

## **A two-way road: how real estate and the approval bureaucracy interact in São Paulo**

Telma Hoyler\*

© by the author(s)

(\*) Master in Political Science/University of São Paulo (USP), currently a junior researcher at the Center for Metropolitan Studies (CEM) and a decision maker at São Paulo's Municipal City Hall.

Contact: [telmahoyler@gmail.com](mailto:telmahoyler@gmail.com)

For further information visit: <https://urbanpoliticscem.wordpress.com>

Paper presented at the RC21 International Conference on “The Ideal City: between myth and reality. Representations, policies, contradictions and challenges for tomorrow's urban life” Urbino (Italy) 27-29 August 2015. <http://www.rc21.org/en/conferences/urbino2015/>

## **A two-way road: how real estate and the approval bureaucracy interact in São Paulo**

Telma Hoyler

In 2005, during the change in Sao Paulo municipal administration, real estate developers suggested to the incumbent the bureaucrat that should become responsible for approving buildings produced by the sector. Seven years later, news came to public that this bureaucrat and his team expedited licensing in exchange for bribes. When the scheme was dismantled, the developers recommended to the new incumbent that a new bureaucracy should be created for approving projects, and donated close to US\$1 million to structure the new organ. In addition, they designed the workflow for approval processes, conducted training workshops to instruct the bureaucrats on how to approve projects, created indicators for a periodic assessment of the organ's efficiency, and established a workgroup with the secretary's office to redesign the rules in the Constructions and Buildings Code, the municipal law regulating project approvals. All this is true, but it is only part of the story.

The capacity of this economic sector to interfere in the land use policy in São Paulo is directly related to the interests of the public sector in conducting the intermediation of interests and advancing their political agenda. In Brazil, the municipal building approval bureaucracy holds legal attributions providing it with such decision-making room. However, the intensity and the content of interacting interests are also influenced by federal policies. These are the other parts of the story. When read together, they unveil one of Sao Paulo's power structures, specifically with regard to land use and increase the variance of cases for the comparison between cities.

The empirical choice for São Paulo is attributed to the fact that the capital city is home to major real estate developers and concentrates a major portion of the country's real estate dynamics. The argument contained in this paper may be extended to other cities, but the connections established with the public power and the political order, originated from this intermediation of interests, is necessarily an empirical problem and a challenge to be faced by future comparative studies in the search of regularities.

Because of its federative formula, several explanations concerning the government of United States cities have based themselves on the systemic conjunction between local government and large inter-sectorial coalitions, formed to generate competition among cities pursuing increased revenues, as explained by the mechanism of growth machines (Molotch, 1976). The differences between the federative and tax structure in Brazil allow us to reject this explanation. There is in Brazil a fixed transfer structure from the federal

government to local governments, which reduces dependencies from the private sector. The Brazilian federative structure would lead us towards a model closer to the European one, where there are regular funding sources by the central government, and where we find the centralization of financial institutions at a national level. Unlike the European situation, however, where the construction sector remains strongly regulated by national models (Harding, 1997; Le Galès, 2000), Brazilian cities have plenty of room for action, since the regulation of land use and occupation is within municipal jurisdiction.

The Brazilian institutional framework after the 1988 Constitution creates particularities in the relationship between the federal government and municipalities when it comes to the relationship between the main actors, the financing mechanisms, and the decision-making power on key urban policies. A federal law from 2002 (known as the City Statute – *Estatuto da Cidade*) designed urban instruments to be applied within cities through the Municipal Master Plans as part of the planning and regulatory process in urban expansion. As so, this law is responsible for selecting and regulating the application of the menu of instruments contained in the City Statute. Although designed by the federal government, the decisional locus over urban instruments is municipal, as well as decisions on the approval of constructions, and it was maintained even with the *Minha Casa, Minha Vida* Program, the largest housing policy ever designed by the federal government in the country.

Since the ownership of urban land is not public in Brazil and the rules allow for the free incorporation by the private sector, municipal control only occurs in terms of compliance with the specific legislation. In formal terms, the municipal government is responsible for deciding, based upon existing rules, if an enterprise may or may not be built according to the submitted real estate project. Permission is granted to developers on a case-by-case basis as they file construction projects in the City Hall. However, there is plenty of discretionary space due to obsolete laws or areas unregulated by law, by certain conjectural situations or by spaces designed for civil society participation.

A case-by-case approach for understanding policies on land use is quite relevant for Brazilian cities, also considering the fact that Brazil has never had an urban redevelopment era in any of its 5,564 municipalities, not even in São Paulo, the largest national metropolis, which concentrates approximately 10% of the GNP and 8% of the national population. The only exceptions are the *Porto Maravilha* project in Rio de Janeiro in the context of investments for the 2016 Olympic Games and the *Nova Luz* in downtown Sao Paulo, discontinued after pressures from civil society (Sarue and Hoyler, 2015). Still, these are very recent projects from 2010 onwards, and do not indicate the adoption of a different approach for understanding how cities are governed.

Notwithstanding the municipal responsibility to regulate land use and occupation of urban land in Brazil, we must consider that this environment will be strongly influenced by economic and policy regulations from the federal government, which has the ability to confer more agency to the real estate sector and purchasing power for the population.

Some studies in Brazil have analyzed how the real estate sector has acted upon policy design and the rules of the federal government (Dias, 2012), and the design of municipal regulations (Villaça, 2005), but the individual action of developers with the public power to exert influence for the approval of their projects and, on the other hand, the public power seeking to implement a development policy and to expand its governability by supporting this sector, had not yet been studied in detail. From an analysis on the approval policy of developments, this article presents how this occurs in Sao Paulo and operationalizes how stakeholders are conformed within the State.

The article is divided into four sections, besides this introduction and closing remarks. In the first section, I briefly present the political economy of incorporation, the process by which developers operate the transformation of urban land, and their specific interests aimed at profit from the municipal policy instruments in place. The second section presents the federal government policies directly affecting the real estate activity. The third section will look at the conformation of the municipal approval bureaucracy for developments, to identify the interests of the public power in this policy. Lastly, the fourth section presents the intermediation channels to unravel *how does the government and the public sector really perform their interests*.

### **What does it mean to develop in São Paulo?**

In Brazil, the developer is the one responsible for articulating all agents responsible for undertaking a construction, from the land buying to its commercialization<sup>1</sup>. This includes the disputes over urban land, its regulation, and the profit generated according to the approval time and access to some regulatory instruments. For a better understanding of this dimension and the specific interests of developers with the municipal public power around which real estate development takes place, I briefly explain below the real estate development process. The urban land pricing mechanism should be the same verified in all cities in which negotiations takes place between two private entities, without price regulation by the State. However, bargaining arguments used by developers and the

---

<sup>1</sup> Depending on the case, the developer is also responsible for negotiating and providing counterpart works to ease the road traffic generated by the project. Moreover, in the case of being both a developer-landowner, they are responsible for the infrastructure in the surroundings.

reasons by which they attempt to influence the approval bureaucracy are specific, according to the policy instruments in each city.

Urban land is the substrate over which real estate development takes form. Thus, the first job of the developer is the release of the land lot(s) in which it has interest, taking into account the characteristics of non-reproducibility and the differentiated confluence of urban amenities on each lot of urban land. However, the price of urban land is the price of a commodity without production costs, as Topalov reminds us (1979).<sup>2</sup> From this follows that pricing will be conducted by means of a dispute between landowners and developers for a share of the location's superprofit. Based on an observation of the market, the developer establishes the price they can charge for their product and then performs a "backwards" calculation, deducting legal and operational values to reach the land price and the net income earned from the development activities. As I described in detail in Hoyler (2014a), no speculation is involved when a developer buys a land lot and immediately begins its transformation. What is peculiar to the developer's activity is the establishment of a hurdle rate and the transformation of the land use beyond the superprofit dispute. To this end, the capital flow velocity is of utmost importance, thus the urgency in obtaining license approval from the City Hall, from which the developer may begin to sell and, consequently, to feed the cash flow of the enterprise.

The dynamics in establishing land prices seen in the light of urban policy instruments explains the considerable amount of interest that developers have on the state regulation of this market. By somehow regulating any of the following elements listed below, the public sector changes the rules of the game and forces the developers to remake their calculations and projects and to establish a new negotiation level with landowners.

The created land, the onerous grant calculation formula, the potential stock, and zoning, which are listed below, are grounded on the city's Master Plan. Nevertheless, the approval dynamics for development projects in Sao Paulo opens the possibility of exceptional cases, in which the current legislation is made flexible to grant a certain license. Sometimes there are spaces not covered by law and such situations are once again decided case-by-case.

*Increase in the availability of created land:* the City Statute separates land ownership from the right to build, dismembering the urban land matter into "land ownership" and

---

<sup>2</sup> In response to the ecological thinking of the Chicago School, the French urban sociology of the 1970s characterized the city as the result of a capitalist mode of production rather than considering it as a previously given reality, and identified the State as a set of apparatuses without self-interest that conducts the interest of the ruling class. Despite his conclusion on the actions of the State, Topalov is an author who advanced the understanding of the specific logic of real estate development, by understanding the city as a result of production processes carried out by different fractions of capital.

"constructability". That is, the possession of an urban land lot is no guarantee that the owner may build up to the occupancy limit of financial or technological resources. The municipal authority is responsible for potentially managing the constructive potential of land lots at its maximum, basic, and minimal usage coefficient, in order to ensure the social function of the property. The interest in expanding the construction potential of land lots is grounded on the enterprise's Potential Sales Value, from which the other costs and the average profit are deducted. In other words, in a hypothetical situation in which the developer could build three times the land area and is impeded from exceeding twice of the total amount, the total price of the enterprise would be reduced, while other constant conditions are maintained. On the brink of a decrease in the usage coefficient, developers threaten to raise the price of real estate as compensation for their loss in constructability. Following the logic proposed by neoclassical economics, in order to influence the reduction in prices, an increase in land availability would suffice. While Topalov was writing, in 1979, about the insufficiency of this theory to account for the dynamics of land price, the city of Santiago in Chile insisted on adopting this formula and prices, contrary to what neoclassical theory would predict, increased (Sabatini, 2000). This underscores the real interest of developers in increasing land availability at the same that there exists a complex bargaining anchorage performed with the actual pricing. It also reveals an important facet of the social construction of real estate market risk as studied by David (2012).

- *Onerous Grant Value of Construction Rights*: the stakeholder must pay an onerous grant to the municipality to acquire the right to build the basic Coefficient up to its maximum. The interest for the non-payment or maintenance of low prices in the financial compensation value to be paid for the construction of the maximum land potential exists because, by paying the construction and reserving the pre-fixed inner margin, the decrease in legal costs increases the share disputed by the landowner and the developer on the location's superprofit, while keeping other factors constant. The explanation for such interest is quite similar to the previous case. In case of an increase in the onerous grant, the developer may attempt to increase the real estate value, but the market will not necessarily assimilate the price imposed for maintaining the superprofit level. The developer may also reduce the amount they are willing to pay for the lot, at the risk of failing to acquire the land. On the other hand, we may empirically observe that a reduction in the grant value does not translate into a decrease in the final property price or an increase in the value paid for the land, although it is an important bargaining tool between the public sector and developers.

▪ *Increase in the Construction Potential Stock:* the 2002 Strategic Master Plan for the City of São Paulo and zoning established and regulated the city's maximum constructive volume, named Constructive Potential Stock. This regulates the maximum area allowed for residential and non-residential constructions in each city district. Until the exhaustion of the available limit in the district of interest by the developer, it was possible to pay an onerous grant for the right to build, according to the interest in increasing the construction potential. Once the inventory was depleted, however, the acquisition of construction potential became unavailable. The expansion of the residential stock was the subject of fierce quarrels between industry representatives and the public sector, and also used as a corruption object. It has ceased to be adopted as an instrument in the 2014 Master Plan.

▪ *Processing period for approvals in the City Hall:* the longer the processing period of a project filed for City Hall approval, the longer the developer takes to sell and capitalize on the change of land occupation. The longer the cash flow remains still, the greater must the company's capital be for it to start paying income from other development costs involved in the development of the subsequent enterprise, thus reducing the alternative return of capital. The interest in the processing period of approvals in the City Hall concerns the rotation period of the enterprise investment.

▪ *Changes in zoning:* the law for payment installments, land use, and land occupation determines the zone and the type of occupation permissible, from which the construction parameters must be considered during construction. The combination of the type of usage, templates, usable area, and additional requirements is decisive for the developer to calculate their Potential Sales Value, from which they deduct the project's costs to achieve the superprofit. Zoning is also important in case the developer wishes to reserve land for future valorization. In this case, for example, being within a rural area is an advantage as there is no collection of the Tax on Urban Property, but of the Tax on Rural Territorial Property, a lower tax.

Disputes for superprofit, for a good land location, and for a rule design according to the project one wishes to build, underscores the *local* interests of real estate development. Apart from this aspect, to obtain financing and the solvable demand, regulations at the federal level matter a lot in Brazil and there is a relationship between them, as we shall see.

## **How the Federal Government affects real estate production in São Paulo**

The high production costs of a building and the long construction period required places production and purchase funding as a central theme. Thus, the capitalization of the Brazilian real estate sector has been historically associated with the federal government's housing policies and with the public financing for acquisition.

Constructions were already being built in São Paulo since the 1920s from foreign investment and from the so-called building by cost price, but it was only during the 1960s, with funding from the National Housing Bank (BNH) created during the military regime, that the development activity was bolstered and established its own accumulation of real estate capital (AZEVEDO; ANDRADE, 1982). Due to the regulation of this policy, São Paulo's verticalization greatly increased and became quite elitist in the 1980s (SOUZA, 1994). However, with the institutional fragmentation of the housing policy after the dismantling of the bank and the unstable economic environment of the 1980s, housing production occurred in relatively low levels over the 1980s and early 1990s. These problems were only tackled from 1995 onwards through successive measures for redesigning the financial and legal environment during the Fernando Henrique Cardoso administration (PSDB, right-wing, 1995-2001). These actions were conducted in a fragmented and sectorial manner, individually meeting the demands of different sectors related to housing production and housing credit, but signaled the revival of a broadly favorable context for the housing business.

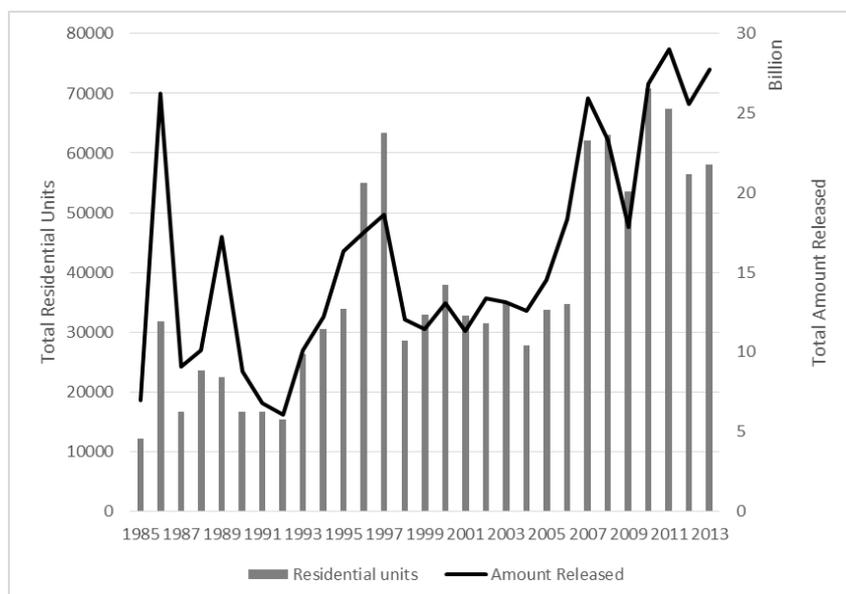
The establishment of the Real Estate Financing System (SFI) in 1997 was an important regulatory framework for real estate financing and for financial institutions to operate in the capital market, which would allow developers to securitize the debts of buyers and sell them in the market, earning back the capital used to finance buyers and reinvest it in another project or pay off debts. Royer (2009) criticizes precisely this point: the SFI was not created to solve the housing deficit, but as a funding model to ensure security in the real estate industry transactions and to introduce major investments from the financial market.

In 2003, when Luiz Inácio Lula da Silva (PT, left wing, 2003-2010) took office, he was willing to make housing the fuel for the country's development and expanded policies already in place. The re-articulation of the housing policy also depended on improvements that would make them appealing to the private sector, both in production and in loans. The federal government then created incentives for banks to apply their savings funds in housing by establishing some guarantees, such as facilitations to repossess the property in the event of non-payment or delay in the payment of installments. The federal government also contributed by improving the scenario for developers with increased resources from

the main public and semi-public funds to finance the purchase of real estate, and subsequently the introduction of the *Minha Casa Minha Vida* Program, with major subsidies for housing acquisition in Brazil, thus recommencing a large scale housing production.

This regulatory environment provided security for initial public offerings by companies from the sector. Thus, from mid-2006 the relationship between housing policy and private housing production also gained new contours with the entrance of financial capital in real estate development companies (Fix, 2011; Shimbo, 2012). At the same time, the period witnessed economic growth and stability as well as increased consumption power, essential for the combined public and private resources in the housing market to couple with solvable demand, which gained ample access to housing credit.

**Chart 1 – Number of residential units and amount released (1985-20013)**



Source: Original compilation based on data from Embraesp.

The new institutional scenario established significant changes in production and in the organization of the São Paulo housing market, thus ultimately strengthening major companies. This becomes clear, for example, in the increased number of launches, growth of the Potential Sales Value, and diversification in both territorial and economic sectors affected by these large companies and not in the same proportion by smaller companies. Publicly traded companies created economic subsidiaries to act in the economic segment, which has come to mean solvable demand from the *Minha Casa Minha Vida* Program.

Another indicator of the distinct benefit from regulatory measures according to the size of the company is that from the second half of the 2000s, while production greatly increased, there has been a trend towards a concentration of enterprises by a small number of developers – with emphasis on concentration in large companies.

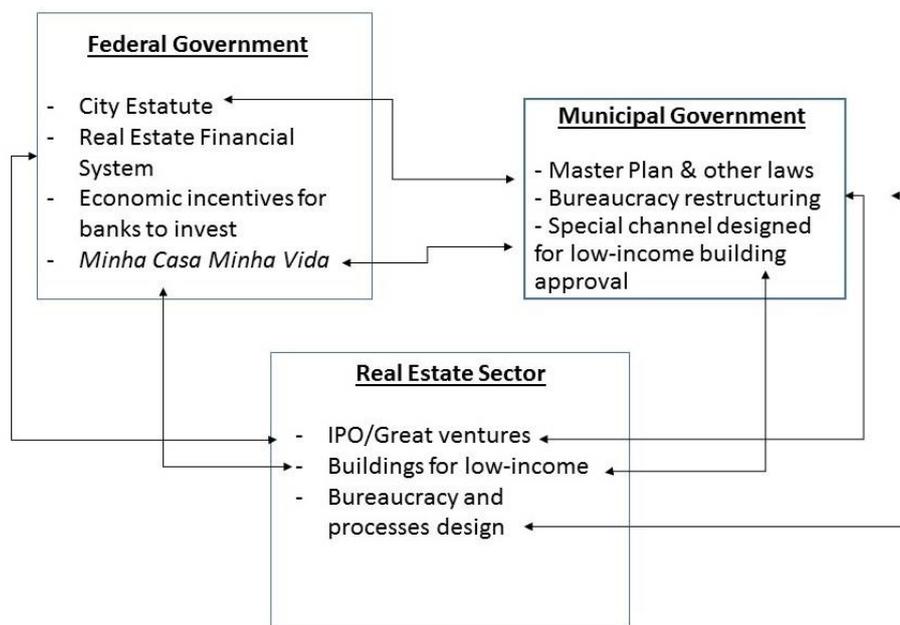
There is no official classification to define a large, medium, or small developer company in an attempt to organize production according to the profile and financial economic power of the companies operating in the sector. For the purposes of this research, we consider large developers to be the equivalent of 1% from the total of 3,432 developers listed on the database for organizing real estate launches in São Paulo (Embraesp), which launched individually between R\$ 2 billion and R\$ 23 billion between in 1985 and 2013. All 18 developers that went public are among the major ones. These 18 companies alone have launched 3,794 residential and commercial enterprises throughout the period, achieving a cumulative sales value corresponding to almost 30% of the total produced by all development companies, accounting for both segments. Compared to small developers, for those who only launched 1 or 2 projects, it would take 2,622 companies to produce the amount of projects equivalent to these 18 companies in the same period. Before the initial public offering, 15 of these developers already had a production corresponding to 17% of launched PSV (potential sales value) between 1985 and 2005. This share has more than doubled since 2006, the year that marks the opening of capital of the companies, and went to 43%, suggesting the importance of this event for the capitalization of real estate developers.

It is possible to assert that there is a cumulative effect in the federal government's regulations, which explains the large size assumed by major real estate developers.

Securitization, the basis for the SFI's fundraising system, involves a set of necessary requirements for real estate investment to become attractive to investors: generation of cash flow, quality of receivables, portfolio diversification, frequency of payments, homogeneous deadlines, amortization methods and ease in trading titles, property type, maximum credit value, debt/value ratio of the construction, and the buyer's capacity to pay. Real estate development, with the intention of ballasting the collateral from this complex financial transaction, became structured from the outset to meet these criteria, and these demands are more feasible to major real estate developers. Take the example of determining the future income flow, which is of utmost importance to the investor. The cash flow depends on the type of property built, which is associated with the location. The location of the property, in turn, will depend on the superprofit dispute between the developer and the landowner. Real estate developers, capitalized by the initial public

offerings, have a wider share to negotiate with the owners, leading them to acquire the land in prime locations regarding construction parameters, thus winning the dispute over offers made from owners of small and midrange developers. With the investments received due to the attractiveness of the project, capital circulation time decreases and allows for simultaneous developments in more locations, increasing the Potential Sales Value of the company. In addition, initial public offerings triggered a race to the creation of land banks as a means of presenting the investment potential of the companies firms to shareholders. Major real estate developers had a head start from the very beginning.

The large size resulted therefore in a privileged position in the dispute for urban land, strengthening investments and the production capacity of these companies. This dispute, however, does not determine the construction outcome within a given land lot. Since urban land property is separated from its constructability and because the time involved in the building approval greatly matters for the cash flow, developers engage in specific disputes with the project approval bureaucracy at a local level. The government, in turn, has interests in these interactions. The scheme below attempts to reproduce these relationships, which shall be examined in the following sections



**Scheme 1 – Multi-level Governance in land use policy**

Source: author's original elaboration based on theory and field research.

## **The municipal bureaucracy for approving development projects**

Currently in São Paulo, there are separate bureaucracies for urban planning, housing policies, and approving constructions. The Licensing Secretariat (SEL) was created in 2013 in order to review and approve commercial, institutional, and residential real estate projects, a responsibility before delegated to an old sector of the Housing Secretariat. Since then, several measures have been adopted to establish governmental capacity within this bureaucracy and streamline the approval of projects. The measures include: (1) designs in service process and analysis of real estate projects; (2) convocation of employees approved in public tenders; (3) allocation of employees according to demand; (4) weekly management reports for the control of the inventory of projects; (5) manualization and transparency in the requirements for the approval processes; (6) priority in approval for companies that provide documentation and complete blueprints; (7) establishment of specific divisions to analyze major enterprises; (8) compatibility of the requirements of the "*Minha Casa Minha Vida*" program with Social Housing<sup>3</sup> to increase solvable demand for this housing standard, which even though it provided discount in the onerous grant, it remained non-profitable to developers and underbuilt in the city (as alleged by the developers); (9) creation of a one-stop entry for *Minha Casa Minha Vida* projects to streamline the approval of this specific type of venture<sup>4</sup>.

Since all these actions are new, we are naturally led to question the reasons as to why changes were not made earlier, as well as the underlying motivations in the government's construction capacity. We shall now deal with the workings of these bureaucracies.

Until the creation of SEL, Aprov was the bureaucracy responsible for licensing projects, a meager department hidden within the Housing Secretariat (Sehab). Aprov's structure remained fairly stable since its creation in 1986, although the data analysis shows that this bureaucracy remained unassailable not because of its efficiency of flows and procedures in providing a public service. If we consider the amount of projects approved per employee in a given period<sup>5</sup> as an efficiency indicator in the approval of projects, by comparing data from the SEL and Sehab for the same period we have the results below.

---

<sup>3</sup>A municipal housing policy tool provided to families who earn up to 3 minimum wages.

<sup>4</sup> These processes could take longer than two years until approval, according to information provided by the SEL. The deadline is now of 90 days.

<sup>5</sup> For easier viewing, we had to select a given year to present data from Sehab, but the average from previous years is quite similar.

**Table 1** – Comparison between the number of employees and projects approved in Sehab and SEL for the same period.

SEL Coordinating Body	Sehab Division	Sehab - July 2010 to March 2011			SEL – July 2013 to March 2014		
		Number of procedures	Number of employees	Procedures/ employees	Number of procedures	Number of employees	Procedures/ employees
GABINETE	Aprov G	324	34	9,53	58	20	2,90
RESID	Aprov 1	652	20	32,60	874	64	13,66
SERVIN	Aprov 2	206	15	13,73	236	61	3,87
SERVIN	Aprov 5	169	15	11,27	236	61	3,87
COMIN	Aprov 3	62	18	3,44	160	49	3,27
COMIN	Aprov 4	124	13	9,54	160	49	3,27

Note: The two left columns in the table below compare equivalent divisions/coordinating bodies between SEL and Sehab.

Source: Original compilation based on raw data provided by SEL and Sehab

The analysis in Table 1 shows that concomitant to the hiring of young architects, there was also a redistribution in their proportion among the coordinating bodies, resulting in a decrease in the average number of procedures per employee. In addition, for the same period, there was a decrease in the number of procedures approved by the department office, an expedient often adopted by the former project approval director, Hussain Aref Saab. This decrease becomes patent in the contrast of 324 projects approved in office by Aprov during the Aref administration in comparison to only 58 by the SEL office. Another indicator showing Aprov's inefficiency is approval time for a project. In 2012, it took on average 437 days for the release of an approval and execution license. When dealing with major enterprises, this period surpassed 708 days.

What could be considered a dysfunction of the bureaucracy in its implementation powers was actually the result of successive decisions adopted by the technical levels (endorsed by political posts). The former approval director benefited from this dysfunction and his staff worked within it: he expedited the processing of licensing and/or approval of irregular constructions through the payment of bribes from developers. By expediting the analysis of a project via payment of bribes the developer could accelerate revenues from cash flow as well as the pathway for approving the project in a given district, given the rapid depletion of

the constructive potential stock, especially for housing in many places of the city. By benefiting from such "dysfunctions", this practice also helped to produce further dysfunctions, accumulating projects by developers who didn't pay in order to get ahead in line. The existence of this long queue and the market pressure for approving development projects, in turn led to a demand of "pay to get ahead," legitimizing the maintenance of a system based on reciprocal behaviors.

For developers, however, the best scenario would be the swift approval without the need to pay bribes. For this purpose, a partnership was established in 2002, "Online Plants I", in which the Union of Developers (Secovi) donated money to physically structure the City's approval organ. Corroborating this measure in 2004, the current Licensing Secretary, and Aprov director at the time, established a 30-day deadline for the analysis of the procedures in the Technical Divisions, but this measure had no effect without a deeper restructuring of the bureaucracy. The restructuring did not come into the agenda, since the administration was coming to its end and all efforts were concentrated in the participatory design of the City's Master Plan and the redesign of the city zoning, the first municipal instruments in the democratic period.

Since the donation of funds did not reverberate into a deeper restructuring of the status quo, with wide market presence, the entity had to adapt to the interests of the bureaucracy, recommending to the City Hall a prominent role in Aref, which would ensure swift approval in exchange for particular benefits. Only in 2012 did investigations from the State Prosecutor's Office lead to his departure from the City Hall, by which 108 properties were accumulated in his name, a patrimony incompatible with his remuneration.

### **The formal channels for the intermediation of interests**

The details of this story, and the accompaniment of the daily lives of bureaucrats who approve projects, revealed significant formal channels articulating State interests within its licensing bureaucracy branch and the interests of developers in the recent period. In addition to the lawful intermediation of interests, generically called lobby, and its illegal aspect, corruption, several interface channels complicate the boundaries between public and private and underscore the municipal level as the locus for disputes.

*(1) Conjectural interaction: the bureaucracy is structured by major companies and the union*

Early in 2012, when the Public Prosecutors Office took its first incisive steps towards investigating corruption schemes in the old Aprov and a dismantling of illegal

practices became imminent, which individually benefited a few companies in the industry, five major developers hired two consulting firms to map the obstacles in the approval process of *major projects* and suggest solutions to streamline the processing time for this specific construction size. The consultancy identified more than one hundred approval obstacles, among them those related to technology, routine, personal, and legislation, for which it presented several solutions, which have been adopted almost entirely by the new secretariat. One of the recommendations addressed by the developers was to reduce the time of approval of major projects to 90 days, being this decision also in full operation. To measure the impact of this measure on the profitability of companies, it is worth pointing out that a reduction from 708 to 90 days in the license concession time increases the profitability of the investment, analyzed in its present value of more than R\$ 7 million and increases the profit rate in 4% for a given model<sup>6</sup>. Among the recommendations, we also have the implementation of performance indicators per coordinating body to monitor the 90-day deadline goal and quarterly follow-up meetings, involving a select group of major developers.

Together, these five companies alone have accumulated between 1985 and 2013, the equivalent of 10% of the Potential Sales Value of the entire Sao Paulo real estate market (over 3000 companies), according to information from the Embraesp database. In this sense, we must also provide the reader with the information that major companies have privileged access to decision-making offices. This does not mean that the City is closed for small developers, but that major players have an easier time when using such channels than smaller developers have – and consider it a resource. Besides, major developers are the ones responsible for producing major enterprises, which generally include a greater complexity of variables that need to be analyzed. The analysis of several of these variables, which include, for example, land conditions and impact in the vicinity, demand careful case-by-case studies and therefore require more time and suffer greater discretion from bureaucrats. Major developers do not control the game, but have a greater agency capacity. In the words of Stone (2015), they have the possess "*power to, not power over*".

When the new incumbent took office (PT, left wing, 2013 - present), he found on the one hand, a completely unstructured project approval bureaucracy and, on the other hand, a list of recommendations made by these developers in formal dialogue with the anti-corruption

---

<sup>6</sup> This information derives from a calculation formula used by the RB Capital Investment Bank for securitization. The identified differences were calculated based on the following assumptions of the project: floor area of the apartment, 85m<sup>2</sup>; price per square meter, R\$ 3,006.87; total of 528 units in the project; PSV of R\$ 134,948,326.00; brokerage cost of 3% of PSV and others indicated in Hoyler (2014a). Thus, the difference in the internal rate of return was of approximately 4% and the present net value changed by R\$ 7,636,609.00.

and transparency principles promised in their campaign, in an attempt to distance himself from party scandals at a federal level.

The Developers Union (Secovi), which had been gaining strength from its role as representative of the interests of medium and small companies, saw the restructuring of this bureaucracy as an opportunity to influence the design of its new internal flows and work routines so that not only the agenda of major developers would prevail. Influence was exerted by donating sizable amount of resources to equip the new Licensing Secretariat. The donation was operationalized through a technical cooperation protocol called "Online Plant II", similar to what was done in 2002, but this time with a broader restructuring, which included the overhaul of physical infrastructure and the training of municipal employees by the Developers Union University. Each group established the narrative most interesting to them to justify the deal. In the vision disclosed by entities associated with the real estate sector, "[...] We expected that Online Plants II<sup>7</sup> will instate a new urban management model in the city's urban development, in which private companies come together for the necessary restructuring of the state apparatus". While for the official City Hall discourse "[...] this process of administrative modernization had the principle of transparency in procedures and the preservation of the public nature of the provided service ".

To compensate the donation, SEL created a workgroup with Secovi representatives to discuss the reformulation of the 1992 Constructions and Buildings Code. The Code in effect does not represent society's understanding on desirable constructions (e.g. it discourages some types of constructions as being retrofit) and for a long time there have been arguments indicating the need of a reform. The important data for understanding this interface is that the technical cooperation privileged Secovi in the design of the new legal framework in detriment of other groups also directly affected by construction rules, such as housing movements.

The restructuring of the procedures, specialization of functions, hiring of personnel, monitoring of routines, and disclosure of information are elements generally addressed in the literature as indicators for the state capacity in construction. In the case of SEL, this also provides agility to the approval of a building project. At the same time that it addresses the main interests of real estate development, it is also a form of bureaucracy created to strengthen itself in face of an external shock, namely, the dismantling of a formerly operating illegal system. A longitudinal analysis of the decisions by governmental administrations showed that the idea of providing swiftness to the approval of real estate

---

<sup>7</sup> The name refers to one of the measures of interest from developers to make almost all project approval stages electronic.

projects is not novel, but along with the political decision came an external event that shocked the current structure, and interests – public and private – have converged.

In addition to the connections between government and developers within a conjectural sphere, there are institutionally predicted links, such as those occurring in routine negotiations between developers (or its designees) and technicians (architects) analyzing real estate projects in the City Hall, which shall be analyzed below.

(2) *ordinary interaction: the role of street-level bureaucrats*

The daily workings of the SEL depend on the discretion of bureaucrats evaluating real estate projects, even though public administrators do not necessarily take this space of action into account. Although not quintessentially a street level bureaucracy in the sense adopted by Lipsky (1980), given that direct interaction between developers and their employees does not need to occur for a project to be approved, the often adopted possibility of scheduling an appointment for discussing the real estate project makes this organ a structure employing a significant number of bureaucrats who interact directly with developers. These employees are the focus of the stakeholders. The employees' discretion paves way for the prospect of responding favorably to the interests of stakeholders, revealing a high degree of disaggregated interaction in sectorial arrangements. We list below some exemplary cases of bureaucrat technical discretion to look at this dimension in more detail, which is obviously far from including all the dilemmas faced by these technicians.

It is important to notice that the practice of technical discretion has increased since the redesign of the department, whereas before constructions were only approved through bribes, and housing production never decreased because of this fact.

▪ *The case of street width (or discretion by insufficient resources)*

The Constructions Code stipulates that for the construction of a house in what is called a "Vila" in Brazil, the entrepreneur must consider a minimum size of 8 meters wide for the official street. For widths between 8 and 10 meters, the entrepreneur must provide additional parking space for visitors. However, the width of the street should be informed in the Technical Data Bulletin (a document the bureaucrat receives from the bureaucracy itself to examine the conformity of real estate projects with the land lot characteristics),

which quite often fails to report this information. This generally happens because of an obsolete database in the City Hall. The technician conducting the analysis then becomes responsible for conducting a digital measurement of street road in the City's Official Map and compares it with the value reported by the entrepreneur in the project. This is where the discretion of the street-level bureaucrat comes into play: "*We often have to work with our gut feeling, because I know that there's an error in everything digitally measured with this tool. There are technicians who consider a 5% difference between the measurement and what is reported by the developer; some technicians consider a lot more*", a SEL bureaucrat reported. If there is no agreement between bureaucrat and developer, the option is to send a technician to the street to conduct measurements. The bureaucrat is responsible for deciding which measurement to use, or even if a new *in loco* measurement is necessary – although this last alternative is curtailed by the logic of conferring fast approval.

- *The case of rising the ground floor level (or discretion predicted by law)*

When the land has a slope or declivity equal to or less than 50% from the public street and adjacent buildings, the definitions for implementing the ground floor level depends upon an examination and consideration by the SEL. A ground level elevation allows for less interference upon the water table, but this decision needs to consider the surroundings of the land of the real estate development, since neighboring buildings may have their foundations shaken in case of interference from the water table or damages to lighting and ventilation in some cases where the ground floor is raised. Regarding this matter, it is also interesting to note that elevating the ground floor level allows the developer to reduce the number of excavations and install another type of foundation structure, thus reducing work costs. While this preference varies according to the architectural design, as well as the discretion involved, it is an example of how meeting the demand of the developer's interests does not necessarily clash with the city collective.

- *The case of usable area (or discretion through obsolete laws)*

Modern buildings equipped with sophisticated technological resources require large areas for the installation of information technology, data broadcasting, data security, as well as for the cooling of the equipment. Such resources did not exist in 1992, when the COE defined the limits of a usable area. Therefore, technicians who consider this obsolete law must examine case-by-case whether these technical areas are non-usable, even if this task is not formally predicted.

While decision makers dislike mentioning in their speeches the routine intermediation in implementing their project approval policy through bureaucratic discretion ("*it's all provided by law*" or "*they only make technical decisions*"), this is how an important part of approving rules for project implementation effectively operates, which may lead to small changes in the initial design, and, in time, accumulate notable consequences. This form of interaction also revealed situations where intermediation is not always a zero-sum game and benefits to developing companies necessarily imply diffuse damage to the public interest and, therefore, suggest the use of a more complex analytical framework by the sector.

### (3) *Participative interaction: the Technical Chamber for Urban Legislation*

The *Technical Chamber for Urban Legislation* (CTLU) is a participative arena where actors outside the government deliberate upon the approval of real estate projects. This is the main forum in the city's organizational structure for discussing and deliberating the approval of projects in circumstances not predicted by law, *ad hoc* changes in zoning, uncertainties as to the application of zoning, and the approval of proposals for participating in Consorted Urban Operations, usually by great developers<sup>8</sup>. In these situations, members vote for an approval/execution license through simple majority voting.

This body, established in 1972 when the urban planning bureaucracy was taking its first steps toward reorganization in São Paulo, occupied different positions in the structure, suffered successive losses and recovery of its functions (including disputes with the Legislative Power over its attributions), and had different compositions, stressing the importance of a responsible body for legalizing exceptions.

While it appears to have the technical profile required for evaluating the architectural aspects of real estate projects, the decisions adopted by the CTLU are actually mostly political, often making decisions even before voting occurs – when composing the agenda for each meeting. The substantive discussions occur prior to the meetings, which ultimately merely serve to legitimize previously taken decisions.

Its legitimizing role is also suggested in the compositional design of the Chamber, which contains a 50% representation from the Executive Power (appointed by the mayor) and 50% from civil society, whose representatives should be appointed by the Municipal

---

<sup>8</sup> Consorted Urban Operations are city perimeter in which zoning is suspended. To build beyond the basic coefficient, developers are required to purchase Constructive Potential Certificates, securities issued by the City of São Paulo City Hall. Each Certificate equals a certain amount of m<sup>2</sup> for usage in an additional construction area or in modifications of in the project or site parameter.

Council for Urban Policy. From ten civil society representatives, at least eight are in some way connected to the interests of the real estate sector. During a certain period, interests from this sector also occupied one of the veto points. Union representatives founded a non-governmental organization called "Minha Cidade" (My City) to occupy the seat reserved to the civil society organization related to urban policy. After holding the seat for three years, this same representative assumed the seat through the union.

The notorious lack of participation from social movements in this body cannot be justified due a required technical knowledge, since members with engineering and architecture knowledge often report not being capable of analyzing the project in technical terms. CTLU representatives are called upon about a week in advance for meetings, which occur on monthly basis. In the same calling, a summarized material is also sent, dealing with the technical aspects of projects over which the Commission must deliberate. In addition to the short deadline, the material is insufficient to subsidize the decisions in approving projects, especially considering the size and complexity of projects generally analyzed by the commission. The information is incomplete, obsolete, and/or too brief. Additionally, the agenda is very extensive, reaching over 30 items in need of deliberation in a single morning, scattering the attention of participants on important aspects that demand a thorough analysis. In some cases, agendas that do not concern the CTLU are included so that decisions may be legitimized and the cost of irregularity divided among all representatives of the arena. The inclusion of inappropriate material to the committee is also one of the reasons contributing to the agenda increase, which in turn hinders the substantive analysis of real estate projects.

Voting is conducted according to a "case-by-case" scenario, i.e., they evaluate aspects affecting the real estate project at stake, and deliberation occurs according to the specific interests involved in the project. Similar situations may be decided differently in another project. Many of the uncertainties come from gaps and overlaps in the city zoning, an ideal situation for *ad hoc* deliberation in project approvals. However, once overlay zoning is diagnosed, the procedure commonly adopted by this body is not to amend the law through a detailed zoning of the streets where inconsistencies were identified in order to avoid future uncertainties. Shortly after the approval of the 2004 Zoning Law, some technicians conducted an inventory of open or overlapping perimeters, locating about 900 parts that needed to be fixed by law and in need of a redraft of the descriptive text in the zoning perimeter. This would reduce the issues submitted to CTLU and the extent of the agenda, thus allowing for a more thorough analysis of the submitted projects. Perhaps for these very reasons this inventory was never carried forward. In this case, most of the doubts

concerning the application of zoning can be understood as non-governed elements, which end up benefiting developers, since they can decide on a case-by-case basis.

Even though project analyses are individualized, we find an empirical regularity in approval deliberations within the CTLU agenda. Since its creation (through the recent overhaul of the Secretariat), the overwhelming majority of decisions of the committee is favorable to developers, despite the balanced configuration between government and civil society in the body. This suggests that CTLU plays an important role in the governance structure for land use to ensure the maintenance of the bureaucratic status quo – whether this status quo is established through illicit schemes or agility in approval. The maintaining of a space of exception is functional to the bureaucracy, which may be mobilized as a bargaining chip in specific goals and as a resource for risk dilution in the approval of some polemic projects.

### **Summing up**

The case of land use policy in São Paulo allowed us to identify the occurrence of a fragmented and dispersed pattern of intermediation of interests, in which the private sector does not always win, and depends upon specific negotiations on a case-by-case scenario. The organized actions of interests from the real estate sector happen during the policy design, during the definition of the legislation, when conforming bureaucratic structures, and when implementing the actual project approval policy.

Power dispersion for influencing politics is not, however, homogeneous, driving away potential pluralistic impressions. The Union ensures minimum market conditions for small and medium companies, but the potential individualized power focuses on major developers, which influence decision-making processes according to their own interests in approving their projects. The financial dimension assumed by major developers, in turn, reflects decisions taken at the federal level.

A cumulative effect of regulations from the federal government explains the large dimension assumed by major developers. This dimension has resulted in a privileged position in the dispute for urban land, reinforcing the investments they receive and the productive capacity of these major companies. This dispute, however, does not determine the constructive outcome of a given land lot. Given that urban land property is separated from its constructability, and since approval time greatly matters for cash flow, developers engage in specific battles with the municipal approval bureaucracy, the body responsible for actions in such matters. The public sector, in turn, has interests in these interactions,

which go beyond campaign financing or the establishment of corruption schemes, in how the issue is generically handled.

In each of these forms of interaction – creation of bureaucracy, technical approval, and voting on specific cases – the intermediation of interests occurs within state structures, in which the interests of the State are identified through the agency of its bureaucrats and decision-makers. The degree of success in achieving the political goals of the State or the private sector depends on the convergence of interests, even if substantially different as informed by the neoinstitutionalist literature, which we name by “*fit*”.

Insofar that the State holds the prerogative to approve real estate projects, and its deadlines and format interferes with the developer’s profitability, the interests of the private sector becomes clear when performing the fit with the public sector. For what reasons, however, would the State seek to perform a fit with the real estate sector? Many answers have been given to this issue, often pointing towards the need for resources and political support. By operating on a detailed level, this research allowed us to list new reasons.

In the case of conforming the structures regulating the approval policy for projects, the State’s interest in performing the fit was because of the need to establish a State capacity to deal with an external shock, and thus maintain the campaign promises that garnered broad support to the new incumbent. This case shows that the construction of capacities, if understood as the State’s capacity to develop and deliver policies and enforce laws, could in fact mean a better fit between the public and private sector and not necessarily imply greater State control over this policy.

In the second form of interest intermediation – operating between developers and bureaucrats evaluating real estate projects – the bureaucrats make use of their discretion when analyzing projects within an environment of porosities due to insufficient resources, obsolete and complex laws, as well as the impossibility of legally predicting all potential situations. We should emphasize that the aforementioned porosities many times do not happen by chance. There are prior political decisions regarding allocation of resources, legal drafting, and the modus operandi of politics itself, which often leave discontinuities in what is being governed, where spaces and important implementation tools remain purposely unregulated.

The third form of interest intermediation occurs in the Technical Chamber for Urban Legislation, an institutional body approving major projects through voting, and which serves to dispel qualms in the legislation. At the same time that we find a favorable empirical regularity towards developers in voting, this is not imposed by the sector. The maintaining of a space of exception is functional for the bureaucracy, which can be mobilized as a

bargaining chip in specific goals and as a resource for the dilution of risks in the approval of some projects.

Taken together, the three forms of interest intermediation diversify the ways in which policies are produced by the interface areas between the State and external agents.

### References

- AZEVEDO, S.; ANDRADE, L. (1982). *Habitação e Poder*. Rio de Janeiro: Zahar.
- DAVID, L. 2012. The social construction of real estate market risk. The case of financial investments cluster in Mexico City. *Journal of Urban Research* (9).
- DIAS, E. (2012). *Do Plano Real ao Programa Minha Casa Minha Vida: negócios, votos e a reforma da habitação*. FFLCH/USP. Dissertação de Mestrado.
- FIX, M. (2011). *Financeirização e transformações recentes no circuito imobiliário no Brasil*. IE/Unicamp, Tese de doutorado.
- HARDING, A. (1997), Urban Regimes in a Europe of the Cities? *European Urban and regional studies* 4 (4): p. 291-314.
- HOYLER, T. (2014a), *Incorporação imobiliária e intermediação de interesses em São Paulo*. São Paulo: DCP/USP: dissertação de mestrado.
- HOYLER, T. (2014b). Qual o lugar das cidades no mercado imobiliário financeirizado? – Revisitando conceitos críticos a partir do caso brasileiro. *Revista Oculum* v.12 n.2 jul./dez. 2015 (no prelo).
- LE GALÉS, P. (2000). Private sector interests and urban governance. In: Bargansco, A. e Le Galés, P. (org.) *Cities in contemporary Europe*. Cambridge: Cambridge University Press.
- LIPSKY, M. (1980) *Street-level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.
- MOLOTCH, H. (1976). *The City as a Growth Machine: Toward a Political Economy of Place*. *The American Journal of Sociology*, Vol. 82, No. 2.
- ROYER, L. (2009). *Financeirização da política habitacional: limites e perspectivas*. FAU/USP, Tese de Doutorado.
- SABATINI, F. (2000). Reforma de los mercados de suelo en Santiago, Chile: efectos sobre los precios de la tierra y la segregación residencial. In: *EURE*, v. 26, n. 77,

SARUE, B; HOYLER, T. (2015) Variables with an impact on Great Urban Projects in Brazil. XXXIII International Congress of the Latin American Studies Association.

SHIMBO, L. (2012). *Habitação Social, Habitação de Mercado: a confluência entre Estado empresas construtoras e capital financeiro*. Belo Horizonte: C/Arte.

SOUZA, M. (1994). *A identidade da metrópole: a verticalização em São Paulo*. São Paulo: Hucitec/Edusp.

STONE, C. (2015). Reflections on Regime Politics: from governing coalition to urban political order. *Urban Affairs Review* 51 (1), pp. 101-137.

TOPALOV, C. (1979). *La urbanización capitalista*. México: Editorial Edicol.

VILLAÇA, F. (2005). *As ilusões do Plano Diretor*. São Paulo: edição do autor. Disponível em: [http://www.flaviovillaca.arq.br/pdf/ilusao\\_pd.pdf](http://www.flaviovillaca.arq.br/pdf/ilusao_pd.pdf). Acesso em: 02/05/2015