

introduction

ASSESSING THE USE OF PLANNING TOOLS IN SÃO PAULO

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Article 82 of the 1988 Federal Constitution stated that Municipal Governments must elaborate Master Plans as their primary tool to achieve their own urban development policy (BRASIL, 1988). Besides, the discussion about Urban Reform (which became popular during the 1960s) was quite relevant to influence legislators to incorporate the social function of the city and the urban property into the Constitution's guidelines. At that time, Brazil underwent a fast-growing urban sprawl and accelerated economic growth in the context of peripheral capitalism, being affected by all the ensuing urban ills.

Due to the conflicts and disputes of interest regarding land property (MARICATO, 2008; MARTINS, 1979), it took thirteen years for legislators to put the City Statute into effect. The Statute was enacted by Federal Law 10,257 on July 10th, 2001 (BRASIL, 2001) despite many urban planning tools had been previously used by Municipal Governments. Therefore, the City Statute provided the necessary urban-legal framework for the proper use of the instruments nationwide.

Twenty years after 2001, several studies were carried out to put light on the effectiveness of such tools and assess whether the results met their initial goals or not. In an assessment developed for the Ministry of Cities (Portuguese: *Ministério das Cidades*) on the implementation of master plans, Santos Junior and Montandon (2011) highlighted the difficulties to regulate planning tools, as can be seen below:

The findings evidenced a generalized inadequacy of the tools regulation in the Master Plans concerning their self-application or effectiveness, especially in urban development-oriented tools. In other words, they are not good enough to define urban concepts and parameters, demarcate which tools must be used in each territory, and establish deadlines for administrative procedures, among other aspects (SANTOS JUNIOR; MONTANDON, 2011, p. 34).

Santos Junior and Montandon's work (2011) also draws attention to the need for articulating planning tools with Master Plan's goals:

The National Council of Cities Resolution 34, instituted on July 1st, 2005, [...], defined guidelines aligned with the current Master Plan content. As a result, there is a clear orientation for the Plans to incorporate the City Statute's tools, "connecting them to the goals and strategies established in the Master Plan" (item IV, art. 1). The reason lies in the relationship between the planning tools with the fulfillment of the social function of property and, consequently, of the urban development strategies entitled to the Master Plan (SANTOS JUNIOR; MONTANDON, 2011, p. 34).

São Paulo was one of the leading cities in Brazil to use planning tools for controlling urban development from the 1980s onwards, even before the enactment of the City Statue. Some of them are namely Interconnected Operations (Portuguese: *Operações Interligadas*), Urban Operations (Portuguese: *Operações Urbanas*), and Transfer of Development Rights (TDR, Portuguese: *Transferência do Direito de Construir*¹). Although city administration did implement other alternative tools, some of them had already been included in several drafts for the city's master plan. For example, the Special Zones of Social Interest (Portuguese: *Zonas Especiais de*

1. N.T. This term is literally translated into English as "Transfer of the Right to Build".

Interesse Social) and the Urban Development Fund (Portuguese: *Fundo de Desenvolvimento Urbano*). Moreover, many of them were built on discussions and ideas addressed nationally that also traveled worldwide during the period.

The Strategic Master Plan of 2002 regulated all those planning tools in a more articulated manner and legally passed into Municipal Law 13,430/2002 (SÃO PAULO, 2002), amended by the new São Paulo's Strategic Master Plan on Municipal Law 16,050/2014 (SÃO PAULO, 2014).

The city's brand-new regulatory framework of 2014 resulted from a participatory process that sought to review the tools ruled in 2002 to enhance their capability, as well as proposing new tools to achieve the Master Plan's main objectives, namely: promoting the social function of the city and urban property; equity and socio-territorial inclusion; democratic management; and the right to the city.

The city administration at the time (mayor Fernando Haddad, 2013-2016) endeavored to improve the legal and administrative framework proposed by the São Paulo's Master Plan of 2014. The tools to promote the social function of the property were revised along with the creation of a specific department for its implementation (the Department of Control of the Social Function Property of the Municipal Secretariat for Urban Development).

Urban mobility in São Paulo gained ground through the Structuring Axes of Urban Transformation tool (EETU, Portuguese: *Eixos de Estruturação da Transformação Urbana*) - which resulted in the formulation of the Structuring Axes of Urban

Transformation zone (ZEU, Portuguese: *Zonas de Estruturação da Transformação Urbana*) by the zoning law n. 16.402/2016, promoting urban growth throughout the public transport axes, following the Transit-Oriented Development (TOD) standards.

The 2014 São Paulo Master Plan modified the tool known as Additional Building Rights Levy (Portuguese: *Outorga Onerosa do Direito de Construir*) to capture land value and improve development control. The Master Plan of 2014 also reallocated resources of the Urban Development Fund (FUNDURB, Portuguese: *Fundo de Desenvolvimento Urbano*) to provide public transit, cycling systems, pedestrian thoroughfares (at least 30% of the funds), and to acquire land for social housing (at least 30% of the funds). Likewise, part of the resources obtained by Consortium Urban Operations (25%) also began to be designated for land acquisition for social housing.

Master Plan of 2014 also increased 20% the number of Special Zones of Social Interest (ZEIS) areas and reviewed their regulations to assist lower-income families mainly. In addition, a Solidarity Share allocated 10% of the computable large new projects' lot area to Social Interest Housing. Furthermore, it also included the category of Cultural Built Heritage Protection Areas (APC, Portuguese: *Área de Proteção Cultural*) into the Special Cultural Preservation Zones (ZEPEC, Portuguese: *Zona Especial de Preservação Cultural*). Besides, the Transfer of Development Rights underwent a reviewing process aimed at enhancing its performance.

In addition, the 2014 Master Plan addressed several other urban planning and restructuring instruments, such as Urban Intervention Projects (PIU, Portuguese: *Projetos*

de Intervenção Urbana), Consortium Urban Operations (UOC), Urban Intervention Areas (AIU, Portuguese: *Áreas de Intervenção Urbana*), Local Structuring Areas (AEL, Portuguese: *Áreas de Estruturação Local*), etc.

As a result of innovation-based goals, the Master Plan of 2014 was awarded as the “best urban commitment” by the renowned international architecture website ArchDaily and as “the best innovative practice” from the UN-Habitat New Urban Agenda. In addition, New York City Department of Transportation’s former commissioner Janette Sadik-Khan praised the Master Plan’s principles on social inclusion and environmental sustainability, as quoted below:

Janette Sadik-Khan, the former commissioner of the New York City Department of Transportation, believes that the current administration [Fernando Haddad, 2013/2016] lays the groundwork for a more sustainable São Paulo. If the largest city in Latin America still cannot be considered one of the most globally developed, we can conclude that São Paulo has made great strides toward that goal (ARCHDAILY, 2015).

The plan’s innovation strategies sought to overcome a historical ideology of urban planning in São Paulo guided by car-oriented ideologies and favoring regulation on the economic elite area of interests (NOBRE, 2019).

The changes followed up with the government administration viewpoint at the time. It invested in projects that made room for active transportation and rapid transit (such as bus lanes and cycling paths, speed limit policy); a recovery of the social function of the public space (with successful projects such as *Centro Aberto* [Open Downtown], Parklets, *Paulista Aberta* [Carfree Avenida Paulista]); and the development

of an alternative economic. For example, the Chain of Agriculture Project (Portuguese: *Projeto Cadeia de Agricultura*), also known as “Connect the Points,” simultaneously restrained urban sprawl and generated income through encouraging urban agriculture. The project won international awards by the Bloomberg Philanthropies’ 2016 Mayors Challenge.

However, recent political changes in municipal urban policy put the plan’s goals and its long-term view at risk. The following administration (mayors João Dória/Bruno Covas, 2017-2020) politically diverged from the 2014 Master Plan guidelines.

Despite representing a state initiative in regulating the city production, the effectiveness of urban tools must need integration with other policies and social practices. Tools do not solve issues regarding city production, much less solve its intrinsic struggles, given that they are shaped by the political and social conditions that structure society itself. Agreeing with Deák (1999), urban planning tools will only become more effective as society’s transformations demand them. Therefore, success depends on how social forces can organize themselves to engender makeovers. Then, it is crucial to propose directions towards overcoming several obstacles and realizing its unrealized potential.

Thus, this book investigates the use of planning tools proposed under the 2002 Strategic Master Plan. Besides, it prospects the possibilities of making effective use of the mechanisms offered by the 2014 Strategic Master Plan to assess to what extent they can achieve goals such as: the fulfillment of the social function of the city and the urban property; equity and socio-territorial inclusion; democratic management; and the right to the city.

This book results from a project funded by two research agencies (FAPESP and CNPq) and is divided into seven chapters².

The first chapter, written by Eduardo Nobre, He Nem Kim Seo, and Marina Pinheiro, presents a first analysis of the urban metropolitan context of São Paulo. The chapter's goal is to understand the urban real estate dynamics and their impacts on the city to provide subsidies for evaluating the effectiveness of urban tools. The following chapters will deep into each urban tool for a more detailed investigation. Furthermore, this chapter provides a theoretical analysis of the recent transformations in the São Paulo real estate market based on an extensive bibliographical review. Besides, the authors examine the spatialization of real estate production, relating it to the current zoning through the geospatial data collected during the periods in which different legal frameworks were in course. Finally, the authors assessed the impact of real estate production on the urban structure, pointing out conceivable transformations between 1997 and 2017 by analyzing the mapping of socioeconomic data, such as family's income and demographic, household, and job densities.

The following sections thematize the chapters according to their main objectives in common and accordingly with the definition given by the work coordinated by the Chamber of Deputies (BRASIL, 2002):

Part 1: proposes analyzing urban tools for supporting urban policy and development, socializing land gains, and mediating private participation;

Part 2: presents an examination of urban and legal tools for expanding access to urbanized land and ensuring the right to the city.

2. Research Project "Limits and Possibilities for Fulfilling Urban Tools in the Municipality of São Paulo: evaluation and prospection," supported by FAPESP's Regular Research Project (Process n. 2017/15,256-1) and the CNPq Universal Notice (Process n. 423,981/2018-8).

The second chapter, written by Eduardo Nobre, analyzes the implementation of Consortium Urban Operations in São Paulo, considering how they benefited some social strata to the detriment of others. In addition, Nobre displays how much each operation fundraised and how funds were spent by type of work.

The third chapter, written by Kaio Nogueira, assesses the conceptual field of the Additional Building Rights Levy, its metrics and reviewing, to show to what extent it might be concretely effective to socialize land gains. In addition, the author points out promising limits and barriers for this tool to meet the master plan's goals.

The fourth chapter, written by Eduardo Nobre and Marília Valerio, assesses the implementation of the Urban Development Fund (FUNDURB) in São Paulo by judging how funds raised were settled by urban dimensions.

The fifth chapter, written by Dulcilei Cipriano, analyzes the concession of Development Rights, a tool that became popular between 1998 and 2018. The author sought to find out if this tool safeguarded the cultural built heritage in São Paulo.

The second part of the book, at the sixth chapter, Simone Gatti investigates the implementation of the Special Zone of Social Interest (ZEIS - type 3) in São Paulo, mainly concerning promoting new social housing units.

The seventh chapter, written by Patrícia Cezário Silva and Igor Borges, presents findings concerning the impact of the Solidarity Share from 2014 to 2019. In addition, the authors sought to identify the implications of the alternatives included in the legal text concerning housing production in urbanization and collection priority hubs.

Finally, the afterword presents our general findings. It highlights essential recommendations for regulating tools to integrate them better with other techniques offered by São Paulo's regulatory framework for urban planning.

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