

## REVISION OF THE PORTUGUESE LAND USE LAW: IMPACTS ON PLANNING POLICIES

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### ABSTRACT

The Portuguese Land Use Law is currently under revision. This law dates from 1976 and it has failed to keep up with the socio-economic evolution of the country during the last three decades and a half, being completely mismatched from reality. Within this context, the central theme of this article focuses on the identification of problems, inefficiencies and hindrances to urban development that accrued from the application of the currently enforced law.

The pursued methodology founds on the analysis of the homologous Spanish law. The expected outcomes consist in the identification, through compared law, of some proposals to surmount these problems, inefficiencies and hindrances, namely in order to:

- assure all citizens access to housing (avoiding real estate speculation);
- control urban sprawl, and recover most vacant dwellings;
- fight urban corruption, assuring higher transparency and citizen participation in urban processes;
- allocate the surplus-values engendered by public planning decisions for the social interest in general.

These proposals materialize, namely through:

- the settlement of a sustainable urban development;
- a new concept of land property rights;
- a renewed assessment of the duties of landowners and other stakeholders involved in urban development processes;
- alternative land valuation criteria, according to the current and real value of land;
- application of different land management tools.

This paper is relevant for planning education, practise and scholarship. Indeed it adds to the current debate on land use instruments and policies, in order to support more efficient planning policies that better fit real needs, and able to surmount the prevailing crisis, thus contributing to territorial sustainable development and to citizens' quality of life.

### 1 INTRODUCTION

Similarly to what happened till recently in other developed countries, in Portugal has emerged a greediness to convert rural into urban land, and towards the intensification of land use (Talixa, 2008) favoured by: (i) inconsistencies in legal urban development grounds, and in respective harmonization with territorial planning instruments; (ii) lack of clarification of planning assignments, and in the delimitation of public administration and planning technician's remits, (iii) conceptual and operational inefficiencies in property taxation; (iv) excessive tolerance of public administration organizations; and (v) systematic non acquaintance of the planning system with the market characteristics and conditions, as well as with the impacts that administrative decisions exert on property values (Rebelo, 2009a).

The consequences have been expressed at different levels. First of all, municipal powers have failed to control the distribution of surplus-values that accrue from their own planning decisions and administrative interventions on territory. These surplus-values correspond to

the increase in property values that result whether from planning administrative decisions – changes from rural to urban land uses, definition of urban perimeters, division of the land property, expansion of building capabilities, and increase in the number of autonomous building plots – or from public works (Pardal et al., 1996). This lack of control has fostered speculative processes – that translate into land and real estate price rises out of control – that benefit private interests at the expense of its application to favour the general social interest.

Besides, municipal policies and planning decisions haven't managed to attain a sustained balance between the public interest and the interests of private land owners (land hasn't been able to fulfil its social function, and planning still goes on disregarding the real economic performance). This has translated, on the one hand, on the incapacity of the municipal authorities to assure the availability of land and real estate products for the different kinds of functional uses at reasonable prices; avoid excessive profits before, during and after urban development and construction processes; and foster the private initiative, assuring the neutrality of land property interests in face of land dynamics and changes in land use intensities induced by their proper planning processes (Arnott and Petrova, 2006). All these reasons have led to public administration's lack of control over market prices.

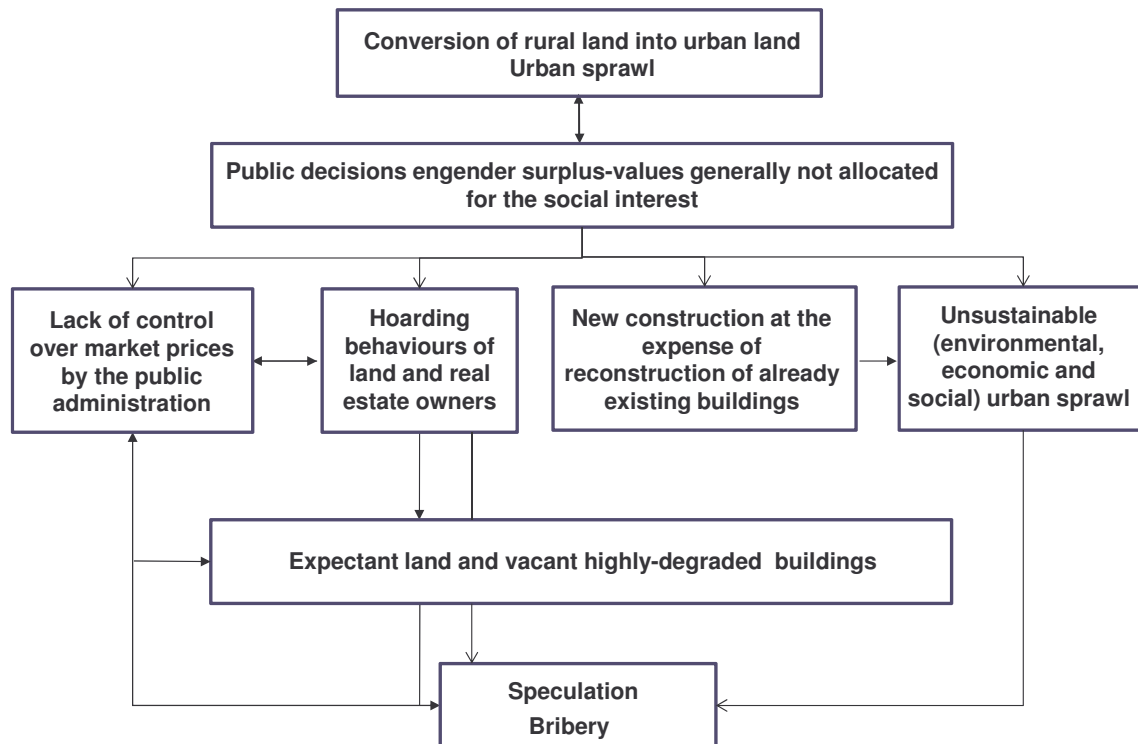
At the urban level, city centres have progressively shrunk – supporting vacant highly-degraded buildings and expectant land – as a setback of the urban sprawl towards urban peripheries where new constructions are fostered, instead of promoting the renewal and recovery of already existing buildings. These processes engender an unbalanced urban development from the environmental, economic and social perspectives.

The current article starts with a survey of the problems that accrue from the enforcement of the Portuguese current Land Use Law, and from the enforcement of the previous homologous Spanish Law (between 1998 and 2007). These issues are briefly described and interrelated, and the reasons underlying them are searched after. Some proposals of the current Spanish Land Use Law to solve these problems are finally analysed. These proposals are transferable (after appropriate adjustments) to the Portuguese legislation in order to solve similar problems.

## **2 ANALYSIS OF PROBLEMS AND UNDERLYING REASONS**

Some relevant issues that accrued from urban development practices within the scope of the Portuguese Land Use Law and complementary legislation and regulation are pinpointed and interconnected in the following flowchart (Figure 1):

**Figure 1. Interrelation of problems that resulted from the application of the Portuguese Land Use Law**



The way how land values are assessed potentially engenders speculation. There are two possible origins for the increases in land values (that may occur simultaneously or alternatively): decisions and interventions of territorial planning, not depending upon the owner's investment or merit; and profits that accrue from trade goals and the current market operation, and from the accomplishment of improvements by the builder's owner or tenant (Pardal et al., 1996). Thus the value of a certain land plot may be split into two distinct components (Pardal, 2004): its territorial-based value – that is shaped by its dimension, location and licensed use (dependent on urban interventions) -, and the remaining value – that results from the improvements carried out by the land owner (connected to the owner's merit, to the investment performed, and to market characteristics and operation) (Rebelo, 2011).

The control over surplus-values may be carried out by the state or local authorities, whether through fiscal devices or through an appropriate land policy and management. The speculation issue arises because these entities fail to control the surplus generation and distribution processes that derive from their proper decisions. If the production of developed land is the sole responsibility of state organizations, the public administration manages to keep in all the surplus values without conflict, imposes the rules for urban development, and balances the operation of the land market (Pardal et al., 1996). But if the production of urban land is granted to private promoters, the public administration loses a basic instrument of urban development, and will only levy and return on its own benefit a part of the surplus values (and even so, only in a vague and indirect way, as surplus taxation focus upon assumed values). In the case of the urban division into lots carried out by private promoters, surplus values are merged with infrastructures' costs, and with the promoters' profits and losses, so under these circumstances it remains almost impossible to retain the engendered surplus values in a clear and transparent way (Rebelo, 2011).

Land costs subdivide into two parts (Rebelo, 2009b): the transference costs - that corresponds to the capitalised income that results from its productive use -, and the

economic rent. The former is a component of real estate costs<sup>1</sup> so it contributes to their prices, whereas the economic rent is given by the difference between the land price and its transference cost. The land economic rent thus includes a surplus rent in relation to its transference cost, and an additional profit margin, and it is very hard to distinguish between rent and profit. Land surplus values may be computed through the difference between the land market price and its transference costs added by a surplus rent. The formation and distribution of land surplus values should, consequently, be regulated by the municipal authorities assuring the social function of land, on the one hand, and the need to encourage promoters' initiatives and investments, on the other (Rebelo, 2009c).

One of the goals of the currently enforced Portuguese Land Use Law that dates back to 1976 consisted in the resolution of the housing problem, avoiding real estate speculation. And despite the housing issue has been solved in the meantime, this law never managed to control speculation.

The urban classification of land stated by the previous Spanish and the current Portuguese Land Use Laws engendered expectations of increases in land values even before the execution of plans. Thus they fostered speculative processes based on the inflation of land values. The strategic target of the previous Spanish law that stated the principle that the whole land would be preferably developable, unfolded a real estate "boom" that almost tripled dwellings prices throughout the last decade (Agência LUSA, 2007). This aggravated speculation process was mainly due to the fact that the land value was stated as a function of its potential uses instead of its current real uses.

Besides, the current way to assess the land market has revealed mismatched from reality as it states land use classifications set apart from the market operation rationale (Pardal, 2006a), considering the current uses as starting points, instead of pursuing proactive strategically-oriented behaviours.

On the other hand, territorial planning should also aim at fostering the private initiative of promoters, builders and sellers in order to achieve a sustained socioeconomic development. Here turns up the controversy of the public interest versus the private interest. And despite – according to the Portuguese Constitution – land should fulfil an eminently social function (Monteiro, 2008), meeting the specific public interests on health, safety and buildings' aesthetics, and the general collective interests, the rights of the urban real estate property should also be observed. However, the urban law doesn't assess this problem as a whole. Not even the proper territorial planning system answers appropriately to how the private property should accomplish its social function.

Despite its crucial importance for planning, the urban legislation hasn't yet dealt properly with the issue of the urban real estate property (Monteiro, 2008): the Land Use Law did no more than regulating land acquisition and trading forms by the public administrative sector, whereas the Basis Law for Territorial Ordinance and Urban Development Policy remits to the adjustment of the content of the rights of urban real estate property with the planning instruments (municipal plans of territorial ordinance) through the definition of the land use regime without, however, rendering this regime compatible with the property civil regime.

If land legislation doesn't define a strategic framework for land use that promotes its balanced socioeconomic and environmental sustainable use, and if it doesn't clearly state deadlines on development and regeneration goals, the lack of clarity on property rights will lead to hoarding behaviours of keeping dwellings high-degraded and vacant, and land expectant.

Within this framework it is important that urban legislation, especially the Land Use Law, is able to (Monteiro, 2008): (i) render compatible the contents of the urban property law with the territorial management instruments (including the rights of the private property in urban development legislation), (ii) adjust the property object and structure to urban life needs, and to the requirements of land targeted to social uses, whether through the strengthening of the horizontal property paradigm (in contrast with the vertical property paradigm), or through the

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<sup>1</sup> The transference cost includes a profit margin considered normal for the same type of transactions.

progressive autonomy of the building rights from the content of the private property rights (rendering compatible city public governance with the private appropriation of its space). The new Land Use Law should be able to warrant a land policy socially-oriented, the rehabilitation, and the control over urban sprawl, as well as the provision of land plots for different uses at reasonable prices.

### 3 OUTCOMES OF THE RESEARCH

In order to deal with the problem of land speculation and overvaluation, the Spanish Land Use Law (in contrast to the previous homologous law) gave up valuing land plots from their urban classification (distinction between rural and urban land) and qualification<sup>2</sup> (according to their dominant use within the scope of both classes) (Cardoso, 2007). So this law, instead of considering land classes, only proposes land basic situations and valuing criteria. It means that it considers land real or current situation just split into rural or developed land (where developed land was effectively and properly transformed in an urban development process). Different measures were included in the Spanish Land Use Law in order to grant a higher transparency and participation of citizens in drawing up municipal urban development plans (Agência LUSA, 2007). These measures include the duty to issue the name of all the owners of a certain land plot during the five-year period prior to its requalification, and the demand that all councillors and municipal leaders publicly declare a list of their property belongings (Agência LUSA, 2007). These measures are particularly pointed to face the bribery issue.

The current Spanish Land Use Law proposes the resolution of the problem of the excessive greediness to convert rural into urban land, proceeding to face land (including urban land) as a scarce non-renewable environmental natural resource. It reinforces the understanding that land should support a sustainable development that is compatible with the minimization of urban sprawl, and fosters urban rehabilitation. Thus it links together with the European framework instruments – the Community Space Development Scheme and the Thematic Strategy for the Urban Environment – that argue for a compact urban development (as a counterpoint to the harmful effects of dispersed development such as the environmental impacts, the social segregation, and the economic inefficiencies generated by high costs of energy, building, maintenance of infrastructures and provision of public services).

This law also promotes the social sustainability (meant as integration and social cohesion), thus assessing the issue of unsustainable urban development from environmental and socioeconomic perspectives. In order to face housing issues, plans need instruments that warrant a wide range of typologies and social heterogeneity, linked up with the social integration in public spaces.

The idea previously prevalent in Spain was that the provision of urban land should strengthen the structural reform of the Spanish economy. The current enforced law, however, stresses the basic concept of the land status. This concept grounds on the principles of necessity (only the required urban land should be classified as such), evidence (rural land may be reclassified as urban land only if needed, considering the underlying social, economic and environmental interests) and preservation (the remaining rural land should be preserved as such). Urban plans in Spain require an environmental assessment (including a map of natural risks); information on its economic sustainability (including the financial consequences of the execution and maintenance of urban infrastructures and provision of services); and the justification that the land assigned to productive uses is sufficient and adequate to the needs. The principle of sustainable development pleaded in this Spanish law pursues the following goals: to protect and to conserve the heritage, the nature, the flora, the fauna and the landscape; to develop rural land according to its nature (regardless of its adequacy to urban changes); and to occupy urban land efficiently (considering the proper harmonization of uses and the provision of infrastructures and services that fit the anticipated density).

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<sup>2</sup> The terms classification and qualification have the same meaning in the Portuguese Land Use Law.

To face the problem of land and real estate owners' hoarding behaviours - that, by its turn, lead to expectant land and vacant highly-degraded buildings -, the current Spanish Land Use Law ceases to include the rights to urban development in private property rights; and the constitutional rights and duties of the land regime are no longer exclusively identifiable with property.

Additionally, and in order to oppose to the tendency to new construction at the expense of the renewal and rehabilitation of the already existing buildings, the Spanish law introduces the figure of the "urban development agent" and of the "entrepreneurial agent". They operate as mediators between the administration and landowners when a decision concerning the development of a certain land plot is taken.

As far as the accomplishment of the social function of land is concerned, the Spanish law allows public administration to partly control market prices, as it ensures the constitutional right to a honourable and proper dwelling (stated in the territorial ordinance plans) through the establishment of housing reserves (despite subjected to a protection regime within the scope of urban development processes).

#### 4 CONCLUSIONS

The Spanish Land Use Law faces these different problems (that turned up in Spain during the enforced period of the previous law, like, furthermore, what has happened in Portugal for the application of the current law), pursuing the following main objectives: (i) warrant citizens' access to housing (avoiding the real estate speculation prevailing during the last decade); (ii) control urban sprawl, recovering a large share of vacant dwellings; (iii) fight against urban corruption, thus ensuring higher transparency and citizens' participation in urban development processes; and (iv) allocate the return of the surplus values engendered by the intervention of public authorities to the general social interest (Cardoso, 2007).

The main proposals of the Spanish law in order to fulfil these objectives consist in: (i) the accomplishment of the principle of sustainable urban development; (ii) a new conception of the status of land property rights (that excludes the development rights); (iii) a new assessment of landowners' or other stakeholders' duties in urban transformation processes; (iv) new criteria to assess land, according to its real and current value; and (v) new administrative instruments to intervene on land (Cardoso, 2007).

The analysis of legislation and experiences in other European countries is highly relevant in the Portuguese reformulation of public policies and laws, considering their strong inter-relations with the economic development and with the promotion of populations' quality of life.

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