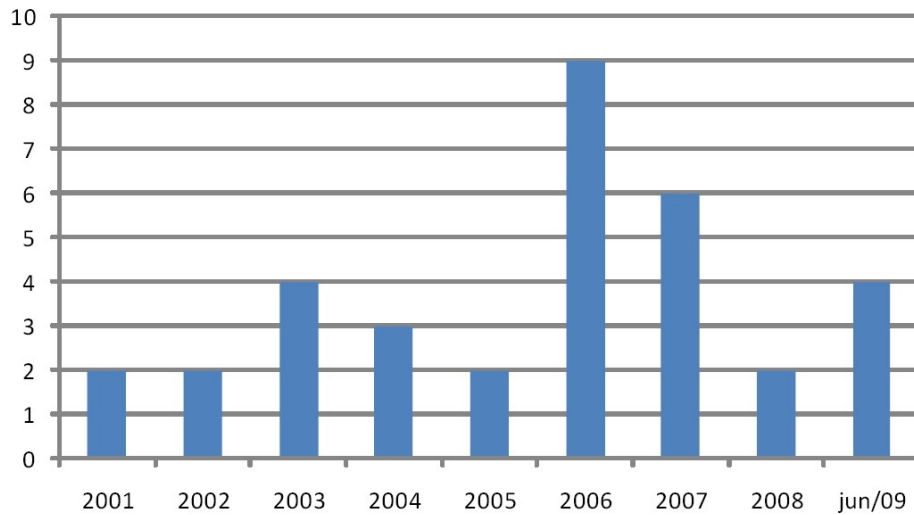
¹³⁹ Serving mostly a medium/ high income segment, classified as 6 minimum wages which corresponded in 2010 to R\$3,400 of income per month.

¹⁴⁰ Some of the most significant residential buildings developed between 2003 and 2009 within the perimeter of the Agua Branca special district include: '*Cores da Barra*' a complex of four residential towers developed by Klabin Segall which merged in October of 2009 with Agra and Abyara Incorporadora to form the Agre Group; '*Liv Barra Funda*' by PDG Realty; '*Inovarte Club Barra Funda*' developed in conjunction with a new office building 'New Worker Tower' by Tecnisa Engenharia e Comercio Ltda; and 'Complexo das Caldeiras' by Helbor Empreendimentos SA together with Setin Imoveis. Some of the most significant commercial building developed between 2003 and 2009 within the perimeter of the Agua Branca special district include the Millennium Business Center composed of two towers with 18 floors developed by Mereb SA. and 'Trademark Pacaembu' developed by Esser S.A.

¹⁴¹ Contato e Associados (2008)

¹⁴² After posting growth rates of 5.7% in 2007 and 5.1% in 2008, Brazil's GDP dropped 0.2% in 2009. Several steps were taken by the government to minimize the impact of the crisis, including injecting more than U.S. \$100 billion of additional liquidity into the economy, providing tax cuts to manufacturers and consumers, and reducing Central Bank interest rates. Brazil emerged from the global financial crisis in 2009 and economic growth is estimated to reach 7.1% in 2010. A more sustainable growth level, in the range of 4.5%, is predicted for 2011.

Figure 69. Proposals submitted to EMURB inside the perimeter of the Agua Branca special district by year 2001-2009. Source: Sao Paulo DPU, 2010.

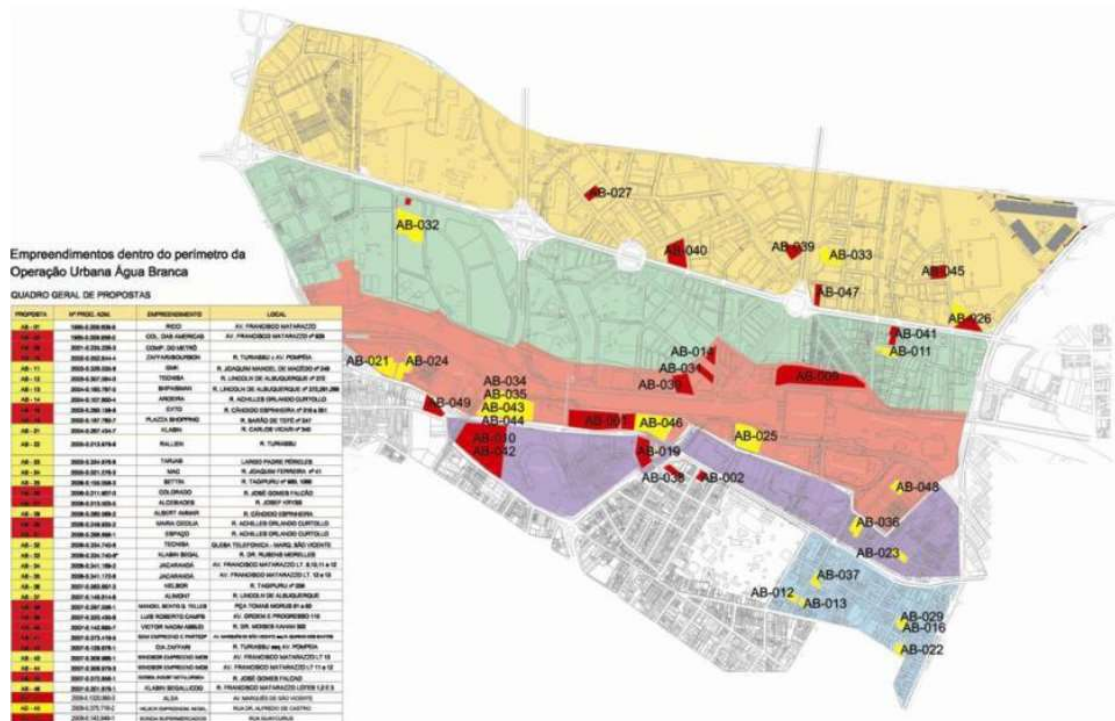


In a clear sign of the resilience of the Sao Paulo real estate market and growth expected for the development area, the large undeveloped site with 25ha located in the central section of the site owned by Telefonica was sold in March of 2008 to Tecnisa S.A. for approximately R\$135 million a year after the company went public in the Brazilian stock exchange BOVESPA. The site represented close to 25% of the area included in the '*Bairro Novo*' proposal by the Oliveira team. Instead, the developer announced its intention to build a closed condominium with 30 individual residential towers with approximately 3000 units. In same year, the developer Bueno Netto also announced its intention to build 27 residential towers with approximately 2,100 units in 12 sub-condominiums in a site with 6.3 ha located in the development area.

In total, approximately 245,000 m² of the 1.2 million m² additional development rights granted by the special district Agua Branca had been used as of June of 2009. This corresponded

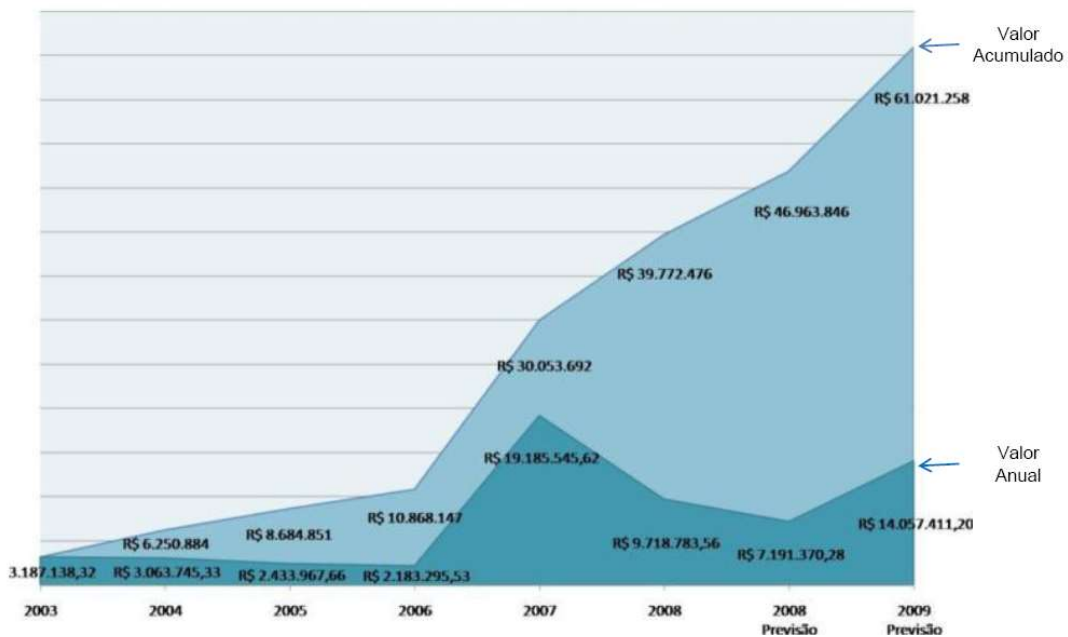
to 138,000 m² of the additional 300,000 m² available for residential uses and 107,000m² of the additional 900,000 m² available for commercial uses. EMURB was also evaluating proposals for an additional 250,000 m² of residential development (which if approved would exceed the maximum additional square meters available for residential uses) and 110,000 m² of new commercial buildings. The proposals submitted indicated that the allocation of uses implemented by the 1995 regulations favoring commercial developments were inadequate as most developers tended to choose residential developments. Also, most of proposals tended to be located close to transport hubs, particularly the transport terminal 'Barra Funda' and the new subway station planned for the six orange line of the Sao Paulo subway network.

Figure 70. Location of proposals submitted to EMURB inside the perimeter of the Agua Branca special district as of June 2009.
Source: Sao Paulo DPU, 2010.



The instruments implemented by the Agua Branca special district generated approximately R\$85 million of revenues as May 2010, including R\$61 million through the onerous concession of development rights and direct contributions from developers. The largest share of R\$19 million was captured in 2007, due to the approval of the residential development ‘Complexo das Caldeiras’ by developers Helbor and Setin which paid R\$16 million to the FUNAPS fund to increase the FAR in its site to 4 in order to build four residential towers and one office building with 25 floors. Although all of the revenues should have been used to finance the program of public works proposed by the special district regulations, up to May 2010, only R\$2.5 million had been spent in minor road improvements. As a result, the development area continued to have severe problems of traffic congestion and drainage problems with frequent flooding.

Figure 71. Annual and total revenues generated by the Agua Branca special district. 2003 - 2009. Source: Sao Paulo DPU, 2010.



Revision

In 2007, when the revenues generated by the Agua Branca special district reached its peak, EMURB under the new Mayor Gilberto Kassab elected in 2006 restarted the planning studies to revise the 1995 Agua Branca regulations. The studies were part of a broader effort by the city to rethink the use of special districts to redevelop large urban sites and improve urban infrastructure in order to promote the location of new population within the central area of the city and contain its continuing outward expansion. Together with the revision of the Agua Branca special district, new planning studies were also prepared for four of the nine new special districts proposed by the 2002 PDE including ‘*Diagonal Sul*’ and ‘*Diagonal Norte*’, ‘*Carandiru – Vila Maria*’ and ‘*Vila Leopoldina- Jaguare*’. The choice was justified by the level of urban infrastructure present in the development areas selected which could support higher densities.

The studies for the revision of the 'Água Branca' special district were based on the need to adapt the stock of additional development rights granted by the special district to the intentions of investors which tended to favor residential developments. It also aimed to expand the program of public works proposed by the previous regulations, taking advantage of the additional revenues available to improve the road and drainage system, add new public spaces, open space amenities and social housing units. In addition it would introduce the possibility to use CEPAC's to sell the additional development rights upfront to investors in public markets and private auctions and use proceeds to finance the new program of public works proposed.

Based on the recommendations of local real estate market conditions commissioned in the 2008 to a Brazilian consulting firm, EMURB proposed to increase the additional development rights permitted by the Água Branca special district from 1.2 million m² to 2.6 million m². The allocation of permitted uses would also change substantially with 1.56 million m² allocated for residential uses and the remaining 1.04 million m² allocated for commercial uses. The proposal would change the development area dramatically, adding an estimated 85,600 of new population in 15 years to the existing 25,800 making it one of the densest areas in Sao Paulo with 211 habitants per hectare from the existing 48 habitants per hectare. The proposal would add close to 20,000 new vehicles to the existing 8,000.

The new studies elaborated largely discarded the plan of 13 public works included in the 1995 regulations. Particularly the proposal to build a large water reserve on the Francisco Matarazzo Avenue to prevent the flooding that the area was frequently subject was considered insufficient and discarded by the city which commissioned a new study for R\$4.7 million.

Instead EMURB proposed 56 new interventions in nine new subsectors with an estimated cost of R\$400 million¹⁴³. The most significant was the construction of a new tunnel with 12 kilometers linking the train stations of Lapa, Agua Branca, Barra Funda, Julio Prestes, Luz and Bras in order to bury that section of the train lines 7 and 8 and construction of a new urban avenue above. This complex and expensive intervention would allow demolishing the elevated highway '*Costa e Silva*' (known as '*Minhocao*').

The new plan largely discarded the winning proposal for the 'Bairro Novo' competition by the Oliveira team. Instead it proposed a limited number of new roads, minor road improvements and renovation of existing public spaces within the existing property boundaries. The most ambitious project was the implementation of a continuous urban park with sections occupying part of the large property owned by Tecnisa. SA. For the undeveloped central section owned by various developments companies such as Tecnisa SA and Bueno Noite, the studies produced by EMURB indicated various proposed subdivisions articulated with existing streets and incorporating the new proposed park. The new subdivisions seem to conflict with the developer's intentions and the articulation between both is not clear (see figure 73 below).

¹⁴³ Of the 56 new interventions proposed, 11 road improvements around the Barra Funda transport terminal were considered priority and commission in July of 2009 for R\$14 million.

Figure 72. New plan proposed for the Agua Branca Special District by EMURB. Sector B of the plan with subdivision proposed by EMURB for the site owned by Tecnisa SA (bottom right). Source: Sao Paulo DPU, 2012.



In May of 2009, the city announced that it had decided to merge the three urban special districts being studied ‘*Agua Branca*’, ‘*Diagonal-Norte*’ and part of ‘*Diagonal-Sul*’ in one new continuous ‘*Lapa-Bras*’ special district¹⁴⁴. The merge permitted to address the proposed new railway tunnel as one integrated intervention and better articulate the various improvements proposed for the South margin of the Tiete river. As of August 2010, the environmental impact study for the ‘*Agua Branca*’ special district had been completed and was expected to form part of a new ‘*Lapa-Bras*’ special district to be sent to the Sao Paulo City Council for approval in 2011.

¹⁴⁴ Together with the special districts of ‘*Rio Verde-Jacu*’ (enacted in 2004) and ‘*Mooca-Vila Carioca*’ which included the remaining portions of the special district ‘*Diagonal Sul*’ not included in the perimeter of the ‘*Lapa-Bras*’ district as proposed by the 2002 PDE.

6.5 IMPLEMENTATION: JARDIM PERDIZES – ‘THE BEST PLANNED NEIGHBOORHOUD IN SÃO PAULO’

In the beginning of 2012, after three on intense negotiations and several technical studies elaborated by EMURB, TECNISA and PDG announced a new large-scale commercial development for the central lot with 24.4 hectares bought from Telefonica in 2006 for 134 million reais, approximately 549 reais per sq.m. Labeled as ‘Jardim das Perdizes’ it included 32 towers, 80% of which were residential with total estimated sales approximately 5 billion reais. When announced it was the largest development project in Sao Paulo of the past 40 years, surpassing the project by Odebrecht Realizações Imobiliárias for the 82,000 sq.m. former site of Bicycle factory Monark bought in 2011. The project was owned by a special purpose entity Windsor Investimentos Imobiliários Ltda. (Windsor), with TECNISA as its majority shareholder with a 68.9% stake, PDG with 25% through Agra Empreendimentos Imobiliários S.A. and BVEP with the remaining 6,10%.

Figure 73. View of 1st Phase of Agua Branca ‘Reserva Manaca’. Source: Tecnisa, 2012.



Approximately 45% of the lot for ‘Jardim das Perdizes’ was to be ceded to the City of São Paulo for public roads, green areas and other public amenities including an oval shaped central park with 5 hectares. After intense negotiations with the City, TECNISA decided not to build a private condominium and instead cede the public areas to the city and integrate it with its surroundings. The plan consisted of 16 superblocks with areas between 3,000 and 10,000 sq.m. located around the new oval shaped central park.

The decision to do a subdivision with public areas was pointed by Tecnisa as the main reason for the 5 years it took in launching the project since its acquisition in 2007 to Telefonica. Particularly the need to negotiate with the City the public benefits to be delivered by the project was pointed as the key factor in the delay and why large-scale subdivisions were rare throughout

the city in the last 30 years. Still, the decision to do a subdivision was worth it for the developer due of the additional development rights it generated to the project.

The city got a significant monetary sum through its development tax 'outorga onerosa' and 'CEPACs' to be used to finance the required public works, including much needed drainage work, new public amenities or burying the CPTM rail line from Lapa to Brás. These intentions were announced by the City following the suggestions of EMURB. For the planned investments to be implement, it required an agreement between the City and Hall and sale of the CEPAC's to fund it. Until the end of 2012 no public work had been started.

The first phase included two private condominiums with three towers each targeting the higher income stratas (Class A e B): 'Bosque Jequitibá', with apartment sizes between 159 and 197 sq.m, and "Reserva Manacá" with apartment sizes between 241 and 283 sq.m. It also included two office towers, an hotel and neighborhood strip mall. The developer's commercial strategy for the project's first phase included starting by selling the first six residential towers with apartment units between 150 and 270 sq.m. The initial estimates indicated revenues of approximately 800 million reais for a sale period of approximately 3 years. The subsequent phases included the remaining residential towers and the offices. The option to develop the complex in phases was based on the need limit the supply of new units to the market and not take one too much leverage which would be required to develop the whole complex at once. It also allowed the developer to test the market and adapt apartment characteristics and mix of uses to demand, including replacing residential towers with office towers. The possibility to include a

hotel was also part of the developer's plans. Only a shopping mall was not included due to the proximity of the project to shopping malls West Plaza and Bourbon.

The main price comparable for the project was the 'Casa das Caldeiras' project sold by developers Helbor and Setin in 2010. The whole project sold in a few days at around 6,300 reais per sq.m. for the apartment units and 9,000 reais/ sq.m. for the retail space. The initial target for the first two projects of 'Jardim das Perdizes' was a sales price 20% lower with also high sales speed. The barrier of the train line was considered as the main reason for the lower price target.

Three thousand real estate brokers located throughout Brazil were trained specifically to sell the projects including the sales team of TECNISA, PDG and Lopes a company specialized in real estate sales. The marketing strategy, as described by Fabio Villas, senior executive at TECNISA, was focus on its well-planned urban layout, common amenities and green area "It's like living inside a park".

The project caused concern amongst market specialists due to its size and target price. It was pointed that TECNISA which had 2.1 billion reais in sales in 2011, had seen that number shrink to 1 billion in 2012 and overall lower profit margins. From January to September 2012, TECNISA's gross profit margin was 27,7% significantly below its average of 37,7% for the previous year. "Jardim das Perdizes" could improve that margin significantly as the lot was contributed at a cost of 133 million reais represented only 3,3% of sales, including all the payments to the city. As mentioned by Vasco Barcellos, TECNISA's financial director "Jardim das Perdizes would accelerate the improvement of profit margins for the company".

The focus of the company was margin instead of sales speed and included another 600 million reais in sales in other residential projects. The strategy was to withhold new sales and possibility postponed them to 2014 in order to focus on 'Jardim das Perdizes'. Market analysts continued with the sales recommendation for TECNISA's publicly traded shares with a target price of 8 reais. That represented a 3,5% drop in the stock price vis a vis a 18% increase in the index for construction companies in the BM&FBovespa for the same period. The delays in getting the required permits for the project was seen as a major cause of concern. The required approvals were only completed in the beginning of 2013, six years after acquiring the lot from Telefónica. The requirement by the city to oversee the infrastructure work executed was pointed as the main cause for the delay.

The commercial strategy for 'Jardim das Perdizes' was to start by selling an initial 821 million reais that could go up to the total of 1,172 million depending on market demand. The construction was expected to take 30 months and to be executed by TECNISA's construction arm. Constructing financing was provided by Santander Bank S.A in the mold of the Brazilian Housing Finance System ("SFH") for an expected total of R\$750 million, sufficient for the development of the 10 first towers.

In December of 2012, TECNISA opened a new sales room of 5,000 sq.m. based on the Bienal Pavillion at a cost of R\$ 12 million. The initial sales price was 7,500 million \$R/ sq.m., significantly above the what the initial market studies recommended. The target buyers were mainly residents of Perdizes, Pacaembu and Higiétopolis who were increasingly being priced out its neighbors. In this first phase, it was made available 428 units in four towers in the both

projects with apartments between 159 square meters and 283 square meters, beyond penthouses totaling R\$804 million of sales and 97,761 square meters of private area. Over the first weekend, it sold 367 units, 86% of the total at an average price of R\$ 8,000 per square meter. Twelve thousand people visited the sales room, 6,836 saw the apartments and 3,063 asked to reserve a unit. Construction of the towers launched soon after.

TECNISA immediately also started preparing the sales of the next four towers, again in two separate private condominiums named ‘Recanto Jacarandá’ to be sold first and ‘Bosque Araucária’ soon after with a similar product and higher sales price. Total expected sales were approximately R\$1 billion. As illustrated by figure 76 below, the sales prices in the area almost doubled in the previous three years and were expected to continue to increase.

Figure 74. Variation in Sales Pices 'Jardim das Perdizes'. Source: Tecnisa, 2013.



After posting its first loss in 2012, Tecnisa’s numbers for the first half of 2013 were very positive. From April to June, the company had record profits of R\$ 73 millions compared to the profits of R\$2,6 millions in the same quarter of previous year and R\$ 42 millions from January to

March. Most of the turn to record profitability was due to the success of Jardim das Perdizes which contributed approximately R\$32 million to the company total profits. Also, its profit margin increased significantly to 40%. Meyer Joseph Nigira, founder and CEO of TECNISA confirmed that because of the success of Jardim das Perdizes, the company was now ‘in a very good moment’.

Figure 75. Views of ‘Bosque Auracaria’ project. Source: Tecnisa, 2012.



CHAPTER 7 : COMPARISON AND EXPLANATION: LEARNING FROM THE CASES

7.1 OVERVIEW

The case-study chapters described the planning process and implementation of large-scale urban redevelopment projects in New York City, Paris and São Paulo from 2001 to 2012. Each chapter started with an introduction to the urban system of each city, its regional economy and demographics. It then described the system of urban governance with a focus on the actors, institutions and regulations focused on land-uses and urban development. Finally, it described the planning and implementation of the redevelopment projects of ‘Hudson Yards’, ‘Clichy-Batignolles’ and ‘Água Branca’. The present chapter provides a summary of the cases, a comparison of the different planning processes, implementation and the provision of public benefits delivered until 2012.

7.1.1 COMPARISON BETWEEN MODEL OF SPECIAL ZONING DISTRICTS

7.1.2 ROLE OF LOCAL LAND-USE GUIDELINES IN THE PLANNING PROCESS

The purpose of this section is to compare how land-use guidelines differed between cases. The objective is to compare the role that local land-use documents played in the planning process leading to rezoning of each site. Specifically, it focuses on comparing the framework of policy objectives and guidelines defined for each project in local plans, and how it impacted the planning process of each special zoning district. A key component of the analysis was that the local policy framework was not static throughout the planning process of each special district. Indeed, the focus of the research is on the effect of the *changes* in the underlying policy framework promoted by legislative reform. Table 6 and provides an overview of the changes in

the policy framework over time at different government levels for each special district and the procedures to revise it.

Table 6. Planning Objectives - Comparison of the planning objectives at different government levels

	Special Hudson Yards District		ZAC's Clichy-Batignolles/ Cardinet-Chalabre			Operacao Urbana Agua-Branca	
Location	New York City, U.S.A.		Paris, France			Sao Paulo, Brazil	
National Planning Regulations	Very weak SZA (1926)/ SCPEA (1928)		Strong Loi OF (1967) Regulated the procedure to adopt a special district, its contents and instruments to implement it. The adoption of a special district (ZAC) allowed the creation of a master plan (PAZ) which could depart from the local land-use plan (POS)	Very Strong Loi SRU (2001) Required the local land-use plan (PLU) to contain planning guidelines for each special district (ZAC) in the plan of sustainable development (PADD), the PLU had to be compatible with the ZAC, ZAC could only be modified if the PLU was revised.		Very Weak	Very Strong Estatuto da Cidade (2001) Introduced the nation-wide possibility for municipalities to introduce special districts, regulated the content of special districts, introduced the possibility to use CEPAC's to anticipate the revenues to finance the provision of public benefits.
State Planning Regulations	Very Weak SEA (1936)		Medium SDRIF (1994) Site zoned as 'new urban district' in the category of 'logistical spaces dedicated to transport infrastructure which present a new development opportunity'. Objectives: (1) to accommodate part of the new residents and economic activity to be located in the region; (2) limit the conversion of green spaces; (3) new development should be integrated with its surroundings; (4) balance residential and commercial activities and; (5) promote mixed-uses and residential quality.			Very Weak	
Local Land-Use Plan	Very Weak	Weak PlaNYC (2007) General city wide objectives including (1) transit-oriented development and use rezoning to direct growth towards transit infrastructure; (2) develop underused areas to knit neighborhoods together and identify underutilized areas that are well served by transit; (3) Deck over railroads, rail lines, and highways; (4) develop new financing strategies; (5) expand inclusionary zoning; (6) encourage ownership.	Medium POS (1989)	Strong PLU (2006 - before approval of ZAC) Development site qualified as 'Planning District', where mixed-used development should be promoted, and commercial uses incentivized. The specific urban design were left purposely vague until the ZAC was approved.	Very Strong PLU (2007 - after approval of ZAC) Development site qualified as 'Planning District', where mixed-used development should be promoted, and commercial uses incentivized. The plan contained specific urban design guidelines for street grid, public amenities and transport infrastructure.	Medium PD (1988) Allowed the use of planning incentives to incorporate the private sector in the provision of public benefits. Required the elaboration of specific legislation for each special district.	Strong PDE (2002) Development site qualified as a district of restructuring and urban requalification with the following objectives: (1) promote urban development geared toward higher density residential uses; (2) improve the quality of public spaces and urban environment; (3) promote commercial uses; (4) preservation and refurbishment of cultural heritage; (5) restructuring of urban infrastructure and mass transit systems.
Zoning Resolution	Medium NYC Zoning Resolution (1961)					Medium LPUOS (1972)	Strong LZ/ PRE (2004) General objectives for the West region as well as Lapa and Se subprefectures: (1) promote the development of tertiary activities in the area; (2) restructuring of roads and public spaces; (3) new cultural and sports and facilities; and (4) promote tourism through the redevelopment of the Latin America memorial.

Table 7. Comparison of procedures to enact/ revise a special district

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles/ Cardinet-Chalabre	Operacao Urbana Agua-Branca	
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil	
Procedure to Adopt/ Revise Special District	Planning Study by 'lead agency', typically the Department of City Planning with external consultants. Private Sector and Community groups can also make	Identification of development site as 'Planning District' in local land-use plan	Identification of development site as 'Special District' in local land-use plan	
	City Environmental Quality Review Process	Environmental Assessment Statement	Planning study by Department of City Planning	Planning study by Department of City Planning
		Declaration of Significance	City Council Review	Public Participation
		Scoping	Contract with SEMAVIP	Environmental Impact Study
		Draft Environmental Impact Statement	Development Program	Public Participation
		Final Environmental Impact Statement	City Council Review	City Council Review
	ULURP Review Process	Filing of Application	Public Participation	
		Certification	Planning Contract	
		Community Board Review	Environmental Impact Study	
		Borough President Review	Public Enquiry	
		City Planning Commission Review	City Council Review - Simultaneous adoption of Special District and Revision of Local Land-use Plan.	
	City Council Review			

Role of Local Land-use Guidelines in the Planning Process of the Special Hudson Yards District

The planning process for the Hudson Yards area was characterized by an absence of direct oversight at federal, state or regional levels. Throughout the process, the federal and New York state governments did not have legal jurisdiction over local zoning controls. The various studies, testimonies and policy statements produced by the Regional Plan Association did not bind the MTA, Department of City Planning or any of the entities voting on the proposed amendments.

Similarly, the 'PlaNYC' released in 2007 two years after the approval of the Special Hudson Yards Districts did not have any direct consequence for the New York City Zoning

Resolution. The FEIS of the zoning amendment for the Western rail yard did include a summary of the consistency of the proposed actions with the specific PlaNYC goals and initiatives related to land use and zoning¹⁴⁵. But the plan did not include any planning guideline that the application was legally required to follow such as permitted uses, maximum FAR allowed, percentage of open spaces, community facilities required or affordable housing units required. The regulations of the adopted zoning districts and various incentive programs implemented were not legally required to be consistent with any map or planning regulation elaborated by any supra-local public agency.

Instead, supra local oversight was provided indirectly by a complex multiplicity of state agencies and federal and state laws. As was shown, the MTA had a prevalent role since it was the owner of the John D. Caemmerer West Side Yard. Its influence was particularly expressed in the priority given to the economic component of the bids submitted in 2007 to lease the site's development rights. This was done to strengthen its weakened financial position. It was also expressed in the need to 'self-finance' the extension of the No. 7 subway line which formed the cornerstone of the proposed financial strategy based on a bond issue secured in its majority by revenues generated by future property taxes on the new commercial investment projects.

Federal and state oversight was exerted through allocation of funds for specific purposes within the development area. For example, the failure to approve the state funding component of

¹⁴⁵ Section E, Chapter 3, Western Rail Yard Final Environmental Impact Statement, October 2009, CEQR No. 09DCP007M.

the stadium essentially denied its viability. Similarly, the proposed expansion for the Jacob K Javits Convention Center was drastically reduced by state officials in the beginning of 2008 with a new proposal that included selling the land where the new addition was supposed to be built and scrapping the proposed convention center hotel. Months later it announced a more modest project and suspended the sale of the adjacent site.

In addition, several state and federal programs and laws were used in the financing strategy. The most significant was the ‘Uniform Tax Exemption Policy’ of the New York City Industrial Development Agency which was amended in order to provide significant financial assistance to commercial investment projects in the Hudson Yards development area through tax discounts and access to tax exempt bond financing used by the Hudson Yards Infrastructure Corporation created under New York State ‘not-for-profit’ law. In addition, the traditional ‘R10’ inclusionary housing program adopted in 1987 was also amended in order to allow the use of several state and federal programs to incentive the provision of affordable housing including the NYC HDP ‘80/20’ program using federal tax credits through its LIHTC and the ‘420-c’ tax exemption.

In the planning process of the Special Hudson Yards District, the absence of direct planning oversight over the Department of City Planning by higher level agencies was substituted by the city’s required local review processes. Most of the amendments to the NYC Zoning Resolution adopted for the Hudson Yards area had to go through an extensive City Environmental Quality Review (CEQR) process as well as the Uniform Land Use Review process (ULURP) before being adopted. Such requirements were part of an earlier legislative movement to extend the

opportunities for public participation and increase oversight of local development control. Indeed, the final zoning controls approved for the area through the cumulative effect of all adopted amendments were subject to countless public hearings, forums, testimonies and votes from a multiplicity of public and private stakeholders. The city's unique review system for discretionary actions allowed for extensive opportunities for representatives of a broad base of constituents and interests to provide comments, suggest alternatives and vote on each of the proposed amendments.

Role of Local Land-use Guidelines in the Planning Process of the ZAC Clichy-Batignolles

In Paris, the process of creating and modifying the ZAC Clichy-Batignolles was formally subject to oversight by both regional and local land-use plans. Until September of 2008, when the SDRIF was revised, the planning process of Clichy-Batignolles site was subject to the planning guidelines contained in the previous version of the plan approved in 1994. As discussed, the SDRIF classified the area as presenting a new development opportunity, contradicting the POS approved in 1989 when it was still zoned exclusively for logistical and technical uses. For all spaces classified under such category, the SDRIF defined general objectives that should be followed by the public agency responsible for the redevelopment process. The indications of the SDRIF were only binding to public agencies.

The relationship with the local plan - first the 1989 POS and after 2006 the new PLU – was more complex and bi-directional. The plans defined guidelines such as maximum permitted height or minimum percentage of affordable housing units required, which had to be followed by the development program of each ZAC. At the same time both ZAC's originated revisions to the

PLU in order to accommodate changes in circumstances and intentions during the planning process. The process was further complicated by the adoption on a new PLU in 2006 during the revision of the ZAC program, which weakened the possibility of the plan to guide the planning process and required the incorporation of temporary guidelines until development program for both ZAC's was approved in 2007. In addition, the adopted PLU was the material expression of an earlier reform produced by the publication of the Loi SRU in the end of 2000 that changed drastically the articulation between ZAC's and local plans.

The effects that the POS and PLU produced in the ZAC programs, together with the ability that the ZAC instrument had to revise the PLU, gave the city and SEMAVIP a 'controlled flexibility' over the planning process. Within certain limits defined by the plan, the development program was allowed to adapt the regulations applied in standard zoning districts elsewhere to the specificities of the master plan elaborated by the Grether-Osty-OGI team for both ZAC's. For example, while the global COS of 3 applied uniformly throughout Paris could not be surpassed for the ZAC as a whole, the district was classified in the PLU as a special planning district where individual lots could have a COS higher than 3, as long as the global ratio remained below the limit. Also, while the maximum height limits used throughout the city (first 37 meters and then 50 meters) could not be surpassed, the PLU provided the flexibility to change the relationship used in standard districts between maximum permitted heights and street widths in order to match the urban design intentions. Similarly, although the final percentage of affordable housing included in the plan ended up being 55% of the total, the PLU did not allow that number to fall below 25%.

On the other hand, when the maximum permitted height was changed from 37 meters to 50 meters for buildings facing the new urban park and one tower next to the train station was allowed to go as high as 130 meters, the decision was part of a comprehensive change to the PLU as a whole which produced an impact in several other ZAC's and redevelopment projects throughout Paris in addition to the Clichy-Batignolles site. And as previously mentioned, the PLU included a number of planning easements applied uniformly throughout Paris that the development program was required to follow. In such cases, it was a city-wide planning regulation that impacted the ZAC program, while in other cases it was the specificity of the master plan that required individual modifications to standard regulations of the PLU.

In both revisions to the PLU, the city opted for the 'simplified' procedure included in article L123-13 of the National Planning Code. As opposed to the general revision which required a procedure equivalent to the elaboration of a new PLU, the simplified version only required a six month period of public enquiry as regulated by the National Code of Environment and the approval by the City Council in order to be implemented¹⁴⁶. The use of the simplified procedure was only available for cases where the city Mayor established that there was a 'public interest' to modify the PLU¹⁴⁷. As the National Planning Code required that any ZAC modification had to be accompanied by a revision of the respective PLU, the adoption of the ZAC instrument implicitly

¹⁴⁶ Chapitre III du titre II du livre Ier du Code de l'environnement

¹⁴⁷ '(...) Lorsque la révision a pour seul objet la réalisation d'une construction ou d'une opération, à caractère public ou privé, présentant un intérêt général notamment pour la commune ou toute autre collectivité, elle peut, à l'initiative du président de l'établissement public de coopération intercommunale ou, dans le cas prévu par le deuxième alinéa de l'article L. 123-6, du maire, être effectuée selon une procédure simplifiée.(...)'

gave the city additional flexibility to adapt the development program of the Clichy-Batignolles site to changes in circumstances. Without the use of the ZAC instrument, the city would have had less flexibility to change the development program, as it would have been harder to revise the PLU.

At the same time, the requirement to revise the PLU guaranteed that the ZAC was integrated with the plan. As discussed, it was one of the main objectives of the Loi SRU in order to guarantee that a ZAC could no longer be used as a mechanism to depart from the regulations defined in the POS for the community as a whole. But, as it was mostly a modification to the ZAC that created a need to revise the PLU, both revisions were mostly formal procedures with little practical consequences. In that sense, while the integration between both documents was deepened in comparison to the old POS, the ZAC was still used as a mechanism to depart from certain regulations defined for standard zoning districts. For example, it permitted a decrease in the required minimum distance between buildings and parks from 6 meters to 2 meters.

The requirement that each revision to the PLU should be preceded by six months of public enquiry and approval by City Council provided additional opportunities for a broad base of constituents and interests to provide comments, suggest alternatives and vote on each of the proposed revisions. Indeed the final zoning controls approved for the area were subject to numerous public meetings, forums, public design studios and votes from a multiplicity of public and private stakeholders. Some of revisions proposed by city were particularly controversial and subject to intense debate before being approved. For example the decision to allow the construction of a 130 meters tall tower was contested by the Green Party, which chose not to

participate in the group meetings studying such possibility. In addition, the proposal to increase the maximum permitted height from 37 to 50 meters and increase the percentage of affordable housing from 50 to 55% was intensely disputed by the independents party UMP and its representative Brigitte Kuster as president of the 17th district. The contestation included the creation of a public petition ‘Stop the Massacre at Batignolles’ signed by 7,000 residents of the districts and several public debates and forums organized by the UMP.

Role of Local Land-use Guidelines in the Planning Process of the OU Agua Branca

The enactment of the initial Agua Branca special district in 1995 was formally subject to the guidelines defined by the 1972 Sao Paulo Zoning Resolution and the 1988 Sao Paulo strategic plan. The previous 1985 plan had already identified the site as one of 35 areas of Sao Paulo where the city should actively promote development in order to finance the provision of public benefits. A separate law enacted in 1986¹⁴⁸ aimed at *favelas* provided the possibility to exempt planning controls for special districts from the regulations defined throughout the city by the 1972 Zoning Resolution. As the 1991 Sao Paulo strategic plan - which would have completely revised the 1972 Zoning Resolution - was never enacted, the 1995 ‘Agua Branca’ special district became mostly an expansion of the 1986 ‘Interconnected Operations’ used in the redevelopment of *favelas*, lacking an integration with the Sao Paulo Strategic plan and Zoning Resolution. The

¹⁴⁸ ¹⁴⁸ Law 10209/ 1986 known as ‘*Lei das Operações Interligadas*’ [Law of Interconnected Operations] and ‘*Lei do Desfavelamento*’ [Law of Slum Removal].

new district overlaid existing zoning controls and provided an alternative set of regulations which landowners could use in exchange for a defined contribution.

The initial separation between the special district and the underlying planning controls was modified with the adoption of the new 2002 PDE. The new plan classified the development area as a district for restructuring and urban qualification, where the city should increase densities, improve urban infrastructure and expand the mass transit system. In order to implement the defined objectives, the PDE recommended the use of several instruments implemented by the new national law 'City Statute' as well as CEPAC's introduced a year later in order to finance the proposed public investments. The 2002 PDE incorporated the perimeter of the 1995 Agua Branca special district as well as the maximum achievable FAR of 4 which was applied to all of the new and existing special districts. In order to guarantee an adequate articulation with the existing OU, the PDE required the strategic regional plan to be elaborated for the Lapa and Se Sub-prefectures to follow the regulations already approved.

The strategic plans approved for the development area in 2004 (Lapa and Se) followed the guidelines proposed in the 2002 PDE, by rezoning the entire site and increasing substantially the base FAR permitted 'as-of-right' as well as the maximum permitted lot coverage. It also introduced the possibility of increasing the maximum achievable FAR without having to use the exceptions available through the OU. The new plans specifically recommended the revision of the 1995 regulations in order to incorporate the new controls and mechanism introduced in 2004. But as the winning proposal for the 'Bairro Novo' competition was discarded largely for political

reasons, the intended integration between the plan and the special districts which should have been formalized with the revision did not materialize.

The planning process to revise the OU, including the recommendations prepared by EMURB in 2001 and 2004 and 2007; as well as submission to the competition to host the 2012 Olympic Games and the *'Bairro Novo'* proposal were largely independent from the planning process that resulted in the rezoning of the site in 2004. Although the new PDE introduced several new planning instruments which would have give the city the ability to implement a master plan such as the *'Bairro Novo'* proposal, subdividing and reorganizing the existing large plots, the plan proposed for the new revision was limited to several road and infrastructure improvements largely within the existing plot structure.

7.1.3 INSTRUMENTS OF PLAN IMPLEMENTATION

The purpose of this section is to compare the structure of planning incentives implemented in each special district and the role of public and private stakeholders in the planning process. The objective is to compare the *'implementation capacity'* of each model as measured by the range of *planning instruments* and incentives available to stakeholders to implement the plan. Table 55

and 56 provide an overview of the role various stakeholders in the planning process of each special district.

Table 8. Public Actors Role - Comparison of the role of public agencies

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles/ Cardinet-Chalabre	Operacao Urbana Agua-Branca
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil
National Government	Very Weak Indirect funding through various federal programs providing fiscal subsidies	Strong Signed planning agreement, provided direct and indirect funding, decision to locate Palais de la Justice	Very Weak
State Government	Medium Refused to provide funding for stadium, reduced program for Javits program, provided indirect funding through several fiscal subsidies	Medium Signed planning agreement, provided direct funding	Very Weak
City Government	Medium Initiated process, led submission of Olympic bid, amendments had to be approved by City Council, negotiated with MTA, acquired certain properties	Strong Initiated rezoning process, led submission of Olympic bid, signed planning agreement, signed several planning contracts with SEMAVIP, provided significant direct funding	Medium Initiated planning process, led submission of the Olympic bid, special district had to be approved by City Council
Department of City Planning	Strong (NYC - DCP) Elaborated initial planning studies, commissioned economic and feasibility studies, elaborated environmental impact study, submitted proposals for amendments subject to ULURP and EQR processes, organized Hudson Yards competition with MTA, prepared new studies and proposal for rezoning of Hudson Yards site, organized public forum.	Strong (APUR/ DPU) Elaborated initial planning studies, organized design competition, submitted proposal to create special district, elaborated new PLU, elaborated environmental impact studies, revision to PLU, organized public forums, design studios, events for public participation.	Medium (SEMPLA/ SP Urbanismo) Participated in initial planning studies, part of inter-sectoral group responsible for the 2001 and 2004 studies, commissioned 2010 environmental impact study.
Development Corporation	Medium (HYDC/ HYIC) Managed various planning and financial incentive programs, arranged financing for property acquisition and infrastructure improvements through bond issues, coordinated the various public agencies, contractors, design teams and private investors.	Very Strong (SEMAVIP) Property acquisition, site assembly, urban design and architectural guidelines, managed public investments, coordinated public agencies, design team, contractors and private investors, issue of building permits.	Medium (EMURB) Elaborated initial planning studies, financial management of special districts, issue of building permits, responsible for public investments, coordination of various public agencies and private investors

Table 9. Private/ Other Actors Role - Comparison of the role of private entities and community groups

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles/ Cardinet-Chalabre	Operacao Urbana Agua-Branca
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil
	Medium	Very Strong	Very Weak
Design Team	(Cooper, Robertson & Partners - Special Hudson Yards District) - Elaborated the urban design plan that formed the basis of the 2005 Special Hudson Yards District; (KPF - Rail Yards Site) - Coordinated a team of eight architects that elaborated a detailed urban design and architectural program that formed the basis of the 2009/ 2010 amendments	(Grether & Osty with Omnium) Won the urban design competition to design the Olympic Vilage that formed the basis of the ZAC Cardinet-Chalabre; elaborated the studies that led to the revision of the first ZAC and adoption of the ZAC 'Clichy-Batignolles', elaborated detailed architectural requirements for each lot sold by SEMAVIP	(Paulo Mendes da Rocha) Elaborated proposal for Stadium and Olympic Village discarded after Sao Paulo lost the bid, (Euclides de Oliveira) winner of the 'Bairro Novo' urban design competition discarded for political reasons.
	Very Strong	Weak	Very Weak
Railway Agencies	(MTA) Owner of Rail Yards site, refused to sell development rights to the city, opted to enter into an agreement with the city, in order to upzone the city and lease the development rights to the highest bidder.	(SNCF/ RFF) Largest land owners. Signed the planning agreement between all parties involved. Transferred properties to SEMAVIP in exchange for negotiated compensations.	(CPTM and RFFSA) Significant land owners. Properties were ceded other public and non-profit institutions, particularly sports teams.
	Strong	Very weak	Very Strong
Private Landowners	ULURP process, Community Board, Several opportunities for public participation. Could sell to the highest bidder at any time.	Several opportunities for public participation. Were required to sell to SEMAVIP at reference prices.	Very limited opportunities for public participation. Could sell to the highest bidder at any time.
	Medium	Medium	Weak
Community	ULURP process, Community Board, Several opportunities for public participation	Several opportunities for public participation through the required procedures pursuant to th adoption of a special district and revision of the local plan	Limited opportunities for public participation
	Strong	Very weak	Very Strong
Private Developers/ Investors	Were allowed to invest within the site at any time. Special district had detailed design requirements. The winning proposal by The Related Companies formed the basis of the rezoning of the Rail Yards site.	Could only buy the developed lots from SEMAVIP through public auctions with detailed design requirements already specified.	Were allowed to invest in the site at any time. The individual lots were not subject to specific design requirements beyond what was defined in the Zoning resolution for the zoning districts used.

Implementation capacity of public agencies in the planning process of the Special Hudson Yards

District

In the implementation of the Special Hudson Yards District, there was a limited possibility to reshuffle property boundaries within the development area in order to adapt it to the urban design. The zoning controls of the new Special Hudson Yards District focused on changing permitted uses and bulk *within* the existent plot structure. There was also no direct planning mechanism to redistribute equitably amongst the area's public and private property owners all the additional FAR approved by the plan with a significant impact on individual property values. The zoning controls adopted for the new district made a significant differentiation between properties zoned for residential uses with a maximum permitted base FAR of 6 and properties zoned for commercial uses with a maximum permitted base FAR of 10. Within each zoning district it also made significant differentiation in maximum achievable FAR, ranging between 11 and 33 for commercial districts and 10 and 15 for residential districts. The only possibility to transfer unused development rights was available from granting sites with significant public uses such as the mid-block boulevard and park and the Eastern portion of the rail yards. Similarly, the ability to capture part of the incremental value generated through the adoption of the new zoning controls was limited to the portion above the new base 'as-of-right' FAR approved. For example, in a property rezoned from M2-3 to C6-4 the base 'as-of-right' FAR increased from 2 to 10. No part of the 8 FAR augment could be included in the various incentive zoning programs established. The ability to capture part of the incremental value in order to fund infrastructure work was limited to the difference between the new maximum achievable FAR and the new base 'as-of-right' FAR of 10.

The planning process was also limited by an absence of public instruments such as land readjustment mechanisms able to reshuffle property boundaries within the development area in order to adapt it to the urban design intentions. The zoning controls of the new Special Hudson Yards District focused on changing permitted uses and bulk *within* the existent plot structure. There was a limited detailed definition of urban design elements with impact on the quality of public space such definition of building footprints and layout of public spaces among others. The only element of the urban design implicit in the new zoning district was the four acre Mid-block Park and boulevard proposed between 10th and 11th avenues from West 33rd to West 38th Streets. In order to implement it, the city will have to acquire the sites through costly and cumbersome eminent domain procedures pursuant to the New York State Eminent Domain Procedure Law.

There was also no direct planning mechanism to redistribute equitably amongst the area's public and private property owners all the additional FAR approved by the plan with a significant impact on individual property values. The zoning controls adopted for the new district made a significant differentiation between properties zoned for residential uses with a maximum permitted base FAR of 6 and properties zoned for commercial uses with a maximum permitted base FAR of 10. Within each zoning district it also made significant differentiation in maximum achievable FAR, ranging between 11 and 33 for commercial districts and 10 and 15 for residential districts. The only possibility to transfer unused development rights was available from granting sites with significant public uses such as the mid-block boulevard and park and the Eastern portion of the rail yards.

Implementation capacity of public agencies in the planning process of ZAC Clichy-Batignolles

In Clichy-Batignolles, the extensive control granted to SEMAVIP over the development process as the owner of the site allowed for more flexibility to adapt the plot structure to the urban design intentions. Without the need to acknowledge prior property boundaries, the new master plan could propose an entirely new structure of public spaces closely articulated with the footprints of new buildings and integrate it with the consolidated surrounding urban areas. There was no need to use complex land readjustment mechanisms and negotiate the redistribution of new plots between the existent owners. The acquisition by SEMAVIP of all the land within the perimeter of the ZAC at referenced prices also permitted the public ‘capture’ of the vast majority of the incremental value of the land generated by the rezoning and public investments. The price that SEMAVIP paid in direct acquisitions or in eminent domain procedures was referenced to average prices throughout Paris. The largest share of the increment implicit in the difference between the acquisition price and sales price to private builders was appropriated by SEMAVIP to finance the required upfront investments in infrastructure and public amenities such as the new Martin Luther King park and public schools.

The prevalent role played by the municipality and respective local public agencies in the planning process of the Clichy-Batignolles site contrasted with the diminished role of other public and semi-public agencies such as SNCF, RFF and GEODIS, the largest landowners within the area. As mentioned, in the earlier stages of the process, the various parties involved signed a public contract with the city and the state which established the objectives for the sites and defined the conditions of the compensation to SNCF, RFF and GEODIS for transferring its sites and respective logistical facilities to the city. Indeed part of the decision to locate the vast majority of the Olympic facilities in the properties belonging to public owners and create a

specific ZAC Cardinet-Chalabre in order to implement them was partly based on the possibility to quickly acquire that portion of the Clichy-Batignolles site. The transfer allowed SEMAVIP to build the platform above the existent railways and implement the first section of the Martin Luther King Park opened to the public in July of 2007. The declaration of ‘public interest’ associated with the adoption of the ZAC mechanism and the signing of the contract between the owners and the City gave SEMAVIP the right to acquire the land and removed the possibility of each agency to search for higher bidders or develop the land themselves which would likely have generated higher proceeds for each agency.

In addition to the diminished role played by existent public landowners other than the city, private landowners and investors also had little influence over the planning process. As discussed, the declaration of the ‘public interest’ in the development process associated with the adoption of the ZAC instrument gave SEMAVIP the right to acquire all land within the perimeter of the site through pre-emption, sale or eminent domain. With the adoption of the ZAC, private owners of land within its perimeter zoned for logistical and technical uses (‘UN’) could no longer search for other buyers or seek to develop themselves in order to take advantage of the increase in property values generated by the rezoning and public investments to be realized.

Also private investors and developers were only incorporated in the development process at the end of the ‘supply chain’ when the developed lots allocated for private uses were sold by SEMAVIP through public auctions. The initiative to develop, definition of the development program as well as the various modifications of permitted uses and bulks within the site were the

exclusive responsibility of the city and SEMAVIP with the Grether-Osty-OGI design team, with inputs from various stakeholders during the period of public enquiry and subject to approval by City Council. Each developed lot sold to private builders had a specific set of detailed architectural and urban design requirements which had to be followed in order to SEMAVIP to grant a building permit. Private investors and builders could only bid to acquire the developed lots and had little possibilities to depart from the uses, program and design requirements defined by SEMAVIP. The role of the private sector was to a large extent as an ‘executor’ of the planning and development strategy defined by the city through SEMAVIP, owned in its majority by the City of Paris.

The extensive control granted to SEMAVIP over the development process as the owner of the site allowed for a substantial degree of flexibility to reorganize the plot structure in order to adapt it to the urban design plan elaborated by the Grether-Osty-OGI team. Without the need to acknowledge the existing property boundaries within the ZAC perimeter, the new master plan could propose an entirely new structure of public spaces closely articulated with the footprints of new buildings and integrate it with the consolidated surrounding urban areas. There was no need to use complex land readjustment mechanisms and negotiate the redistribution of new plots between the existent owners, as SEMAVIP had acquired all properties within the development area.

In addition to the flexibility provided to the urban design team, the acquisition by SEMAVIP of all the land within the perimeter of the ZAC at referenced prices also permitted the public ‘capture’ of the vast majority of the incremental value of the land generated by the rezoning and

public investments. The price that SEMAVIP paid in direct acquisitions or in eminent domain procedures was regulated and reference to averaged prices throughout Paris and did not incorporate the implicit value generated by the public interventions. Therefore, much of the increment implicit in the difference between the acquisition price and sales price to private builders was appropriated by SEMAVIP to finance the required upfront investments in infrastructure and public amenities such as the new Martin Luther King park and public schools.

The use of the ZAC instrument also permitted the city to increase the control over the planning process and sign several concession contracts with SEMAVIP in order to implement the development program approved. The adoption of a ZAC gave SEMAVIP additional rights to acquire all properties within the development area through direct sale or eminent domain. As the new owner of the development area, SEMAVIP could reorganize the plot structure and elaborate for each new lot a detailed program of architectural and urban design requirements matching the intentions of the overall master plan. Once developed, the new lots were either transferred or sold directly to other public agencies responsible for affordable housing and public facilities or auctioned to private builders when destined for residential or commercial uses. As part of the various concession contracts signed with the city, SEMAVIP was responsible for realizing the majority of the public investments, coordinating the various public agencies and technical teams involved and issuing building permits to the owners of the new private lots, corroborating that the projects submitted respected all the design guidelines elaborated for each lot.

Implementation capacity of public agencies in the planning process of the OU Agua Branca

In Água Branca, the new zoning controls applied mostly to the existing plot structure. The OU identified 11 sectors based on existing infrastructure in order to identify which areas were mostly likely to generate revenues and which ones required more investments. The new OU did not change the base ‘as-of-right’ FAR, but only expanded the maximum achievable FAR. As the proposal to increase the maximum achievable FAR in ‘Z3’ sites to 6 was vetoed; the uniform increased to 4 FAR benefited mostly properties where the base FAR was lower. The mechanism of ‘onerous concession’ only applied to approximately half of the additional FAR created by the OU. As opposed to the uniform contribution of \$100 per square feet used in Hudson Yards, the pricing formula used in Água Branca was based on the appraised increase in value generated by the OU¹⁴⁹.

Even though the new 2002 PDE and 2004 Lapa/ Se strategic regional plans gave the city a vast array of instruments providing enough flexibility to reorganize the plot structure and propose a new system of roads and public spaces articulated with the existing surroundings, the city’s actions between 2003 and 2010 were largely limited to evaluating proposals put forward by the private sector for the existing plots and collecting the required contributions without re-investing them to finance the proposed program of public works.

The new controls introduced by the 1995 OU regulations created a situation of exception which privileged landowners within the perimeter of the OU. As the proposal to increase the maximum achievable FAR in ‘Z3’ sites to 6 was vetoed; the uniform increased to 4 FAR

¹⁴⁹ The objective was to capture 60% of the increase in value, with a 40% discount provided in the first year.

benefited mostly properties where the base FAR was lower (particularly 'Z8' sites). The regulations limited the possibility of landowners outside the OU perimeter to sell its unused development rights to landowners within the area through transfer programs which were only available in sites zoned as 'Z8-100' for listed buildings. The required contributions aimed to capture 60% of the benefits conceded. When the properties were rezoned in 2004, the increase in base FAR granted a substantial benefit to landowners which was not captured and decreased the share of total benefits that could be captured through the OU mechanism.

7.1.4 PLANNING AND FINANCING INCENTIVES

The purpose of this section is to compare how the third and last independent sub-variable defined in section 3.5 (Research Design) actually differed between cases. The objective is to compare how the financing strategy used in each case to finance the proposed public benefits. Specifically, it focuses on comparing the instruments of 'public value capture' by which part of increase in property values originated by planning incentives was used to finance the public amenities proposed by each project. This section first provides an overview of the comparison and then presents in further detail the how the sub-variable influenced each case.

Public value capture and financing of public benefits in the Special Hudson Yards District

In Hudson Yards, the allocation of public funds proposed compensated for the absence of upfront public investments with the foregoing of part of the future tax revenues to be generated by the new development. Such capital structure meant that the provision of public benefits such as the open space amenities, affordable housing units and other public facilities was partly dependent of private investment. Part of the future revenues was anticipated with a bond issue

that allowed HYIC to realize the extension of the n.7 line, the most costly component of the project.¹⁵⁰ The tax increment strategy used tying the service of the debt issued by HYIC to real estate related tax revenues of commercial construction projects in the area meant that the ability of HYIC to service its debt was primarily dependent of the success of the commercial projects approved. The need to grant substantial tax discounts through PILOT programs was justified primarily as a form of securing a revenue stream through the signed PILOT agreements in order to pledge them as collateral for the bond issues.

Such financing could be secured through extensive indirect public subsidies where the city's also had to bear a significant financial risk. The indirect public subsidies provided included among others (1) pledging the city's income tax revenue as collateral for the HYIC bonds through the city's Transitional Finance Authority; (2) exemption of HYIC bonds from federal taxation; (3) extensive real estate related tax discounts provided to commercial construction projects through the various PILOT programs established through the mentioned amended to the IDA UTEP; (4) and various tax credits and exemptions available through the 80/20 HPD program, '420-c' tax exemption and LIHTC federal programs in order to incentive the provision of affordable housing. In addition, it can be argued the modifications to the zoning districts

¹⁵⁰ In December 2006 HYIC successfully sold \$2 billion of bonds of part its authorized \$3.5 billion financing. On

November 13, 2007 the board of the MTA approved the tunneling contract for the No. 7 line extension for a cost of \$1.144 billion and a term of 57 months.

approved for the Special Hudson Yards district in order to permit an extensive increase in maximum achievable FAR was in itself an ‘illiquid’ subsidy granted in order to complement HYIC revenues and further incentive the provision of affordable housing.

Public value capture and financing of public benefits in the ZAC Clichy Batignolles

The appropriation by SEMAVIP of the vast majority of the incremental land value generated by the rezoning and upfront public investments together with the public funds provided by the city and the state constituted the main financing strategy used to implement the development program. As discussed, the signing of a public planning contract between the city and state in the earlier stages of the planning process guaranteed that enough public funds would be available to finance the required upfront investments.. The availability of upfront public funds permitted the city to sign a concession contract with SEMAVIP and make an initial transfer of 180 million euros in order to finance the initial land acquisitions, platform above the existent railways and first section of the Martin Luther King park. Those initial investments, together with the fiscal incentives provided increased the certainty of private investors allowing for the progressive sale of the developed lots in order to fund the remaining development work.

The acquisition by SEMAVIP of all the land within the perimeter of the ZAC at referenced prices also permitted the public ‘capture’ of the vast majority of the incremental value of the land generated by the rezoning and public investments. The price that SEMAVIP paid in direct acquisitions or in eminent domain procedures was regulated and reference to averaged prices throughout Paris and did not incorporate the implicit value generated by the public interventions. Therefore, much of the increment implicit in the difference between the acquisition price and

sales price to private builders was appropriated by SEMAVIP to finance the required upfront investments in infrastructure and public amenities such as the new Martin Luther King park and public schools.

The upfront investments realized by SEMAVIP in infrastructure and public amenities together with the detailed definition of planning and architectural requirements provided a high degree of certainty to the buyers of the lots allocated for commercial and residential uses. When placing a bid, investors were sure that all public amenities planned would be realized and that a building permit would be issued by SEMAVIP as long as the design requirements were respected. In addition, as previously mentioned, investors benefited from tax incentives to build within the ZAC perimeter. Such certainty permitted to decrease the ‘risk-adjusted’ returns required by investors, and with it the portion of the incremental value implicit in the difference between the price paid to SEMAVIP by investors and the final market price/ rents of the residential units, retail and office space.

Public value capture and financing of public benefits in the OU Agua-Branca

In the OU Água-Branca, the financing strategy was largely based on attracting private investment to finance a narrow program of infrastructure improvements and social housing units. The additional returns to investors generated by the increase in FAR would support the required contributions. The contribution required guaranteed that the differentiation made with the OU was compensated with the benefits provided. Still, the inability of the plan to entice private capital does not seem to be justified seems to indicate that the 60% threshold was too punitive as the proposals submitted increased once the base FAR was modified.

The possibility to use the exceptions created by the OU were predicated on the payment of a defined contribution which could be made in cash, real estate or direct execution of road and infrastructure improvements proposed. The value of the contribution was based on a defined percentage (60%) of the benefit conceded (subject to a 40% discount in the first year). In order to determine the value of the benefit, the property should be subject to an appraisal before and after the use of the exception granted. The incentive structure used was therefore based on the articulation between the existing zoning controls (which determined the value of the property before the benefit) and the exceptions created because the calculation of the required contribution applied only to the difference in appraised value between them. Limited by a maximum achievable FAR of 4, the perimeter of the special district included 450 ha surrounding the undeveloped central section with 100 ha in order to include enough 'granting sites' able to generate the contributions necessary to finance the program of public works proposed.

As the contributions required were based on the articulation with the existing zoning controls, the new zoning districts made the contributions defined by the OU less punitive as the value of the properties before the benefits increased with new base FAR allowed 'as-of-right'. Also, the new zoning districts overlapped and, in some cases, conflicted with the OU regulations. For example, the possibility to develop residential and commercial uses provided by the OU, which would have been an exception to the prior zoning districts became possible with the new zoning. Also, the new zoning introduced the possibility to increase the maximum achievable FAR without having to use the OU exception. Such possibility would also be granted in

exchange for a contribution determined through the onerous concession of development rights applied throughout the city overlapping with the exception provided by the OU regulations¹⁵¹.

7.2 IMPLEMENTATION OF SPECIAL ZONING DISTRICT MODELS

7.2.1 VARIATION IN ZONING REGULATIONS

The purpose of this section is to compare how the variation between zoning regulations before and after the enactment of a new special zoning district differed between cases. Specifically, it compares the extent of the variation between the new zoning controls for each special district and what was previously in place. The objective is to compare how flexible was the existing planning framework as measured by the extent of the variation between the final project parameters and what was previously allowed. This section first provides an overview of the comparison and then presents in further detail how the sub-variable was affected in each case.

To summarize, each special district was implemented through a different articulation with both the existing zoning controls and local land-use plan. Each new district promoted a different degree of variation between the new regulations and what was previously in place. Figure 76 provides an overview on the variations in planning controls in each phase of the planning process. Table 10 provides an overview of key new binding regulations implemented in the new zoning districts approved for each special district and Table 11 provides an overview a

¹⁵¹ Even though the maximum achievable FAR permitted was 2.5, substantially lower than the 4 FAR maximum permitted by the OU.

comparative overview of the key modifications to the existing zoning districts in the three case studies.

Figure 76. Planning Moments - Comparison of impact of different planning phases on permitted development

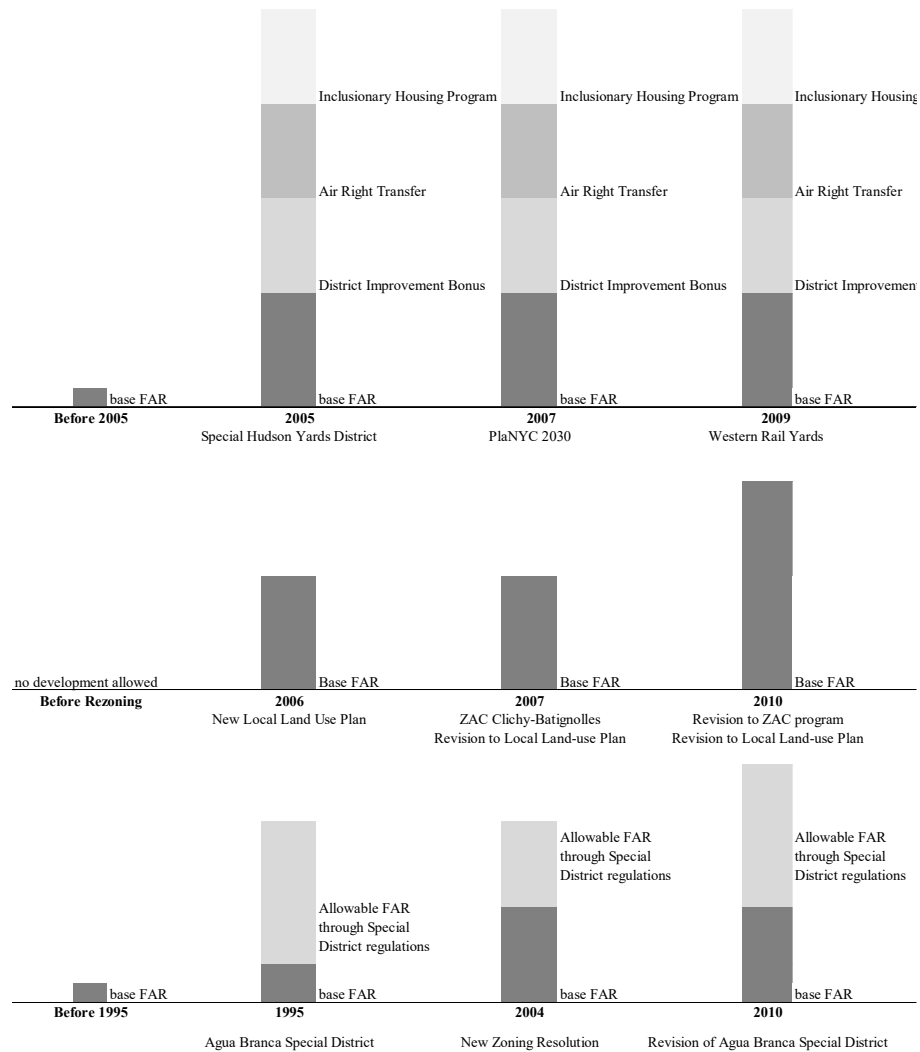


Table 10. Comparison of binding regulations of special zoning districts

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles/ Cardinet-Chalabre	Operacao Urbana Agua-Branca
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil
Base FAR	10	3	4
Allowable FAR	n.a.	3	4
Maximum Lot Coverage	70%		75%
Maximum Building Heights	45 meters (front wall)/ no total height limit	37 meters/ 50 meters	no height limit
Permitted Uses	no significant restrictions	no significant restrictions	no significant restrictions
Required Setbacks	above 45 meters	dependent on street width	
Affordable Housing		25% affordable housing	
Score	Very Flexible	Strict	Flexible

Table 11. Comparison of variations to existent zoning controls

Project Name	Special Hudson Yards District	ZAC's Clichy-Batignolles/ Cardinet-Chalabre	Operacao Urbana Agua-Branca
Location	New York City, U.S.A.	Paris, France	Sao Paulo, Brazil
Base FAR	None	None	None
Allowable FAR	Typical bonus of 2 FAR was increased substantially to as high as 23 in exchange for several contributions	None	Typical maximum allowable FAR of 2 was increased to 4 in exchange for several contributions
Permitted heights		Relationship with street widths was modified	
Required Setbacks			
Affordable Housing			
Score	Very Large Variation	Small Variation	Medium Variation

Variation in planning controls in the Special Hudson Yards District

In New York City, from the publication of the first framework for development in 2001 until the adoption by the New York City Council of the zoning amendments to the Western Rail Yard site in the end of 2009, the New York City Zoning Resolution was subject to more than twenty amendments. A new special purpose district was added, and various existent special purpose districts were changed or eliminated. The creation of the special Hudson Yards district originated the simultaneous modification of the base zoning districts and the creation of several exceptions specific to the development area.

The new zoning districts adopted changed the land uses permitted within the development area in order to allow mixed-use development and increase significantly the base FAR permitted 'as-of-right' (typically from 2 FAR permitted in M2-3 zoning districts to 10 FAR for C6-4 zoning districts). In addition, the implementation of a special purpose district permitted the modification of the regulations of the zoning districts adopted. Crucially, the zoning bonus of 2 FAR permitted in similar C6-4 zoning districts adopted elsewhere in the city was increased to as high as 23 FAR in subareas A2 and A3. The increase allowed the implementation of several incentive zoning programs such as the joint District Improvement Bonus program and Inclusionary Housing Bonus program as well as various transfer of development rights program between 'granting' sites (designated for public uses) and receiving sites (designated for private development).

Variation in planning controls in the ZAC Clichy-Batignolles

In Paris, the modification of the existent zoning controls in the Batignolles site required the creation of a first ZAC '*Cardinet-Chalabre*' in 2005 associated with the Olympic facilities which was modified in 2007 in order to incorporate the revised development program. A second ZAC '*Clichy-Batignolles*' already reflecting the new program was created in 2007 for the remaining portion of the site and modified in 2010 in order to accommodate additional policy changes such as the increase in maximum permitted height to 50 meters and the new Palais de la Justice. Each modification required the revision of the Paris PLU which was only adopted in 2006 while the development program was already being reformulated.

In Paris, the adoption of the first ZAC Chardinet-Chalabre allowed the City to focus on the implementation of the first phase of the development plan which included most of the proposed Olympic facilities. The use of the ZAC instrument established the 'public interest' in the redevelopment of the area giving the city access to additional public funds and the right to acquire all land inside its perimeter. The new zoning district changed the land-uses permitted by the 1989 POS from 'UN' to 'ZUG' and 'ZUV' and gave the City the legitimacy to sign a public planning contract with SEMAVIP. Because the new PLU had not yet been adopted, the old ZAC regime was still in place. The new ZAC overlaid the zoning controls permitted by the POS which did not have to be revised as it no longer had jurisdiction over the site. The public planning contract signed between the various government agencies and the special statute conferred by the ZAC procedure legitimized SEMAVIP to quickly acquire the sites within the district from SNCF, RFF and GEODIS and start the implementation process.

The replacement in 2006 of the old POS enacted in 1989 by a new PLU changed the relationship between the ZAC instrument and the plan. The adoption of the PLU implemented the changes to the ZAC regime made by the Loi SRU in 2000 to the Code d'Urbanisme. The new regime required each ZAC to be integrated with the PLU so that the adoption of a ZAC would no longer be a means to depart from the planning guidelines defined in the POS. Acknowledging the uses permitted by the ZAC Chardinet-Chalabre and the ongoing planning process for a new ZAC Clichy-Batignolles, the new PLU rezoned the entire area to urban, with the vast majority zoned as 'ZUG'. As the PLU was published while the development program was being revised, following the loss of the Olympic bid, the additional planning guidelines for the development area required by the new PADD were left purposely general and broad in order

to allow for flexibility in the planning process. It was assumed that once a new development program was elaborated, the PLU would be revised in order to accommodate it.

When the ZAC ‘Chardinet-Chalabre’ was revised and a second ZAC ‘Clichy-Batignolles’ was adopted in 2007, the new rules implemented by Loi SRU required the revision of the PLU in order to accommodate the changes being proposed. The areas zoned as ‘ZUGS’ because of the Olympic facilities were changed to ‘ZUG’ in order to accommodate the new mixed-use buildings proposed and the ‘ZUV’ zoning district was expanded in order to accommodate the enlarged Martin Luther King urban park. Also, the mandatory COS of 3 used in basic zoning districts was changed in the ZAC Clichy-Batignolles to the global density objectives already being used in the ZAC Cardinet-Chalabre in order to allow for additional flexibility in defining building volumes. That change permitted to reduce the required minimal distance between urban parks and buildings from 6 to 2 meters (article UG.7.1) and modify the maximum permitted heights by street width (article UG.10.1.2) used in the standard ZUG zoning district in order to match the urban design intentions of the Grether-Osty-OGI master plan. The changes to the planning guidelines included in the PADD simply completed what was initially left purposely vague while the master plan was being revised.

Variation in planning controls in OU Agua Branca

In Sao Paulo, the adoption of a new OU in 1995, followed the indications of the 1985 and 1988 Sao Paulo strategic plans in order to promote the redevelopment of Agua Branca area, one of the last large undeveloped sites in the central area of Sao Paulo. The regulations implemented with the OU Agua Branca created a situation of exception to the underlying zoning controls

defined by the 1972 LPUOS. Landowners within the perimeter of the special district had the option to propose new uses and increase the FAR and lot coverage beyond what was permitted by the existing zoning controls in exchange for various types of contributions to a special fund created to finance a program of public works proposed for the area.

The enactment of the new district did not result in a rezoning, but on the adoption of several situations of exception available to landowners and investors. For example the base FAR permitted 'as-of-right' was not modified within the perimeter of the new district. Instead the special district gave landowners the possibility to increase the maximum achievable FAR to 4 and maximum permitted lot coverage regardless of what was permitted by existing zoning districts. It also permitted to exempt proposals bellow ten hectares from having to elaborate the environmental impact studies typically required and constrained the opportunities available for public participation.

The OU added 1.2 million sq.m. of development rights to what was already permitted by the existing zoning controls. This included 300,000 sq.m. of residential uses and 900,000 sq.m. of non-residential uses. The additional development rights could be used in any of the nine sub-sectors of the district regardless of the uses permitted by the existing zoning. Even though not all of the base FAR permitted 'as-of-right' had been used, the requirement for contributions only applied to the additional development rights conceded through the OU.

When a new city-wide Zoning Resolution was adopted in 2004, the entire development area was subject to a comprehensive rezoning. Most of the sites previously zoned as 'Z8' permitting low density industrial uses were modified to various sub-categories of the 'ZM'

district under the new zoning districts introduced by the 2002 PDE. The new zoning districts increased substantially the base FAR permitted ‘as-of-right’ and allowed for a broad range of mixed uses not previously permitted by the existing zoning controls but already possible through the exceptions provided by the OU. The rezoning was completely independent from the OU regulations which did not change and continued to overlay the new ZM districts.

The adoption of the new Sao Paulo Master Plan in 2002 and strategic plan for the Lapa and Se sub-prefectures in 2004 required the revision of the OU regulations. Prior planning studies by EMURB had acknowledged the lack of success of the incentive structure implemented to attract private investment and help finance the proposed program of public works. The lack of a unifying urban design plan able to coordinate public and private investments as well the complexity of the appraisal process were pointed as two of the reasons for its failure. In addition, the 2002 PDE incorporated several new planning instruments introduced in the previous year by the new national planning law ‘City Statute’ which had to be incorporated in the special district. Particularly, the OU should be revised in order to enable to city to anticipate revenues through the sale of CEPAC’s in private auctions and public markets. Such possibility would give the city access to upfront funds which could be used to finance the program of public works without having to depend on private initiative.

The Olympic Games and the subsequent ‘Bairro Novo’ competition in 2004 provided an opportunity to elaborate a new master plan for the site which would serve as the basis for the intended revision. The proposal by the Oliveira team included a detailed subdivision of the large undeveloped central section of the site including both public and private plots. But it lacked any

legal standing and it was not fully incorporated with the proposal to revise the special district proposed by EMURB in 2004. After the rezoning was complete in 2004 it took 7 years to revise the special district, leaving it with overlapping controls with limited possibilities to coordinate the integrated redevelopment of the site in a period where there was a substantial increase in private proposals submitted for new developments. In the absence of legally binding master plan, most of the development of the area between 2003 and 2010 took place under private initiative within the framework provided by the new zoning controls and 1995 regulations of the Agua Branca special district.

7.2.2 IMPLEMENTATION

The purpose of this section is to compare how the implementation of the first commercial projects planned for each project, required infrastructure and public amenities actually differed between cases. The objective is to analyze the execution of the infrastructure work and commercial developments and how it compared relative to the initial development program approved. Specifically, it compares how the phasing and completion rate of the railways extensions and platforms, public parks, schools differed between cases. It then compares how commercial projects were developed and funded relative to the phasing of the public projects. The objective is to compare how the structure of each special zoning district influenced the pace of execution, the development program proposed, and focus placed on the public and private work planned for each site.

To summarize implementation in Clichy-Batignolles has advanced faster and with greater emphasis on the required infrastructure work and public amenities ahead of development of the

commercial projects. The first phase of the Martin Luther King park opened already in 2007 and has become a widely used leisure area for the city. The second phase was scheduled to open by the end of 2014. Work also advanced significantly on the elevated platform and extension the number 14 funded through local capital budgets. Two buildings with mostly student housing and affordable housing were completed and several others were under construction by the end of 2012. The ability to use public funds to start implementation permitted to start with the public amenities and required infrastructure work in a period of economic downturn where there was a difficulty of attracting private investment.

In Hudson Yards the execution of the plan was similar to Clichy-Batignolles, with most of the work focused on the extension of the n.7 line financed with the proceeds bond issues and PILOT programs awarding tax breaks to developers of lots located within the special Hudson Yards district. Given the need to use capital markets and private projects to finance its work, no public amenities were built on site until the end of 2012. Only when Related Companies was finally able to attract an anchor tenant to its 'South Tower' and start construction, did construction only start on the new tree-lined boulevard. In Hudson Yards, the execution of the public amenities is tied to the economic success of the private projects planned. Therefore, the focus of implementation was on the private projects with the support of public funds.

In Água-Branca, the execution of the program of works planned for the special district was extremely limited. After five years of negotiation with TECNISA, the city was able to convince TECNISA to do a subdivision in its lot allowing the green areas to be built by the developer to be ceded to the city and become public. Work has already started on the public park that located

in the center of the condominium. Although several plans continue to be announced such as a new green corridor along the perimeter of the district, moving underground a section of the rail line and drainage work, nothing was implemented until the end of 2012. All of the focus of implementation has been on the private projects hindered by public agencies.

In Hudson Yards, the financing structure put in place by the Hudson Yards Infrastructure Corporation allowed to quickly start using the proceeds from the initial bond issue as well as PILOT programs awarding tax breaks to developers to start construction on the extension of the n7 line. The majority of the infrastructure work executed onsite in the initial years included the infrastructure work required to extend the line constituted the bulk of the work executed on the site and surroundings. By the end of 2012 the subway tunnel was fully excavated, and the Hudson Yards Infrastructure Corp had issued the last \$1 billion in bonds required to finance the subway extension, and at the same rating as the original deal five years ago. Also, work was already scheduled to start on the elevated platform above the rail tracks.

None of the other public amenities planned for the site and surroundings had been executed by the end of 2012. The new Hudson Park & Boulevard was only planned to start construction in 2014. The public square, cultural facility and dedicated elementary⁷ middle school were also several years away from being built.

On the other hand, after a slow start originated by the economic downturn and difficulty of Related in finding a new partner and investors, commercial development started to pick-up in 2012 with tenants signing the long-term leases required for construction to start on the first developments. The beginning of construction on the MTA site and completion of the extension

of the subway line also caused an increase in activity in surrounding sites that had also been part of the PILOT programs and zoning bonuses with other large developers such as Brookfield Properties, Avalon Bay and the Gotham Corporation starting construction on its sites. The first phase of Hudson Yards, which includes the entire eastern portion, is expected to be complete by 2017.

In Clichy-Batignolles, there was a greater focus than Hudson Yards on the development of the public amenities ahead of private development. The first phase of the Martin Luther King Park opened already in 2007 and has become a widely used green area by city's residents. The second phase was scheduled to open by the end of 2014. Work also advanced significantly on the elevated platform and extension the number 14 funded through local capital budgets.

By the end of 2012, construction was finished on three buildings along Rue Cardinet on the Northern section of the site including a new residential parking building with 600 spaces, the first residential building with a mix of market units and low-income units, and student housing with a kindergarten and street-level retail. In contrast to Hudson Yards and Água-Branca, all projects required a preliminary public competition where any architect could participate. As the public developer of the site, SEMAVIP organized a public competition for each lot attracting hundreds of entries from around the world providing innovative ideas on sustainability, façade composition and unit layout. The design competition for the new 'Palais de la Justice' in the only building where increased height was allowed through a revision of the PLU was won by Studio Renzo Piano.

Some developers delayed building in Clichy Batignolles hoping that the market would improve. By the end of 2012, no large commercial tenants had yet committed to the project. Still, the project had already attracted large development groups such as Tishman Speyer and Bouygnes Group hoping to benefit from a significant increase in property values generated by the plan. Estimates in 2012 by Douglas Elliman, pointed to sales prices for the market units of approximately 12,000 euros of 12,000 euros per square meter, or about \$1,450 per square foot.

In Água-Branca no public or private development or infrastructure work started until late 2012 started when TECNISA finally announced a large-scale residential development in its lot targeting high-income strata's. Sales of their first four residential projects have been a significant success, selling much faster and at higher prices than expected. Ahead of starting sales, TECNISA initiated construction of the public park in the middle of its project and infrastructure work required to service its lots. This together with its large sales room constituted all the public work executed within the perimeter of the Água-Branca special district until the end of 2012.

Since the launch of the 'Jardim das Perdizes' project by TECNISA and PDG and start of construction of the public park, the city has announced several alternative public projects. The most significant is the burying of an extensive section of the CPTM rail line between Lapa and Brás removing the physical barrier that hinders access and development within the Northern section of the special zoning district. The plan included building an extensive linear park on top of the line connecting all the planned green areas including the oval shaped park being built by TECNISA in the middle of its lot. Until the end of 2012 no public work had been started not

contracted. Due to the lack of drainage, the area continued to flood every year in the high raining season.

7.2.3 PROVISION OF PUBLIC BENEFITS

The purpose of this section is to compare how the provision of public benefits in the development program of each special zoning district actually differed between cases. The objective is to compare the final development program approved relative to the initial objectives as formalized in local planning documents. Specifically, it compares the provision of public benefits, in the form of affordable housing, public revenues and public amenities (e.g parks, schools, cultural and recreational facilities) provided by each case study. The objective is to compare how effective the planning process was in achieving the initial policy goals and providing public benefits through the rezoning of each site. . Figure 58 below provides an overview of the final development program approved. Figure 59 54 provides a comparative overview of the public benefits provided by each special district.

Table 12. Final Development program.

Special Hudson Yards District				ZAC's Clichy-Batignolles/ Cardinet-Chalabre				Operacao Urbana Agua-Branca			
New York City, U.S.A.				Paris, France				Sao Paulo, Brazil			
Special Hudson Yards District	Private uses	Office Space	2400000 m ²	Private uses	Office Space	140000 m ²	Central undeveloped section	Private Uses	Housing	460000 m ²	
		Market Housing Units	15000 Units		Retail	120000 m ²			Retail/ Office	115000 m ²	
		Retail	1860000 m ²		Total Housing	3500 Units					
		Hotels	2800000 m ²		Retail	30000 m ²					
	Public uses	Affordable Housing	5000 Units	Public uses	Affordable Housing	1750 units		Public Uses	Affordable housing	600 units	
		Open Space			Open Space	10 hectares			Roads/ Green Spaces	400000 m ²	
Western Rail Yards	Private uses	Office Space	1.100.000 m ²	Public uses	Public Amenities	Central undeveloped section	Public Uses	50000 m ²	1 public school		
		Market Housing UNits	5.500 Units					3 kindergartens	1 cultural facility		
		Retail	930.000 m ²					1 day nursery	1 healthcare center		
		Hotels	1860.000 m ²					4 public schools			
	Public uses	Affordable Housing	1300 Units	1 high school							
		Open Space	40 hectares	1 protection centre							
		Public School	750 seat	1 animation centre							
		Cultural Amenities		2 public gymnasiums							
Very high-densities, most new development allocated for commercial private uses, significant new transport infrastructure				Medium densities, very high percentage of new development allocated to public and social uses				High density, almost exclusively all new development allocated for private commercial uses.			

In Sao Paulo, the latest revisions to the OU Agua Branca increased the additional development rights permitted by the Agua Branca special district from 12 million square feet to 26 million square feet (total of 46 million square feet). The allocation of permitted uses also changed substantially 15.6 million square meters allocated for residential uses. Of the three cases, the OU Agua Branca had highest percentage of new development allocated to private uses. The development program for the Special Hudson Yards District in New York City proposed the highest densities, and a lower percentage of new development allocated to private uses than Agua Branca, including 24 million square feet of new office space; 5,500 new market housing units; 1 million square feet of new retail space; and 2 million square feet of new hotels.

By contrast, the final development program approved for the ZAC Clichy-Batignolles had the lowest percentage of new development allocated for private uses, less than 50% including included a million square feet of office space and 100,000 square feet of new retail space. In

addition, the new overall plan also detailed the development proposed for the western portion of the site known as ‘Pereire’ owned by SNCF/ RFF. It proposed 50,000 m² of additional development divided between 31,000 m² of residential space (approximately 400 units), 12,000 m² of office space, 2850 m² for a new high-school and gymnasium and 2850 m² of retail space. The studies elaborated assumed that SNCF as the land owner would have responsibility for the redevelopment of the ‘Pereire’ site and implementation of the development program defined.

Table 13. Comparison of public benefits provided

Special Hudson Yards District				ZAC's Clichy-Batignolles/ Cardinet-Chalabre				Operacao Urbana Agua-Branca				
New York City, U.S.A.				Paris, France				Sao Paulo, Brazil				
Public Benefit	Provider	Estimated Cost	Financing	Public Benefit	Provider	Estimated Cost	Financing	Public Benefit	Provider	Estimated Cost	Financing	
Affordable Housing Units	Private Developer		Private Developer, Inclusionary Housing program, fiscal subsidies	Affordable housing units	SEMAVIP, ...		Direct public transfers from state and city budgets, revenues from sale of developed lots	Roads and infrastructure improvements	Private developers/ EMURB		Contributions to FUNAPS	
Subway Extension	HYIC	USD 1.2 billion	HYIC Bonds supported by PILOT programs, DIB contribution, TDR program, fiscal subsidies...	Martin Luther King Park	SEMAVIP			Affordable Housing Units	Private developers/ EMURB			Contributions to FUNAPS
Mid-Block Boulevard	HYIC			3 Kindergartens	SEMAVIP/ ...			Public Amenities	Private developers/ EMURB			Contributions to FUNAPS
Public School				1 Day Nursery	SEMAVIP							
Deck over Rail Yard Site/ park	Private Developer		Private developer	4 Public Schools	SEMAVIP							
Cultural Facilities	Private Developer		Private developer	1 Protection Centre	SEMAVIP							
				1 Animation Centre	SEMAVIP							
				2 public gymnasiums	SEMAVIP							
				Railway facilities	SEMAVIP							
				Road and infrastructure	SEMAVIP							

Focusing on public benefits provided, the ZAC Clichy Batignolles provided the highest level of public benefits of the three case studies. Following the development program defined in the agreement previously negotiated, the final proposal for the Clichy-Batignolles site included 3,000 residential units, of each 55% would be affordable and another 800 would be dedicated to student housing and youth hostels. The public amenities proposed for the site included one elementary school, one or two high schools, a public sports center and one or two kindergartens. In addition, after the latest revisions, the plan also included new facilities for the Paris High Court) and the Regional Headquarters of the Paris Police. Also as mentioned, the plan was

structured around a new large urban park named ‘Martin Luther King’ which the first section open to the public in July of 2007.

Figure 77. Aerial view of Martin Luther King Park. Source. APUR, 2012.



The development program approved for the special Hudson Yards District proposed the second highest level of public amenities. Twenty percent of all rental units should affordable housing units under the terms of the applicable 80/20 program, with the provision of affordable housing units being subject (1) the allocation of sufficient tax-exempt bond cap credits and (2) the availability of other incentives such as the mentioned 420-a tax exemption pursuant to the 80/20 program. In December of 2009, the developer and the city announced having reached another agreement to preserve an additional 551 apartments (adding to total of 1,294 units) owned by the developer or to be acquired by the city in the area surrounding the site. The agreement was part of a broader effort by the Bloomberg Administration to build or preserve

165,000 affordable housing units as part its ‘New Housing Marketplace Plan’¹⁵² . In addition, the plan included approximately 120,000 PS/ IS school with 750 school seats, 200,000 sq.ft of community facility space, 1,000 parking spaces, and approximately 14 acres of publicly accessible open space of which approximately two acres would be enclosed.

Figure 78. View of Hudson Yards central park. Source: Related Companies, 2017.



The Agua-Branca project delivered the lowest level of public amenities. Until 2012, only the new Jardim das Perdizes park had been built by Tecnisa in the middle of its high-end residential development servicing mostly the new buyers.

¹⁵² ‘2010 New Housing Marketplace Plan’, NYC Department of Housing Preservation & Development, January, 2010.

Figure 79. View of Jardim das Perdizes central park. Source: Tecnisa, 2012.



CHAPTER 8 : ASSESSMENT, CONCLUSIONS AND DISCUSSION

8.1 OVERVIEW

The research herein has studied how city governments use strategic plans to redevelop large-scale urban sites. The objective was to compare the differences between planning systems and their implications for uses and bulks, implementation and public benefits delivered by large scale urban projects. The research found that when applied in practice, planning systems are more similar that what is suggested by comparative planning studies. Despite the formal differences between strategic plans, UDP's require the use of mechanisms of flexibility that result in a similar impact by the strategic plans on the projects. Instead, the most significant differences were found in the implementation and financing structures to fund and execute the required upfront investment and capture the resulting increment in property values. The differentiating factor was not the strategic plan, but the overall development model which encompassed as well

the implementation and financing structures. Such structures determined how development risk was shared between the public and private sectors and how costs and benefits were distributed. The present chapter summarizes the main findings of the research, discusses the outcomes, proposes conclusions and suggests implications of the findings for planning practice and research.

8.2 SUMMARY OF FINDINGS AND ASSESSMENT

The development model used in New York City to plan and develop the Hudson Yards Special District had a weak formal link between the strategic plan and the zoning resolution and thus provided the greatest flexibility to modify the existing proposal and implement a new project. The model was based on an absence of binding parameters set forth by higher-tier plans, extensive local oversight, limited implementation capacity and use of public subsidies to the private sector to develop the commercial lots and finance the required upfront investment and public benefits. The project was supposed to be self-funding. The development of the commercial space was to generate enough proceeds to fund the extension of the subway line and provide public benefits such as schools, community facilities and affordable housing. The rezoning process was led by the city with active involvement by the private sector. Implementation was led by the private sector supported by public agencies created to implement and finance the required infrastructure.

The development model used in Paris for Clichy-Batignolles had a strong link between the strategic plan and zoning resolution. It was based on broad oversight by higher-tier plans,

extensive implementation capacity by local agencies and access to public funding to finance the required infrastructure work and provide public benefits. The planning and implementation process was led by the city's planning and development agencies which selected the site, elaborated the site plan, acquired the parcels, serviced the lots, built the public amenities, oversaw the design process (using public competitions to select the design firm) and then sold individual plots with entitlements to private investors to recoup costs.

The development model used in Sao Paulo for Água-Branca had a strong link between the strategic plan and the underlying zoning resolution but did not bind special district regulations which were already in place. As such, the model was characterized by an intermediate level of oversight by the strategic plan (which provided planning guidelines but did not bind the existing zoning controls), limited implementation capacity by public agencies and use of zoning bonuses to finance a program of infrastructure improvements. Implementation was led by the private sector with limited involvement by the city. The site planning initially elaborated by the city through a competition was disregarded and had limited impact. Instead developers were able to lead the development process of individual plots and determine the provision of public benefits through the payment of monetary contributions.

The first criterion used to compare project outcomes focused on variation in planning controls, specifically the extent of the variation between the new zoning controls and what was previously in place, both in terms of uses and bulks as well as plot boundaries. The second criterion looked at implementation, with the objective of comparing how implementation of the initial phases of each project, required infrastructure and public amenities actually differed

between cases. The third criteria focused on provision of public benefits. Specifically, it compared the public benefits required by each new district and actual delivery until the end of 2012, including affordable housing units, public revenues and amenities such as parks, schools, cultural and recreational facilities.

Focusing on the first assessment criterion, the Hudson Yards project had the most extensive variations between the new uses and bulks proposed and what was permitted ‘as-of-right’ by the previous zoning districts. The NYC strategic plan had limited ability to regulate uses and bulks within the project. As there were no planning restrictions on density and heights, the city could use FAR bonuses extensively together with other public subsidies such as property tax exemptions to attract private investment. Therefore, the resulting bulks and densities were mostly a product of economic equations which increased buildable area to attract private investment to finance the required infrastructure, provide public benefits and meet the revenue objectives of the MTA. The absence of a mechanism within the NYC strategic plan to limit densities and heights (which was present in the strategic plans of Paris and São Paulo) resulted in some of the tallest structures in the United States with questionable articulation with their surroundings and significant windfalls for landowners.

The Clichy-Batignolles project had the fewest variations between the proposed densities and what was previously in place. The changes were mostly limited to permitted uses for properties owned by the railway agencies previously zoned for industrial uses. The strategic plan provided public agencies with the most effective mechanisms to regulate uses and bulks and allocate public resources to fund the required upfront investment. The plan defined maximum heights and

global densities permitted for the project. Also, the availability of public funding to finance the required infrastructure work, acquire land and service the lots in Clichy-Batignolles precluded the need for contributions from investors in exchange for FAR bonuses.

The Água-Branca project had an intermediate level of variations to the zoning controls that were previously in place. The Sao Paulo strategic plan modified the permitted uses for industrial sites and up-zoned it to a greater extent than Clichy-Batignolles but still significantly below the variations of Hudson Yards. Both the base FAR and lot coverage ratios of Agua-Branca were increased and the new projects were exempted from environmental studies. However, these changes were not coordinated with the project-specific controls that were previously in place. As the city was able to modify the underlying zoning resolution based on the strategic plan but not the project-specific controls, it left the site for eight years with conflicting regulations which undermined implementation.

Furthermore, in the Hudson Yards project, the NYC strategic plan provided public agencies with the most limited ability to assemble the site and readjust plot boundaries. As a result, the new site plan was largely a product of the pre-existent subdivision. The model produced extensive variations in permitted FAR within the existing boundaries but almost no modifications of plot shapes or redistribution of additional FAR between landowners within and outside of the new special district. By contrast, the new site plan for Clichy-Batignolles had almost no relationship with the pre-existent subdivision. The strategic plan provided the development agency with strong mechanisms to acquire all sites within the boundaries of the special district. As such, the public development agency was able to create an entirely new site

plan with densities and bulks distributed as required by the urban design and new building footprints and readjust the underlying plot boundaries to match it. In São Paulo, although strategic plan also provided the public agency with extensive land assembly capabilities, these were not implemented due to lack of funding. As result, each private landowner developed a separate proposal for each individual property maximizing the new FAR ratios resulting in a piece-meal design that was the result of the cumulative individual projects. The city's role was limited to planning specific road improvements and to determining the location of parks and public amenities to be funded with the sale of additional development rights to developers.

Focusing on the second assessment criterion, the Hudson Yards model originated an implementation process focused on commercial development ahead of the public amenities. Since private investment was required to finance the public amenities, only when developers decided to break ground could the public amenities be financed. In the period of downturn from 2007 to 2012, no public amenities were built within the special district and the subway extension had to be financed with transfers from the city-wide capital budget. In Clichy Batignolles, there was a greater focus on the development of the public amenities ahead of the commercial projects. Indeed, since the initiative to fund the required upfront investment belonged to the public development agency, the development priority was to create the certainty required to increase property values and sell the newly serviced lots to recoup the public investment. This meant that the project had to start with the public amenities in order to increase the marketability of the private lots. In São Paulo, the structure was largely unsuccessful in attracting private investment until the end of 2012 due in part of to lack of funding and conflicting regulations. Only two

private developers developed their lots with high-end residential towers around a new park with significant success. Even though the city had extensive implementation capacities these were hardly used in practice. Without a dedicated agency to implement the plan lack of funding, the local development agency had little administrative capacity to coordinate the complex drainage and infrastructure work required.

Finally, focusing on the third assessment criteria, Hudson Yards had the most limited possibilities for public-value capture and provision of public benefits. The city only required contributions for additional FAR granted above a new up-zoned base rather the previous as-of-right basis. In addition, there was not minimum level of public benefits to be provided. This resulted in the highest density of the three projects and the lowest percentage of public uses per total new built area. By contrast, the development model used in Clichy-Batignolles provided the highest public-value capture. The development agency received all of the proceeds from the sale of the serviced lots. In addition, the zoning guidelines regulated by the strategic plan defined which public benefits had to be provided. As a result, Clichy-Batignolles had the highest level of public benefits of the three case studies. In Agua-Branca, although the city also had extensive public-value capture capabilities including the ability to issue and sell additional FAR in a publicly-traded market to fund infrastructure improvements, the lack of funding limited the ability to deliver the planned public benefits. Until 2012, the project had only delivered a new public park built by one of the developers in the middle of the largest private lot servicing mostly the buyers of the new high-end condominiums.

8.3 DISCUSSION

When applied in practice, the strategic planning models in the three case studies are more similar than what is suggested by the literature on comparative planning systems. While premised on alternative principles of policy direction, the models had built-in mechanisms of flexibility and oversight to maintain consistency between administrative levels when there was a need to adapt plans and projects to changing circumstances. The use of such mechanisms caused each planning system to deviate from their formal construct towards a similar intermediate position where policy became bidirectional with final project parameters being determined by both strategic city plans and site specific considerations. The projects also had significant variations in planning controls, implementation and provision of public benefits. The variations were not caused by how strategic plans defined project-specific guidelines. Instead they were mostly influenced by the implementation capacity of development agencies, public-value capture mechanisms and financing structures used to fund the required upfront investment.

Articulation between strategic plans and projects

The three projects were planned and implemented through planning systems differentiated by the extent that the strategic plan enacted could affect the underlying zoning resolution and determine planning parameters for each special district created. The relationship between the strategic plan and the zoning resolution in theory should have determined the timing and process required to modify existing zoning districts and the extent to which new zoning controls could deviate from what was previously in place. The differences between planning systems should

have produced alternative outcomes and divergence in the ability of city governments to deliver public benefits.

The model used in New York with a weak formal link between the strategic plan and the zoning resolution provided the greatest flexibility to modify the existing proposal and implement a new project. Such flexibility should have provided timing advantages and incentive structures to benefit implementation. At the same time it should have limited the ability of the project to integrate regional policy and transport infrastructure. And while it provided a bargaining tool to be used in negotiations to extract public benefits, it could cause large variations in planning controls from what was previously in place.

The Paris model with a strong link between the strategic plan and zoning resolution seemed to give the city less flexibility to modify the existing special district and implement a new plan. The lack of flexibility and reliance on a public-owned entity to develop the plan seemed less effective. The absence of planning incentives and fixed requirements of public benefits should have caused the least variation in planning controls and integration of regional policy but should have hindered implementation and provision of public benefits.

The Sao Paulo model seemed to provide an intermediary level of flexibility. The strategic plan was supposed to have a direct bearing on the underlying zoning resolution, but it still allowed zoning parameters to adapt to the specificities of each district. Special districts could provide zoning incentives above an equal base zoning but only up to a certain limit defined by

the strategic plan. This provided the compromise required to integrate regional policy and deliver public benefits without hindering implementation.

However, the planning process, procedures and structures used to plan and implement each project were similar. The initial guidelines elaborated by the departments of city planning for each site were resembled each other in spite of the differences in planning guidelines and procedures. All planning systems incorporated mechanisms of flexibility and oversight that allowed the modification of existing zoning districts and revisions to the strategic plan. Such mechanisms caused the planning systems to deviate from their original legal and administrative construct towards a similar planning framework to change zoning and develop the projects.

In spite of the distinct planning systems, the process of site selection and definition of development goals was similar. The final conceptual framework produced by each city's planning department contained regional and site analyses, integration with transport infrastructure, mix of uses and definition of building envelopes. Also, the process to elaborate each conceptual project framework went through discussions with land owners and private entities as well as community representatives.

Each project created the same exceptions from what was permitted as-of-right. There was no significant difference in the relationship between the uses and bulks approved and what was previously in place. Each project created a new set of controls permitting the uses and bulks required to host the Olympics competition and subsequently allow for the development of a mixed-use district through the enactment of a special district designation.

There was also no distinct direction of policy implementation between administrative levels as the models would suggest. The focus of the process was on consistency between scales more than alternative hierarchical relationships between them. In spite of the distinct formal links between the strategic plan and the underlying zoning resolution, the project-specific guidelines of the strategic plan had a similar impact in the planning process of each project. The final bulks and uses were defined through a similar process largely independent from the strategic plan. In all cases, the projects incorporated guidelines defined by the strategic plan and the strategic plan also incorporated policy defined at the project level.

All models used mechanisms of flexibility and oversight that allowed to modify existing zoning districts and revise the strategic plan. In Paris, the mechanisms of flexibility included: creating two special districts to facilitate implementation; leaving guidelines for special district purposely vague, and using the simplified revision procedure used in 2007 and 2009 to modify the strategic plan and adapt its guidelines for the special district to the new project and permit exceptions to the city-wide requirements for maximum density ratios, minimum distance between parks and buildings, maximum heights permitted and perimeter of special district.

Such mechanisms caused the project to revise the higher tier strategic plan, reversing the theoretical direction of policy implementation intended by the planning statutes regulating the process. The plan did not lead the process as the literature suggested. In practice, the direction of change occurred both ways – the plan regulated project parameters but also accommodated changes determined at the project level. As such, the final zoning controls were a product of the guidelines defined by both the plan and the project. When zoning had to change, the focus was

on consistency between scales more than hierarchical relationships between them. The system was not plan-led.

In Hudson Yards, the opposite was true. In theory, the project should have led the changes to the zoning resolution without supra-local oversight through partial amendments that were meant to adapt zoning controls to the new project. In practice, each partial amendment to the zoning resolution had to go through an extensive local review processes where consistency with the strategic plan had to be demonstrated. Such a requirement provided indirect opportunities for guidelines defined by the strategic plan to be incorporated in the zoning amendments. It also permitted a multitude of public agencies, private investors and community representatives to participate.

The mechanisms of oversight present in the New York model reversed the theoretical direction of policy implementation and change to? in? the zoning resolution. Development did not lead the process. Each amendment was proposed by the department of city planning based on policies that were both project-specific but also related to wider city strategies. The system provided indirect opportunities for comprehensive planning policies to be implemented through the sequence of individual applications for amendments initiated and cumulative impact of decisions taken on each individual request. The plan accommodated ongoing development projects, but also affected individual amendments to the zoning resolution. When zoning had to change, the focus was again on consistency between scales. The system was not development-led.

The bidirectional relationship between plan and project and intermediary level of flexibility present in New York and Paris was also present in the Sao Paulo planning system. The strategic plan defined city-wide guidelines that, when applied to special districts, limited the deviations between the rezoning and what was previously in place. The system also included mechanisms of flexibility that allowed modification of the plan to accommodate changes at the project level.

While premised on distinct legal and administrative principles, the need to continuously change zoning to modify projects caused deviations from their legal constructs towards an intermediate model aimed at keeping consistency between scales. Project formulation was neither plan nor development led. In a context of changing circumstances, the systems provided regulatory frameworks with similar levels of flexibility. When zoning changed, both the plan and the project influenced the parameters of each special district.

In sum, despite the similar articulation between the strategic plan and the zoning resolution, variations existed in project outcomes and distribution of costs and benefits. Together, the regulations, public instruments and procedures used by cities to plan and implement each project constitute a development model that determined the ability of each city to ‘capture’ part of the increment in property values resulting from the project and use it to provide public benefits. The strategic plan contributed to the variations not by how it defined project-specific parameters, but through the definition of city-wide density ratios, implementation tools and instruments for public-value capturing. The differences found in implementation capacity and financing structures between models were the key factor in determining the variations found in project outcomes.

Variation in planning controls

The distinct variations found in planning controls were mostly a product of the financing structures used and ability of city to capture public value. In Hudson Yards, the absence of upfront public investment and the economic objectives of the transport agency meant that the city had to use zoning incentives to attract private investment to lease the site at the target price and generate enough revenues to cover the interest payments on the bonds issued to fund the extension of the subway line. The fact that the city had limited ability for public-value capturing (e.g. revenues generated on zoning bonuses could only be charged on the FAR granted above the new upzoned basis) meant that the plan had to create enough maximum achievable FAR. The upzoning created additional development rights meant to be used as currency to fund the required upfront investment, generating the largest variations in planning controls. The resulting bulks and densities were mostly a product of economic equations and less of urban design guidelines.

In Clichy-Batignolles, the city had a much greater ability for public-value capturing. It did not have to generate profits from development, simply cover its costs. As a public body with extensive implementation capacity, the local development agency could also acquire lots and pay a price based on the existent zoning, execute the public infrastructure and sell the newly upzoned/ serviced lots at increased valuations to recoup costs. This effectively captured all of the increment in property prices. As a result, the public development agency did not have to upzone lots to fund its operations. Such implementation and financing structures resulted in the lowest variation in planning controls between the three projects.

If there was a need to upzone the project to cover cash shortfalls, the strategic plan provided density limits that required a revision to the strategic plan. Such requirements did not play a significant role in determining final bulks and uses. The high implementation capacity of the local development agency and financing structure resulted in densities were actually below the limits allowed. The proposal also included higher ratios of affordable housing and public amenities than what was required by the strategic plan. Where the project did not follow the plan's guidelines, the plan was revised to accommodate the project proposals.

In Sao Paulo, the variation in planning controls proposed by the special district was also premised on the need to attract private investment to fund the required public works. The proposal was based on granting additional development rights above the existing base in exchange for contributions to be used to fund public works. The variation in planning controls was a product of the cost of the public works proposed by the special district and the ability of the city to capture part of the value between the existing base and the new achievable maximum. As discussed, the enactment of a new zoning resolution in 2004 increased the base FAR and changed permitted uses. As the special district incentives were not changed, the variation decreased and with it the incentives provided to developers and the ability of the city of capture part of the value increment.

Impacts on implementation

The additional flexibility of the New York planning system to change the Zoning Resolution did not benefit implementation. On the contrary, the extensive and uncertain local review

processes required made the system less flexible than the Paris system, where the simplified revision procedure allowed the zoning resolution to be quickly revised to accommodate changes at the project level. In New York City, implementation was mostly a product of the financing and the implementation capacity of the development agency. In Hudson Yards, even though the structure was supposed to be self-funding, the inability of the subsidy programs to generate enough revenues required direct transfers from municipal budgets to pay for the interest costs of the bonds issued to fund public works resulting in a more expensive structure than if the public funds had been used directly to pay for the works. In Sao Paulo, there were no funds available upfront. In Clichy-Batignolles, funding the upfront investment through direct transfers from national and local capital budgets lowered the cost of capital used allowing the project to provide additional public benefits.

The availability of funds determined how projects were implemented. In both New York and Paris, the local development agencies had funding available to start implementation immediately after the revisions to the special district. That allowed construction to start on the extension of the railway lines. In Sao Paulo, there was no development agency created to implement the project nor were there funds available to finance the required upfront investment in public works. Nothing was built on the Agua-Branca site until late 2012.

Also, the period of 2008 to 2012 was a period of market downturn where there was a significant contraction in private sector investment in real estate. The availability of public funds for Clichy-Batignolles allowed implementation to continue on the railway extension as well as the public park and the urban infrastructure required to service the private lots. That produced

public benefits from the start and increased the commercial value of the newly serviced lots, creating the certainty required for private sector investment.

In Hudson Yards and Agua-Branca, implementation was premised on the private sector having to invest in public amenities and infrastructure. That meant that until 2012 no commercial projects or public amenities were built. When new investors and tenants finally signed up for Related's South Tower, and Tecnisa decided to launch the first phase of its 'Jardim das Perdizes' complex, implementation was focused on the development of the commercial projects and public amenities associated with them. The implicit need to first involve the private sector delayed implementation and focused it on the commercial developments ahead of public amenities.

Provision of Public Benefits

Clichy-Batignolles provided the highest level of public benefits and ratio of public uses relative to total built area because of its ability to capture most of the increment in land values and lack of need to generate profits from the project. The structure benefited from the ability to acquire the existent private lots at prices that did not include any appreciation in value resulting from the up-zoning. The return targets meant that it could include more public uses than the other cases because it had to generate less revenues to pay for them.

In addition, the single ownership of the site freed the urban design proposal from the existent plot structure. The design team could propose an entirely new urban quarter with the new buildings closely articulated with the new urban park and surrounding city blocks. This produced a new neighborhood with low densities, significant public uses and one better articulated with its

surroundings than Hudson Yards or Agua Branca where the existent plot structures were maintained.

In Hudson Yards, the flexibility to create incentives through zoning bonuses provided a bargaining tool that delivered significant public benefits including affordable housing units, green areas, cultural facilities and schools. The difficulty was that the city had a weak ability to implement public value-capture mechanisms and public benefits were meant to be delivered by private investors. As a result, public benefits were directly proportionate to the incremental building area created above existent development rights, resulting in the lowest ratio of public uses to total new building area and a focus of implementation on commercial projects ahead of public amenities. In addition, the need to use the value of additional development rights to finance the required infrastructure work meant that the final bulks had the largest increases in FAR and overall densities, with the lowest ratio of public to private uses and open green areas. Also public amenities were more expensive than if directly financed by the local capital budget.

In Agua Branca, the city relied exclusively on the private sector to fund the planned infrastructure work and deliver public benefits. Although an extensive implementation capacity provided an extensive range of instruments, these were not applied in practice. The lack of articulation between the strategic plan and the special districts and lack of public funding, hindered implementation and the provision of public benefits.

Distribution of costs and benefits

The distinct development structures used by each city produced different projects outcomes inspite of the similar planning models which resulted in different costs and benefits for the projects. Each project required a change in permitted uses and significant public resources which increased substantially the value of the existing lots and surrounding real estate. The structure of each model determined who funded the costs and captured the additional value created by the planning system.

In Hudson Yards, the city took most of the development risk while the private sector captured most of the additional value created by the rezoning and public investment. The development model provided extensive subsidies to the private sector while placing most of the risk through debt liabilities on the public capital budgets. As the private sector waited until 2012 to invest, not enough revenues were available to cover the costs of the initial funding, requiring extensive transfers from the city-wide municipal budgets. The additional risk that the city took did not translate into additional public returns. On the contrary, the final project delivered limited public benefits, a low ratio of public uses and very high densities. Private investors and end-users mostly benefited.

In Clichy Batignolles, the city took the initial development risk and captured most on the increment in land values. The approach placed significant risk on the public developer and produced the most public benefits. The structure was only possible because of the willingness of the state to commit public funds and the arsenal of public mechanisms for acquisition of land provided by the French planning system overriding private law and largely excluding private landowners and investors from the planning and development process.

In São Paulo, the main beneficiaries of the upzoning seems to have been the private developers who already owned land in the district. In addition, the requirement that the revenues generated by the rezoning could only be used within its perimeter also raised broader distributive issues. Even though the city was able to capture a percentage of the increase in value, these revenues could only be re-invested in the development area, benefiting mostly the new, high-income residents. As only a small percentage of the revenues generated were actually re-invested, the Agua Branca rezoning seems to have mostly benefited the developers who took advantage of the substantial increases in prices generated by the rezoning to invest in the area.

8.4 CONCLUSION

When applied in practice to contexts of changing circumstances, the planning systems in each of these cases had mechanisms of flexibility and oversight that caused them to deviate from their legal construct. The need to modify underlying zoning altered the intended direction of policy implementation because it shifted the ‘moment’ of policy formulation. The planning system constituted one of several components of the broader development models used by cities to plan and develop large scale urban projects. The implementation capacity of development agencies and financing structures were intrinsic to the process and contributed the most to determine variations in planning controls, implementation and provision of public benefits. The strategic plan influenced project outcomes, not by defining project specific policy, but by regulating city-wide ratios and defining rights of stakeholders in project implementation. The differences found between development models determined the availability and sources of funds to finance the required upfront investment and the ability of cities for ‘public-value’ capturing.

Such structures determined how development risk was shared and who benefited from the additional value created by the rezoning and public resources used.

This research illustrates how strategic planning has converged around the common themes of ‘strategic spatial planning’ and ‘place quality’ with the goal of articulating more coherent and coordinated spatial frameworks for land-use regulation and urban development. The introduction of new strategic plans by each city provided a means to translate visions, values, and ambitions into practical programs of governance, investment, and management with practical delivery arrangements. The plans were regarded as mechanisms for prioritization of key projects and interventions with the most impact on long term priorities.

The new strategic plans attempted to formulate and implement policies that were based on a strategic vision which shifted planning away from the role of controlling and limiting development towards flexible and proactive strategies recognizing the need for the convergence of interests between public and private actors in all the phases of new large scale urban projects. The new plans were regarded as mediators between long term urban policy and short-term development based on a redefined conceptualization of city and territorial management. The objectives of the plans were both proactive and reactive inasmuch as they were derived from an attempt to maximize the benefits and minimize the costs of urban restructuring. They encouraged structured city growth that provided public goods, and achieved an adequate timing of execution and equitable distribution of costs and benefits. In its attempt to guide changes to zoning maps and ordinances, the strategic plans provided an incentive structure to develop in changing contexts and goals.

However, the research findings indicate that the strategic plans had a limited impact on project outcomes. The planning process of each project, with its own internal dynamics and actors, was largely independent from the strategic plan. Each project required the creation of exceptions to existing zoning that strategic plans could not have predicted.

A direct articulation between the plan and the underlying zoning districts as well as the willingness of the city to commit public funds to finance the required upfront investments and capture part of the resulting increment in land values seems to increase the possibilities of cities to extract public benefits from urban redevelopment and improve integration with surrounding neighborhoods, transport infrastructure, and regional policy, thereby increasing the public “return” from the project and an equitable distribution of its costs and benefits.

Strategic planning participates in the system of incentives that cities use to mediate land markets and influence investment decisions in real estate and infrastructure by public agencies and the private sector. That incentive system can be expressed directly through ordinances, regulations and development by public entities; or indirectly through public spending, taxation and provision of incentives to the private sector. Cities plan through an integrated combination of direct and indirect policies and strategies defined through formal and informal processes where the role of public agencies and private sector vary.

The promise of strategic planning in urban development is that it offers advantages in collaboration – it is a resourceful approach in a fiscally constrained environment, and neither sector takes on all the risk. Thus, strategic planning can overcome co-ordination failures by

acting as ‘joint plans’ between multiple departments of city government to articulate investment opportunities and priorities. However, it should be articulated with wider development models which require commitment of public funds and adequate mechanisms of implementation and public-value capture to achieve its goals for large scale urban development projects.

8.5 IMPLICATIONS FOR PLANNING POLICY AND RESEARCH

This research has implications for planning policy concerning: strategic plans and special districts; implementation tools; public value-capturing and provision of public benefits. The key findings of the research also add to the existent theoretical framework and future research directions for large scale urban development projects, comparative planning systems; and strategic planning theory.

8.5.1 Implications for Planning Policy

Strategic Plans and Zoning Resolution

The research indicates that a certain room for negotiation and flexibility is always desirable. It incentivizes developers because they can potentially benefit from negotiating from the base of precise limits while allowing local authorities to retain a measure of power in the process. Flexibility within a general framework may be the goal that both systems could benefit from pursuing.

The strategic plan should have a ‘soft’ impact on the underlying zoning resolution. It should not automatically rezone entire urban areas nor should it simply indicate planning policy without any practical consequences. The plan should have an intermediary role – determine the direction

of zoning changes, articulate regional and transport infrastructure and define parameters for existing zoning districts. Those guidelines should modify the zoning resolution and be included in zoning amendments only when new applications are submitted. Planning policy should be implemented both when strategic plan is enacted and when a building permit is granted. Both ‘moments’ should change the underlying zoning resolution.

The research also indicates that there is an advantage to strategic plans determining city-wide density limits and provision of public benefits. The objective of such limits is not to determine project-specific policy through the definition of fixed zoning parameters. Instead, these ratios should be flexible enough to adapt to project specifics and changes of circumstances. City wide ratios should determine both as-of-right zoning and maximum densities achievable, defining the base above which instruments for public value-capturing can be used and the extent of the variations permitted.

The definition of the ‘as-of-right’ base and the extent of the variations permitted should be considered relative to the city as whole and not simply within the boundaries of each special district. City districts as a whole should be considered both granting and receiving districts, thereby creating redistributive mechanisms that balance individual site plans and allow landowners outside of the special district to benefit from the additional development rights created. The strategic plan should coordinate markets of development rights by identifying public areas that have an excess of development rights and require public investment and city districts that can absorb further densification. The revenues generated by city-wide transfer programs can be used to finance required infrastructure and provision of public benefits.

Special districts

Special districts created for UDP's should be based on overall guidelines for uses, bulks and provision of public benefits defined by the strategic plan as well as site specific parameters elaborated by design and engineering teams. The need for a detailed site plan on which to base zoning controls allows for improved coherence of urban design and integration with surrounding neighborhoods. The modulation of uses and bulks should be independent from the existing zoning districts but be kept within the city-wide limits defined by the strategic plan. The differential between the proposed modifications and the built area allowed as-of-right should constitute the base for transfer programs and for public value capturing.

There is clearly an advantage in defining the public benefits to be provided prior to the rezoning of specific districts. Knowing beforehand the required level of contributions limits increases in land prices. This removes the provision of public benefits from the negotiation process. Nevertheless, it is important that a certain level of flexibility is maintained as it constitutes a valuable negotiation tool to adapt to changing circumstances, adjust the level of incentives provided and extract additional public benefits.

Development agencies

Large scale urban projects benefit from having a special purpose entity owned by the city with a mandate to elaborate the site plan, coordinate the planning process with stakeholders, finance the required upfront investments and contract the public works. As the research findings

illustrate, the implementation capacity and capitalization of the development agency plays a determinant role in the execution of the project and provision of public benefits.

A key component of implementation is the ability to readjust existing plot boundaries and transfer development rights to match the site plan. There is an advantage in having development agencies initiate implementation before the private sector by executing the required infrastructure work and public amenities. Such sequencing protects implementation from market fluctuations and allows the project to deliver public benefits during the earlier phases of the project unrelated to the commercial projects. It also adds certainty to the project creating more favorable conditions for private sector investment.

Financing structures

The link between the site plan, financing structure and economic feasibility of the project is especially important. The uses and bulks proposed should generate adequate risk-adjusted returns for private investors while delivering enough public benefits. Balancing public uses, and private gains requires a coordination between design and feasibility that should drive zoning changes and implementation.

The economic feasibility of projects is directly tied to the sources of funds and sequence of investment. Project outcomes benefit if enough funds are available upfront to finance the initial public works. The sources of capital available to fund the required upfront investment should evolve over time from public to private. Initial implementation should be funded with direct transfers from capital budgets to protect from market fluctuations, provide public benefits from

the earlier stages of the project and create the certainty required for private investment. As valuations increase, the sources of funds should become increasingly private through the provision of indirect subsidies and use of alternative forms of financing available through capital markets. Private sector validation is fundamental to the process as it provides oversight to the use of public funds. As lots become fully serviced, private investors should be able to acquire private lots at increased valuations, develop the commercial projects and corresponding public uses.

Public value capturing and provision of public benefits

The provision of public benefits is a consequence of availability of funds to finance the required upfront investment and the capacity of development models to capture the increment in property values resulting from the up-zoning and public investment. Development models should be structured to capitalize development agencies once a new special district is enacted and provide mechanisms for public-value capturing during the different development stages of the project. In addition, strategic plans should define the minimum level of public benefits to be delivered by the project to frame developer's expectations, put downward pressure on property values, and allow public value capturing to occur prior to the re-zoning. Parameters should be flexible enough to provide a bargaining tool that can be used to negotiate additional public benefits in exchange for incentives.

Public benefits to be provided should be defined and financed in the earlier stages of the project so that land prices adjust accordingly and not be a consequence of the viability of the

commercial projects. Public value capturing is most effective in the early stages of the project and directly linked to the public investment realized. The share of the increment to be captured should evolve over time – public agencies should capture most of increment resulting from the rezoning and initial public investment but require little contributions from the development of the serviced lots.

A new role for the strategic plan

When strategic plans define city-wide density ratios and required level of contributions, coordinate public capital budgets and provide mechanisms for public-value capturing so that funds are available to finance the required upfront investment, they increase the public returns of UDP's by delivering more public benefits and a more equitable distribution of its cost and benefits. As part of development models used to mediate land markets and influence investment decisions in real estate and infrastructure, strategic plans should modify zoning resolutions in sections related to city-wide infrastructure and public amenities, define city-wide zoning parameters and required level of contributions, identify boundaries and guidelines for special districts, coordinate transfer programs of development rights, establish the implementation capacity of development agencies and promote an increase separation of development rights from its spatial location. This requires shifting the role of the strategic plan for a static blueprint

that indicates future zoning modifications to a dynamic coordinator of ongoing urban changes and planning efforts.

8.5.2 Implications for Current Literature and Future Research

Large Scale Urban Projects and Public/ Private Development

In spite of the similarities of policy objectives, large scale urban projects produce different project outcomes. Future research could test the validity of the findings by examining the execution and performance of projects planned in implemented through similar models. It could also examine in further detail the specifics of the implementation structures and financing arrangements and their impact on project performance. Particularly, there is a need to examine the consequences of such mechanisms for urban development and what the track record means for the role of the urban planner in the planning and development of UDP's.

Comparative Planning Systems

The distinction found in literature between plan and development led systems is inaccurate. Research in comparative planning systems should move from comparing systems as legal constructs (focused on the differences between the British and Continental European legal statutes) to comparing integrated development models. The focus of the comparison should also move from the principles expressed by regulations to their actual consequences in practice. That comparison applies to specific large scale urban projects as well as study of urban areas redeveloped through building permits granted within base 'as-of-right' zoning districts.

Also, other examples outside of Europe need to be added to the comparison. Even though the planning systems of New York and Sao Paulo were influenced by European models, over time they incorporated practices from other models and created their own. The evolution of systems through addition and internal restructuring created unique typologies distinct from the European families which require further examination.

Planning Theory – Strategic Planning

In spite of the academic difficulties in building theoretical frameworks based on the new strategic policies, there has been a concrete and specific impact on planning statutes, policy documents and urban development. The policies have focused on comprehensive planning, articulation between administrative levels and long term social and economic sustainability. In some cases, such goals have become part of policy documents while in other it made its own into planning statutes and administrative procedures.

The case studies illustrated that strategic planning entails a renewed active role for urban planners in elaborating city-wide and site-specific plans; monitoring real estate markets; negotiating zoning parameters, incentive structures and public benefits in both special and base zoning districts; and in leading development agencies responsible for implementing projects and arranging financing. Such skills require training in design, business administration and finance that should move curriculums of graduate degrees in urban planning from the social sciences to graduate schools of business, design and real estate development. Future research could compare

the reach of strategic planning in strategic roles and examine the extent to which the role of urban planners and planning departments has shifted and how it has affected graduate studies.

8.6 EPILOGUE

Cities 'plan' through an integrated combination of direct and indirect policies to mediate land markets and influence investment decisions. A direct articulation between strategic plans and implementation as well as willingness by the city to allocate public resources to finance the required upfront investments and capture part of the resulting increment in land values seems increase its ability to deliver public benefits and distribute more equitably its costs and benefits, therefore improving the public "return" from large-scale urban development projects. So that building in the city can also be city building.

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APPENDIX A. POLICY DOCUMENTS

A. Special Hudson Yards District, New York City

NYC DCP (1961) 'Zoning Resolution', Department of City Planning, New York City

NYC DCP (2001) 'Far West MidTown: A Framework for Development, Department of City Planning', The City of New York

NYC DCP (2002) 'Hudson Yards Master Plan: Preferred Direction', Department of City Planning, The City of New York

Cushman & Wakefield (2003) 'Hudson Yards Redevelopment Economic: Overview and Demand Forecast' Economics Research Associates and Cushman & Wakefield, NYC

NYC CPC MTA (2004) 'Hudson Yards Rezoning and Development Program: Final Generic Environmental Impact Statement'. The City Planning Commission, The City of New York

NYC DCP (2005) 'Special Hudson Yards Zoning Text Amendment as Adopted by City Council: N040500(A) ZRM'. Department of City Planning, The City of New York

NYC DCP (2005) 'Special Hudson Yards Zoning Map Amendment as Adopted by City Council: C040499(A) ZMM'. Department of City Planning, The City of New York

NYC DCP (2007) 'A Greener, Greater New York', Department of City Planning, The City of New York

B. Zone d'Aménagement Concerté Clichy-Batignolles, Paris

DR (2000) '*Loi n. 2000-1208, relative à la solidarité et au renouvellement urbains*' Ministère de l'aménagement du territoire et de l'environnement, France

DUP (2008) '*Schema de Coherence Territoriale de L'Ile de France*', Marie de Paris, Paris

DUP (2006), '*Le Plan Climat de La Ville de Paris*', Marie de Paris, Paris

DUP (2006), '*Plan Local d'Urbanisme*', Marie de Paris, Paris

DUP (2007), '*Aménagement du site Clichy-Batignolles : Etude d'Impact*', Marie de Paris, Paris

DUP (2009) '*Ecoquartier Clichy Batignolles : Dossier de Reponse*' Marie de Paris/ SEMAVIP

DUP (2009) '*Projet Clichy Batignolles : Candidature a l'appel a projet nouveaux quartiers urbains*' Marie de Paris/ SEMAVI

SEMAVIP (2009) '*ZAC Clichy Batignolles: Cahier des orientations et des prescriptions, urbaines, architecturales et paysagères*', SEMAVIP, Paris

C. Operacao Urbana Consorciada Agua Branca, Sao Paulo

MC (2001) '*Lei Federal n. 10.257 of Estatuto da Cidade*' Presidência da República Casa Civil, Brazil

SEMPLA (2004) '*Plano Director Estrategico do Municipio de Sao Paulo*', SEMPLA, Sao Paulo

SEMPLA (2004) '*Lei 13.885/ 04 Planos Regionais Estrategicos para as sub-prefeituras de Sao Paulo*', SEMPLA, Sao Paulo

EMURB (1995) '*Lei 11.774/ 95 Opercao Urbana Agua Branca*', SMUP, Sao Paulo

APPENDIX B: INTERVIEWEES

A. Special Hudson Yards District, New York City

Vishaan Chakrabarti, Marc Holliday Professor of Real Estate Development, Columbia University in the City of New York; Former Executive Vice-President of the Related Companies; Former Director of the Manhattan Office for New York Department of City Planning

Jay Cross, President, Related Hudson Yards

Camile Douglas, Adjunct Associate Professor, The Paul Milstein Center for Real Estate, The Graduate School of Business, Columbia University in the City of New York

James Parrot, Fiscal Policy Institute, New York City

Frank R. Ruchala, City Planner, Manhattan Department of City Planning

Aron Kirsch, Senior Vice President, Planning and Construction, Hudson Yards Development Corporation

Robert J. Benfatto, District Manager, Community Board Four, New York City

Thomas K. Wright, Executive Director, Regional Plan Association

B. Zone d'Amenagement Concerte Clichy-Batignolles, Paris

Catherine Barbe, Director, Department of City Planning, City of Paris

Alain Bertrand, Executive Vice-President, SEMAVIP

Hassen Bouflim, Director of Planning, Sector 2, SEMAVIP

Michele Breuillard, Research Fellow, University of Lille 2

Philip Booth, Reader in Town and Regional Planning, The University of Sheffield

Denis Caillet, Director of Planning Permissions, Department of City Planning, City of Paris

Jean-Paul Carriere, Professor, Department of Planning, Ecole Polytechnique, University of Tours

Sophie Gobillard, President, Les Amis de l'EcoZac des Batignolles

François Grether, Architect/ Urban Planner, Grether Architects

Alain Motte, Professor in Urban and Regional Planning at Paul Cezanne University (Aix-Marseille-France)

Jacqueline Osty, Landscape Architect, Jacqueline Osty Associates

Vincent Renard, Professor, Research Director, CNRS, Laboratory of Econometrics, Polytechnical School of Paris

Reine Sultan, Director of Planning Studies and Regulations, Department of City Planning, City of Paris

C. Operacao Urbana Consorciada Agua Branca, Sao Paulo

Edward Zeppo Boretto, Director of Construction, Municipal Department of Urban Development, City of Sao Paulo

Miguel Bucalem, Director, City Development Corporation, City of Sao Paulo

Ruben Chamma, Director of Development and Urban Interventions, Municipal Department of Urban Development, City of Sao Paulo

Csaba Deák, Professor, School of Architecture and Planning, University of Sao Paulo

Paulo Frange, City Council, City of Sao Paulo

Eneida Heck, Director, City Development Corporation, City of Sao Paulo

Maria Teresa Oliveira Grillo, Director, Municipal Department of Urban Development, City of São Paulo

Flavio Gonzales, Secretary of Finance, City of Sao Paulo

Jose Magalhaes, Jr. Professor of Urban Planning, School of Architecture and Planning, Mackenzie University

Erminia Maricato, Professor, School of Architecture and Planning, University of Sao Paulo

Domingos Pires de Oliveira Dias Neto, Director of Development and Urban Interventions, Municipal Department of Urban Development, City of Sao Paulo

Jose Geraldo Martins de Oliveira, Director, Municipal Department of Urban Development,
City of São Paulo

Euclides Oliveira, Architect and Urban Planner

Bruno Roberto Padovano, Professor, School of Architecture and Planning, University of Sao
Paulo

Giovanni Palermo, Mayor's Office, City of Sao Paulo