PLPR 2023 Ann Arbor – Book of Abstracts

1

AUTHOR(S): **Rachelle Alterman**
Samuel Neaman Institute for National Policy Research, Technion, Israel

SESSION: Planning Design & Implementation I

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Hussey

TITLE: Violations of Land-Use Controls as Indicators of Dysfunctional Planning: The Case of Illegal Accessory Dwelling units

KEY WORDS: illegal development, affordable housing, accessory dwelling units, land-use regulations

ABSTRACT:

Sometimes the discrepancies between the original objectives of land use controls and current needs are accompanied by rampant violations. Planning scholarship hardly addresses this issue. Differences in motivations for violations should matter. Instead of criticizing enforcement practices or chastising citizen misbehavior, some type of violations should be viewed by planners as indictors that it is time to redirect the focus onto the regulation itself: Is it still publicly justifiable?

In this paper I address violations that relate to a widely acknowledged public need - affordable housing. An instructive example is what Americans call “accessory dwelling units - ADUs”, Canadians tag as “secondary suites, Hong Kong residents call “illegally subdivided flats” and Israelis term “split apartments or houses”. These are secondary units for rent, not sale, so that they do not impinge directly on current property-related issues. There are unofficial estimates of hundreds of thousands of illegally divided housing units in advanced-economy countries. This large rental housing stock would not exist if the violations of planning law were fully enforced.

Is there something intrinsically so faulty in dividing up dwelling units so that such practice should be punishable? Preliminary comparative research indicates that in some countries, planning law does not regulate what a homeowner does within its home, so long as the internal improvements are built within the permitted built-up envelope and meet basic housing standards. However, in other countries, land use regulations stipulate that each housing unit must accommodate only one household.

The research reported here focuses on a selected country where the tension between the static nature of land-use controls strikingly contrasts with the run-away behavior of the housing market. By mining unofficial data we managed to estimate the quantity and distribution of ADUs. The analysis shows that ADUs contribute a sizeable portion of the rental housing market. They are inherently more affordable than regular rental prices because ADUs are usually “plugged into” an existing neighborhood and rely on pre-financed public infrastructure. ADUs also contribute to gradual densification, have a lower environmental footprint than regular housing, and act as “automatic” social diversifiers.

The paper then analyses planners’ and legislators’ ambivalent responses to the issue: Should the regulation be kept intact despite the rampant violations? How should the public benefits be regarded? The difficulty of letting go of path dependency in land use regulations is demonstrated in two legislative attempts to deregulate ADUs. Both attempts failed because the decision makers shunned recognition of the scale of illegal units. Thus, the ostensible deregulation was actually only half-hearted. The legislators and planners preferred the path dependent approach.

The conclusions point to the need for deep rethinking about the longterm validity of land-use controls. Planners need to be more proactive in evaluating existing regulations without waiting for the legislators. Planners should also solicit partnerships with enforcement agents to register the pulse of violations as indicators. The lock-in effect of land-use controls and their legal impacts should be reassessed: Do they still meet dynamically changing needs in the more turbulent times ahead?

2

AUTHOR(S): **Ayça Ataç**
TU Dortmund University, Germany

SESSION: Valuing and Managing Land by Water

PRESENTATION:
DAY: May 2
TIME: 3:45 p.m.
ROOM: Kalamazoo

TITLE: Unpacking Property Owners' Perception of Flood Damage

KEY WORDS: floods, damage, property owners, perception of damage, perception of property

ABSTRACT:

Floods cause damage to lands and thereby often prevent property owners from using their property in the way they intend. Because of flood damage, property owners may face challenges such as a decreased value of their property, not finding tenants etc. While land policy predominantly treats damage as solely economic, it also has emotional and social implications. Symbolic attachment to a specific piece of land, a family legacy, or other non-economic values are only a few examples of these implications. As the values that property owners assign to their properties differ, so do their perceptions of damage.

A differentiation between property owner's different perceptions is necessary not only with regard to the perception of damage but also with regard to the perception of property itself. The early social constructivists had different approaches to determine the social construction of property. They reduced the complexity of human nature and its impact on property by claiming that all men are violent and self-interested (Thomas Hobbes), confident and brave (John Locke), or vulnerable and good (Jean-Jacques Rousseau). At first sight, their simplifications of the perception of the human nature and property seem to contradict each other. However, considering the plural notions of property in land, all of these approaches have a justification.

This research links the different perceptions of damage and the academic debate about the perception of property. State authorities' land policy interventions often do not consider this link sufficiently. As a result, their policies do not always match the plural notions of property, such as memories linked to a home or spatial attachment to a specific piece of land. Land policy instruments need to be customized in order to target all of these perceptions effectively. The existing instruments are often too generic and not tailored to the needs of property owners.

Furthermore, this research outlines how the mismatch between land policies and property owners' perceptions of damage is an obstacle for effectively combating climate change. Traditional risk prevention methods are not sufficient to tackle climate change. In addition, an active involvement of citizen is necessary. Private property owners need to take private mitigation measures. However, their willingness to collaborate with authorities on this matter may be affected in a negative way if the authorities' policies do not match their needs.

A qualitative case study was conducted in a small-scale district in Turkey's Western Black Sea Basin, including narrative interviews with local property owners. These interviews reveal their plural perceptions of property in land and show the mismatch between land policy responses and the property owners' needs. The results of this study lead to a new question for further research: How can state authorities design responsive land policies to approach property owners' plural notions in land after a flood occurred?

3

AUTHOR(S): **Ellen M Bassett[1],** Harvey M. Jacobs[2,3]
[1]Georgia Institute of Technology, USA; [2]University of Wisconsin-Madison, USA; [3]Radboud University Nijmegen, The Netherlands

SESSION: Theories of Private Property Rights and Institutional Change

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Room D

TITLE: Property Rights for Urban Management in the Global South: Lessons from the Natural Disaster Literature

KEY WORDS: property rights, informal settlements, De Soto, Africa

ABSTRACT:

One of the major land use trends of this era is urbanization, especially in the global south. But urbanization in the global south is often highly problematic with the most vulnerable populations living in precarity. Population densities are excessively high, security of tenure is tenuous or non-existent, physical and social infrastructure is often completely lacking or at levels wholly inadequate to population needs, and personal and site safety often puts residents at great risk. Some have described this situation as a form of disaster (though we acknowledge that this description is itself a matter of great controversy).

For over two decades Hernando De Soto and colleagues have advocated for the creation of western-style private property rights in these situations as a pro-poor strategy, a way to promote sustainable social and economic development. Despite criticism leveled at De Soto's methodology, real-world outcomes, and the inability to replicate his results, the ideological appeal of his work has drawn substantial praise and support.

We examine the veracity of De Soto's claims from another perspective. We use the literature on property rights in the context of natural disaster management and recovery to interrogate De Soto's contentions. Overall, the natural disaster literature argues that it is not a particular property rights system per se that provides for resiliency in disaster management and recovery, but instead it is the quality of underlying social and political institutions. In particular, it is the existence of a strong and enforceable legal system, an up-to-date and functional land records system, and a governmental system with legitimacy and authority that determine whether any particular property rights system is likely to be functional or dysfunctional for residents.

Cases of rapid and unplanned urbanization in sub-Saharan African cities are used as data to further ascertain the strength of the arguments in the natural disaster literature and those of De Soto.

4

AUTHOR(S): **Josje Anna Bouwmeester**, Vera Götze
Geographical Institute, University of Bern, Switzerland

SESSION: Governing Densification I

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: Making Room for Affordable Housing: Negotiations between Landowners and Public Authorities in Densification Projects

KEY WORDS: densification, landowners, housing affordability, negotiations, social sustainability

ABSTRACT:

Emerging objectives to combat urban sprawl have put densification on the political agenda. However, many municipalities struggle to implement densification objectives due to the complex ownership structures in already built-up areas. Simultaneously, a prevalent policy trend of adopting a managerial approach to public problems can be observed. This shift has contributed to a more significant role for private initiatives, a focus on the project level, and flexible decision-making at the local level of planning in many countries. Negotiations between planning authorities and landowners thus increasingly shape the outcomes of densification projects. Considering the potential negative effects of densification in terms of social sustainability, specifically housing affordability, it is important to understand how these negotiations affect what type of housing is constructed and for whom. This study uses a neo-institutional framework to analyze the negotiations taking place between different types of landowners and planning authorities. Six projects in Bern (Switzerland) and Nieuwegein (Netherlands) show that the ability of municipalities to secure affordability is highly dependent on 1) the type of private landowner, 2) the presence of relevant institutional rules, and 3) public participation in the negotiations. Therefore, the study makes an important contribution to understanding how social sustainability can be secured in negotiated planning.

5

AUTHOR(S): **Jan Brabec**, Jan Macháč, Marek Hekrle
J. E. Purkyne University in Usti nad Labem, Czech Republic, Institute for Economic and Environmental Policy

SESSION: Urban Green Space

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Kalamazoo

TITLE: Revealing Public Preferences for Urban Green Elements: Evidence from a Large and a Small Town in Czechia

KEY WORDS: climate change, water retention, green infrastructure

ABSTRACT:

Green elements in cities do not only help with adaptation to the effects of climate change but they are in many cases are also visually appealing with some elements being positively perceived to a higher degree than others. Acceptance of urban adaptation measures by residents is of importance to urban planners, local administration as well as to property owners. Public support allows planners to boost the use of green elements, local administration can actively support those elements without the fear of upsetting the public and developers and property owners appreciate the increased quality of living that the neighbourhood provides, which is reflected in the rise of property values.

Popularity of individual green elements and people's willingness to pay for these elements were measured in Prague, the Czech capital city, and in a small town of Litoměřice located in the northern part of the country. Respondents were asked to rate the elements on a Likert scale and to state their willingness to increase the rate of their rent if green elements are implemented in the street that they live in. Additionally, a choice experiment was conducted, during which respondents repeatedly choose from alternative scenarios the one they prefer the most. This method allows to reveal the trade-offs between different elements.

The preliminary results revealed a strong support for trees, small-scale retention ponds, flowerbeds, green roofs, grassy areas, bushes and grassy tram tracks. In general, people seem to be willing to pay a rent 10% higher than the current one if it means that multiple green elements are present in their street. The presence of trees seems to be the main driver of the willingness to pay, making planting trees an ideal choice for planners. Such knowledge could also enhance the investment in greenery from the side of developers and property owners.

6

AUTHOR(S): **Edwin Buitelaar**, Jasper Lebbing, Lilian Karnebeek, Peter Pelzer, Martijn van den Hurk
Utrecht University, The Netherlands

SESSION: Planning Design & Implementation I

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Hussey

TITLE: Regulate or be Regulated: The Institutional Entrepreneurialism of Landowners

KEY WORDS: institutional entrepreneurship, zoning, regulation, institutions

ABSTRACT:

The scarcity of urban land causes multiple activities and land uses to compete for prominence over that land. While in theory, land-use plans guide landowners' decision making, and keep those landowners within limits, planning practice is often at odds with that. Landowners, particularly real estate developers, tend to (co)produce land-use plans rather than follow them. Private and public actors interact in their attempts to articulate, promote and push different claims for future use.

The planning literature has often taken land-use regulation as a given and exogenous. However, some regulated actors do not stay put and passively await rules to be imposed upon them. Instead, they may voice their opinions on proposed and undesirable rules or proactively seek to (co)create new rules or change existing rules in their favor. The coming about of land-use regulation and the role of actors regulated, most notably landowners, in that process have received limited scholarly attention. Our aim is to get a better understanding of how that process works.

We build on the literature about 'institutional entrepreneurship', which aims to explain how actors try to change institutions – i.e. formal and informal rules. The conceptual framework that we derive from that is then used to analyze how these institutional entrepreneurship strategies empirically play out empirically in development location in the Netherlands.

This case is the area of Rijnenburg, a large greenfield site located southeast of the city of Utrecht. In the early 1990s, the area was first mentioned as a potential location for urban development, sparking interest among private developers who then decided to start assembling land. From 2015 onward the site also was envisioned as an ideal location for wind turbines, which would largely preclude housing developments for at least two decades. However, to this day, Rijnenburg remains a predominantly agricultural area – despite high pressure from its landowners. We employed three research techniques to reconstruct the storyline and grasp the institutional entrepreneurship strategies of landowners: (1) content analysis of policy documents and media items, (2) 12 interviews with crucial stakeholders involved at some point in time in the last 25 years, and (3) an analysis of administrative data on land ownership and land transactions, using a dataset of 1088 landholdings (2985.8 acres in total) and 680 transactions (between 1993 and 2022).

We find that there is a complex interrelationship between planning decisions on the one hand and landownership strategies on the other. Landowners anticipate rezoning, partly because the location is considered a 'logical' next step in the extension of the city (of Utrecht) and partly because the local authority has raised legitimate expectations about that through its policy and media outings. Once the actors have become landholders, they engage in processes of institutional entrepreneurialism aimed at shaping land-use regulations in their favor. The persistence and financial power of the developers involved seem to have evoked public regulators softening their resistance against development so as to accommodate the initiatives from the construction industry.

7

AUTHOR(S): **Giovanni Caudo**
University of Roma Tre, Italy

SESSION: Housing Security and Social Welfare II

PRESENTATION:
DAY: May 2
TIME: 3:45 p.m.
ROOM: Hussey

TITLE: Regenerate Corviale

KEY WORDS: housing, public housing, urban regeneration, heritage, adaptive reuse

ABSTRACT:

The Corviale is one of Rome's most problematic neighbourhoods. The project to transform buildings is currently underway, sponsored by the Lazio Region. The “Quarto Piano” was intended for services, community spaces and professional studios but has been converted into illegal apartments. The census had counted 135 households, but the project realized 103 apartments, a number lower than the number of households. The article reconstructs the activities carried out by the Roma Tre University research working group to complete the transformation of the building and focuses on the social support activities carried out with the residents. The issue of housing, considered in the light of this case study, where we can look at the tradition but also the innovation of housing policy, and described in the final chapter, highlights some lines of action that can have a general value that goes far beyond the case reproduced here.

Corviale is Rome's most famous public housing district and enjoys an international reputation. Its main features are length, almost a kilometre, and the concentration of all accommodation in a single building. For these reasons, it is already received much attention from researchers in the field of housing studies. Since 2019, a vital regeneration intervention has been underway for the "Quarto Piano" of the building. Over time, a hundred families have settled illegally, converting the spaces intended for public services, shops, and offices into self-built flats. The self-built houses are being replaced by new houses designed from scratch. It is an intervention that is only partly constructional. Numerous impacts, including intangible ones, come into play and characterise housing policy today; at least, this is the thesis we want to support in this article.

The article's structure describes public housing in Rome and how the Corviale neighbourhood fits into this long, not always linear history. It then recounts the history of the Corviale neighbourhood, essentially its evolution over time and the processes of adaptation carried out by the residents, often as a rejection of the original project. It then describes the "Quarto Piano" redevelopment project and its final conversion into flats, highlighting not only the structural aspects but also the social impact it has had. The article focuses precisely on these impacts by highlighting that today's housing issue represents a spectrum of situations far beyond the housing issue. From this point of view, the case study reproduced here presents the "Laboratorio di Città Corviale" role in accompanying the redevelopment project. The laboratory, promoted by the University of Roma Tre, Department of Architecture, and supported by the Lazio Region, has played a role that should be known because of the results it has achieved in monitoring the implementation of the measures. The issue of housing, considered in the light of this case study, where we can look at the tradition but also the innovation of housing policy, and described in the final chapter, highlights some lines of action that can have a general value that goes far beyond the case reproduced here.

8

AUTHOR(S): **Tzuyuan Stessa Chao**, Hailiang Vince Zheng
National Cheng Kung University, Taiwan

SESSION: Land Policy and Land Valuation I

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Hussey

TITLE: How Would the Land Re-Adjustment Project Influence on Local Housing Prices: A Case Study of Taichung City

KEY WORDS: land re-adjustment, housing prices, difference in differences, quantile regression

ABSTRACT:

Land re-adjustment (LRA) is one of the most common urban development tools in Taiwan. It is considered an effective tool for achieving the urban planning vision. Also, through the LRA, the land for public facilities can be obtained by the public sector. However, by improving the surrounding environmental quality, it is inevitable to result in impacting on the local property market. In the meantime, the housing price-to-income ratio in Taiwan is 9.16% in 2022 and has continued to rise in the past ten years. As a result, it has become a concerning housing justice issue in urban areas. Past studies lack discussions on the timing, magnitude and scope of the impact of the LRA implementation process on property prices. Hence, this paper aims to identify the possible impact periphery of the LRA projects on the real estate price throughout the whole implementation process. The study site of this paper is the Daqing District LRA project in Taichung City, which was just completed in 2021 after 10 years. We collected the housing transaction data from the "Ministry of the Interior Actual Price Registration Database". A total of 10,190 transaction data within a 14-year time frame were collected within one kilometer of the Daqing District LRA project from 2004 to 2020. The quantitative method including the hedonic price model, OLS regression model, difference-in-difference (DID) method, and Quantile regression (QR) model was applied to identify the impacts of the LRA process. According to the results, the possible impact periphery of the LRA on the surrounding housing prices is approximately 300 meters. The timing of the price impact is during the announcement period of the plan and the early stage of project execution, and the impact on high-priced residential buildings is relatively large. We suggest that in order to create a win-win situation of urban development and housing affordability, the provision of affordable housing or social housing units should be required in the Urban Land Readjustment Regulation.

9

AUTHOR(S): **Tzuyuan Stessa Chao**, Haoyu Juan, ChengTzung Lo
National Cheng Kung University, Taiwan

SESSION: Rural Planning and Renewable Energy

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Kalamazoo

TITLE: Green Conflicts Between Solar Energy Development and Food Security in Taiwan: Seeking for the Just Agricultural Land Use Strategy

KEY WORDS: green conflict, Taiwan, agri voltic, renewable energy land use

ABSTRACT:

It is a global concerning issue that about 38% of the global energy-related CO_2 emissions are emitted by the combustion of coal, gas, and oil in power plants. Green energy transition becomes one of the important strategies on the pathway toward the 2050 Net Zero goal recommended by the International Energy Agency (IEA). In Taiwan, due to lacking national resources, an overwhelming 98% of energy generation relies on imports. Hence, the Tsai administration announced the Taiwan Net Zero Pathway in March 2022 and set a national target to generate 60-70 percent of the nation's power from renewable sources by 2050.

It aims to install 40 to 80 gigawatts (GW) of solar power mostly from ground-mounted solar farms. It is to say, there will be approximately 60,000 to 80,000 hectares of land demand from solar developers. It is inevitable that massive agricultural lands will be under pressure to convert to solar farms. On the other hand, the government set a 40% food self-sufficiency rate to sustain food security for climate action and national security purposes. It is no doubt that conflicts between food production and green energy production on the limited 800,000 hectares of farmlands nationwide will get more intense in the near future. This paper starts with reviewing and identifying the possible conflicts of current regulations and land use policies between the agriculture department and the renewable energy department in Taiwan. We believe that a multiple-land-use strategy of farmland might be a solution for the green conflicts. Hence, we will collect the data and estimate the potential farmlands suitable for Agri Voltic use. We suggest that the decision-makers expedite integrated resource planning, avoid critical environmental and social significance areas, and put more effort into small-scale and community-based photovoltaic development. This paper will also conclude with suggestions for future just land use policies.

10

AUTHOR(S): **Eric Charmes**
ENTPE - University of Lyon, France

SESSION: Spatial Planning for Growth Management and Resource Protection

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: France "Zero Net Land Take" Objective: From Intentions to Implementation

KEY WORDS: zero net land take, land conversion, urban extension, land use regulations, anti-sprawl policies

ABSTRACT:

In line with European union objectives (Cavailhès, 2020; Schatz *et al.,* 2021), France government recently passed a law stating that, by 2050, there should be no net land take (or no net "*artificialisation*"). Urban extension on agricultural or natural land will still be possible but only with compensation.

This presentation will first discuss how this objective became law in 2021. Ecological considerations about soil qualities or biodiversity were not the only, or even the main, concern. At least, two other objectives were aimed for: to preserve the country's agricultural potential and to support the fight against sprawl, which had long been pursued by the urban planning community without sufficient success. The variety of these motivations greatly helped to build a consensus around the zero net land take objective. The problem is that these concerns are only superficially compatible. The most obvious contradiction is between intensive agriculture and biodiversity preservation, but there are several other definitional problems (Decoville & Schneider, 2016). The parliament tried hard to find a compromise between all sides, but this resulted in a somewhat convoluted definition of *artificialisation*.

However, the parliament left it to forthcoming *décrets d'application* (implementing decrees) to make the definition of *artificialisation* legally operational for land use plans. This task is far from easy. The second part of this presentation will present the difficulties faced by French public agencies and departments, based on working papers and personal conversations. Several details have derailed the process, to the point that, while the decrees have been published, they are not fully operational, as key points still have to be specified. One issue is the minimum size of land cover for it to be considered non-artificial. If the threshold is set at a low level, many private gardens will be protected from urbanization, which will hamper so-called "soft densification" policies, deemed essential in the fight against urban sprawl. If the minimum size is set at a high level, then only gardens within very low density neighborhoods will be protected, a prospect that raises social and equity issues. A high threshold will also hinder policies favoring ecological uses of private gardens. In addition, some studies question the impact on biodiversity of residential areas densification policies.

The last part of the presentation will present how the zero net land take objective is being challenged by many, not only by home builders, but also by rural municipalities whose comparative advantage in attracting new households lies in cheap buildable land (Charmes, 2021). Indeed, a few months after the publication of the decrees, the minister currently in charge announced that they would be revised, a process that is still undergoing at the time of writing. The concluding remarks will be about how to respect the aim of the law, especially from an ecological perspective, while making it possible to implement.

11

AUTHOR(S): **Chen Chu**
MIT, United States of America

SESSION: Promoting Public and Private Rights through Policy and Law

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Room D

TITLE: Crafting Public Interest: The Case of the Boston Downtown Municipal Harbor Plan

KEY WORDS: waterfront planning, public interest, public trust, procedural democracy

ABSTRACT:

Albeit a contentious concept, the notion of public interest has never been entirely abandoned in urban planning. Considering public interest is important for waterfront planning in Massachusetts because Chapter 91 of the State's General Law is explicitly framed to regulate private uses to protect public interests in tidelands. Regarding the Boston Downtown Municipal Harbor Plan (MHP), different stakeholders have assessed public interests but have arrived at different conclusions. The Boston Planning and Development Agency (BPDA) and the Conservation Law Foundation (CLF) both carried out extensive public engagement processes. BPDA opines that the MHP is in line with the public interest, whereas CLF dissents and alleges that BPDA's process was not fair nor inclusive. They also reason differently about who the legitimate public trustee is.

This debate over the meaning of public interest and its legal implications is not uncommon for other shared natural resources protected by law. However, this case is unique because of the agenda of building climate resilience on top of familiar concerns regarding economic development, historical preservation and public-private property tension. The new climate politics makes interrogation of how public interest is assessed particularly important. The means—or the generation of public interest—is as political as the subject of public interest itself. I will demonstrate how BPDA and CLF differ in four aspects of their approaches to determining public interests: recruiting and representation, the conceptualization of public interest, the form of participation, and the purpose of assessment. I will demonstrate how their different means shaped their conclusions. This research will have implications for democratic decision-making processes for other shared natural resources at different levels.

This paper will start by explaining the distinction and connection between public interest as a socio-political and planning ideal and public trust as a legal doctrine. It will be situated within the tradition of proceduralist democracy. I will use Mick Lennon's thesis of a co-constitutive relationship between planning and public interest to connect a procedural concern over public participation to the public interest or public good as an outcome. I will use a situated description of the specific characteristics of the means and particular conditions under which participation takes place. By interrogating the means, I will explain the two ends of the participation process—what motivate institutions to engage the public, and what they want to get out of it.

12

AUTHOR(S): **Tristan Claus**, Maarten Gheysen, Hans Leinfelder
KU Leuven, Belgium

SESSION: Planning Design & Implementation I

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Hussy

TITLE: My Property My Right: Uncovering the Strategies for Articulating Individual Project Needs to National Planning Legislation in Flanders (Belgium)

KEY WORDS: particularistic planning legislation, individual project needs, interest articulation

ABSTRACT:

Open space in Flanders (Northern part of Belgium) is scarce and fragmented. The region is just about the worst in Europe in terms of the degree of urban sprawl. Yet, ever since the 1962 Urban Planning Act, governments have been drafting plans to guarantee qualitative urban and rural development. In the 1970s, the national, then Belgian, government laid down a spatial framework for the assessment of building permits in the form of territory-wide land use plans for each square metre of land. Subsequently, in accordance with long-term visions in strategic plans, governments on both national (Flemish), provincial, and local level have changed the original zoning of land-uses through so-called implementation plans to cluster the growth of living, working, and other societal functions.

Flanders' national planning legislation, however, time and again has shown to regard private ownership and legal certainty as more important than translating strategic planning ambitions into land use plans. If land use plans restrict development too much, legislation offers at the same time a broad set of deviation rules. For instance, owners of constructions with a use that does not comply with the zoning in the land use plans have the fundamental right to renovate, rebuild or extend these constructions. Owners are even allowed to change the functional use of constructions into completely different uses that do not comply with the land use plans.

Research has already shown that the planning legislation in Flanders is the result of several path dependent political decisions (institutional framework). But what has not yet been studied, is which interplay of strategic coalitions and power relations incentivise legislative decision makers to do so (dialectical interaction of institutions with actors). As a case study, we have unfolded the decision-making process of rebuilding rights for constructions regardless of the zoning in the land use plans. To this end, we conducted (1) a document analysis of press articles and parliamentary reports in the run-up to the adoption of the Flemish Planning Decree of 18 May 1999, accompanied by (2) more than fifteen in-depth interviews with decisive actors, such as ministers, cabinet members, civil servants, and members of parliament (MPs).

This paper shows that interest groups, i.e. groups of individuals who are, knowingly or not, linked by particular bonds of concern or advantage, apply several access channels to articulate their individual project needs to key legislative decision makers. First strategy are the weekly consultation days of MPs, ministers, mayors, and alderpersons with citizens. Constituency service - the non-partisan, non-programmatic effort of elected policymakers to help and defend the particularistic interests of citizens in their constituency - has had a significant impact on the decision-making process. Next are the practices of associational interest groups, that have lobbied both MPs and government cabinets for an extension of their members' individual property rights. The final access channel consists of the mass media. By framing the constructions as illegal and/or extinguishable, they have created an amount of social unrest large enough to pressure decision makers for quick, generic solutions in legislation.

13

AUTHOR(S): **Peter Davids**
TU Dortmund University, Germany

SESSION: Valuing and Managing Land by Water

PRESENTATION:
DAY: May 2
TIME: 3:45
ROOM: Kalamazoo

TITLE: Exploring the Relation Property Rights and the Behavior of Homeowners in Flood Risk Governance

KEY WORDS: homeowners, property rights, flood risk governance

ABSTRACT:

The transition of flood risk management to flood risk governance invites homeowners (i.e. landowners) to become more actively involved in flood risk reduction. By implementing property-level flood-reducing measures, homeowners can adapt their property against flooding or reduce flood risks downstream. This turns these landowners into crucial stakeholders to contribute to flood resilience.

However, these landowners are not always willing to adapt their property, but their motives why they are not adapting their property, or how these landowners can be motivated, remains not fully explored.

Property rights might substantially influence a landowners' behavior. Yet, we have only a limited understanding of how property rights connect to the concept of flood resilience and landowners' behavior. Therefore, in this study, we explore if and how property rights affect landowner' involvement in flood resilience and their role in flood risk governance. We anticipate that the dynamics of the land market, i.e. dynamics in the time landowners hold their property, could influence the landowners' behavior on implementation of property-level flood-reducing measures.

To explore the relation between property rights and behavior of landowners, a literature study reflects on the outcomes of previous research on landowners´ willingness to protect their properties against flooding in Belgium, the Netherlands, and Germany.

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AUTHOR(S): **Gabriela Debrunner**, Michael Wicki, Katrin Hofer, Fiona Kauer, David Kaufmann
ETH Zürich, Switzerland

SESSION: Housing Security and Social Welfare I

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: Housing Precarity in European and U.S. Cities: Threatened by the Loss of a Safe, Stable, and Affordable Home

KEY WORDS: housing precarity, housing affordability, segregation, social exclusion

ABSTRACT:

Increasing numbers of urban dwellers face housing precarity in many cities globally. This paper examines this global struggle by looking at how different resident groups in six large cities in the 'Global North' (Berlin, Chicago, London, Los Angeles, New York, and Paris) are affected by housing precarity. We specifically focus on how vulnerable residents, namely older residents, households with children, minorities, and renters, perceive their housing situation and examine how precariousness of housing manifests itself across the six cities. We thereby conceptualize housing precarity as a multidimensional phenomenon, using five different dimensions: *1) housing affordability*, *2) tenure security*, *3) housing satisfaction*, *4) neighborhood quality*, and *5) community cohesion.* Building on an original survey with 12'611 respondents from the six cities, we estimate multi-level linear regressions to analyze housing precarity and examine which resident group is affected how. Results indicate that tenure type, i.e., renting, is a strong predictor of housing precarity. We furthermore find that having children contributes to social embeddedness and attachment to community, but also increases their fear of being forced to relocate. Lastly, our findings indicate that residents of U.S. cities face greater lack of affordability and housing insecurity than residents of European cities.

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SESSION: Comparative Analysis in Theory and Application

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: Tenancy Rights and Decommodification: A Comparative Analysis of the Tenancy Rights Situations in Austria, Germany, and Switzerland

KEY WORDS: tenancy rights, tenancy law, decommodification, affordable housing, social exclusion, gentrification, property rights

ABSTRACT:

In recent years, tenants throughout the world have faced increasing rents followed by social evictions, particularly in the urban context. Housing affordability has become a challenge not only for lower-, but increasingly for middle-income households. This paper examines the tenancy rights situation in Austria, Germany, and Switzerland through the lens of decommodification. The focus is on the rules of access to housing markets for new residents and the rules of security that govern the ability of the occupants to continue living in their apartments.

Our aim thereby is to compare (a) the legal differences between the tenancy rights situations, and (b) the decommodifying effects of the implemented rules on tenants' housing situation. Specifically, we ask; (1) How are tenants legally protected through tenancy rights – at the federal but also at the regional and local levels? (2) How does the tenancy rights situation effect tenants' legal protection in housing? And (3) What influence does tenants' legal protection have on private homeowners' decisions to rent out their property?

To answer the research questions, results are conducted through a qualitative and comparative case study design between Austria, Germany, and Switzerland. The three countries are so called 'nations of tenants', but with significant differences in tenants' protection outcomes. Findings show that while tenancy rights in Switzerland are weakly protected, tenants in Austria and Germany receive stronger protection. Conclusions of this study help urban planners and practitioners to (re)consider tenancy rights as an effective way to protect tenants from displacement and to decommodify urban housing stocks.

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AUTHOR(S): **Gabriela Debrunner**[1], Rebecca Leshinsky[2]
[1]ETH Zürich, Switzerland; [2]RMIT University, Australia

SESSION: Social Justice and Inclusion

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Room D

TITLE: Gender, Urban Space, and Decision-Making: The Role of Gender in Swiss Spatial Development and Planning

KEY WORDS: gender, inclusive decision-making, social equity, social justice

ABSTRACT:

In many Western liberal states, spatial planning goals are to be implemented by regions and municipalities. Municipal councils decide on the instruments and measures activated to support sustainable land use (e.g. zoning). But also, on the strategies taken to foster sustainable development in the long run (e.g. active land policy). This makes them key responsible actors for sustainable urban change.

However, there is only little known about gender-inclusive decision-making in municipal executive bodies regarding spatial development processes and outcomes. Therefore, we aim to address this gap in literature by examining gender inclusivity in spatial decision-making. Switzerland makes an interesting case to study this issue since the state is assumed to support gender-inclusive decision-making since many years, however, in June 2019 the country was also scene of one of Europe's so far largest women strike. Therefore, we recognize a strong contradiction between political structures and outcomes - also in the Swiss spatial planning system. Specifically, we ask for the Swiss case; (1) How are women included in spatial decision-making in Swiss municipal councils? (2) How are the results to be interpreted from a social inclusivity perspective of decision-making? And (3) What implications for potential change result for future sustainable land use planning and development in Switzerland? To answer these questions, we systematically analyse data of over 140 Swiss urban and agglomeration municipalities in which over 70% of the population lives. Results help us to start debates on gender inclusiveness in spatial development and planning and to support effective urban sustainability around the globe.

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AUTHOR(S): **Gabriela Debrunner[1], Andreas Hengstermann[2]**
[1]ETH Zurich, Switzerland; [2]Ulster University, Belfast, UK, United Kingdom

SESSION: Governing Densification I

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: Four Theses on the Effective Implementation of Densification Goals: Discussing by Referring to the Swiss Case

KEY WORDS: densification, implementation, policy, law

ABSTRACT:

Densification is considered a desirable planning solution to prevent urban sprawl and reduce land consumption. The implementation of this goal is acknowledged to come with a range of benefits such as biodiversity preservation, improvements of water runoff regimes, or optimizing infrastructure costs. While the need for densification is largely undisputed in the planning debate, the question remains however how to achieve this policy objective? Planning practice is struggling with the implementation of densification objectives because the process implies that stakeholders must deal with the already built environment, small-scale ownership structures, mosaic of ways etc. In this paper, we discuss four theses that help explaining these implementation difficulties in a systematic way. We take the Swiss spatial planning policy system as a case study example due to its traditionally high priority of densification implementation in Swiss cantons and municipalities. Our four theses suggest different intervention ways at the federal, cantonal, and local levels to steer and implement densification goals effectively. Besides a clear definition of what 'densification' means (and what not), greater financial and personnel support is regarded key for municipal planning administrations to effectively resist against increasingly professional and powerful landowners.

18

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SESSION: Comparative Analysis in Theory and Application

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: Post-Consent Planning and Enforcement in Rules-Based and Discretionary Planning Systems: The Case of England and Germany

KEY WORDS: planning systems, discretion, trust, enforcement, planning permission

ABSTRACT:

Implementation and enforcement have traditionally received comparatively less attention in planning practice and research than plan making and the granting of development rights. Once planning permission has been granted or a binding land use plan has been approved, the planning process is usually considered complete. However, most planning system allow for adjustments at a stage when the planning process is considered complete, to which we refer as post-consent planning. In the English system, post-consent allows for important details of schemes, including on design, layout, density, and landscaping to not only be agreed post-consent, but for the details of an original permission to be renegotiated. However, the context in which decisions are made fundamentally shifts with the grant of permission. The incentives and motivations of key players may change, and new players enter the development process, with the potential to impact behavior, practice, and development outcomes, such that the final built product appears markedly different to its original depiction. Our working hypothesis is that under a rules-based planning system with details intentionally fixed earlier on in the development process in land use plans, there are fewer mechanisms for post consent change and renegotiation. This paper draws on empirical evidence from studies of development management practice in both England and Germany, to explore how and why schemes change post-consent, the relationship between key players at this stage, and the differences and similarities between zonal style and discretionary based planning systems in handling post-consent change where it occurs. These studies reveal new insights into the development process, particularly around the legal status of planning decisions in different contexts, the impacts and implications of non-compliance, and importance of trust between different parties.

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AUTHOR(S): **Heather Dorries**
University of Toronto, Canada

SESSION: Social Justice and Inclusion

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Room D

TITLE: Sacred Fires, Homeless Encampments, and Planning Toronto Parks

KEY WORDS: parks, homelessness, indigeneity, colonialism, property

ABSTRACT:

According to mainstream planning theory, urban parks serve many important functions: they enhance urban ecosystems and provide social and psychological benefits to urban dwellers. Critical geographers show how urban parks are also highly regulated spaces, subject to variety of urban norms and legal technologies that criminalize specific park users and uses. This paper considers the conflicting and contradictory nature of park management in Toronto through an examination the ways park management has become part of the City of Toronto's Reconciliation Action Plan and the ways the City has violently cleared Toronto parks of homeless encampments.

In 2022, the City of Toronto announced that it would open three designated sites in Toronto parks for Indigenous peoples to hold sacred fire ceremonies, thereby making good on one of the commitments in the City of Toronto Reconciliation Action Plan. This announcement was made on the heels of a police operation to clear Toronto parks of homeless encampments. Citing City by-laws, those living in parks were charged with trespass. These encampments include many Indigenous peoples: 35% of Indigenous adults in Toronto are experiencing homelessness and make up about 15% of the unhoused population. In this presentation, I will examine how policies relating to park planning and management in Toronto mobilize understandings of nature that enable the park to serve as space of reconciliation while also reflecting an extractive and managerial approach to park spaces based on understanding parks as a form of property. Finally, I will consider Indigenous legal orders can help to re-frame understandings of human-environmental relations that emphasize relationality rather than exclusion.

20

AUTHOR(S): **Stefanie Dühr**
University of South Australia, Australia

SESSION: Spatial Planning for Growth Management and Resource Protection

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Investigating the Policy Tools of Spatial Planning

KEY WORDS: policy tools, policy instruments, spatial planning, urban and regional planning, policy reform, South Australia

ABSTRACT:

Spatial planning is a comprehensive field of public policy and characterised by a considerable diversity of policy tools. Some of these policy tools have a long tradition, but a broadening scope of spatial planning over recent decades in many liberal democracies, accompanied by policy reforms to the way in which spatial planning operates, has altered the nature and type of policy instruments in use. Planning reforms are not only affecting substantive policy instruments, but also procedural policy tools that structure how policies are formulated, implemented and evaluated. Previous analyses have given limited attention to policy tools for urban and regional planning, yet in this paper it is argued that a focus on procedural policy tools can allow a structured assessment of implications of major policy reforms for substantive instruments and societal outcomes. A framework for the study of procedural policy tools according to stages of the policy cycle is proposed, and applied to recent planning reform in South Australia. This allows a critical discussion of how changes to procedural policy tools can influence the effectiveness of substantive policy tools, and affect the ability to involve different actors during the policy process and in shaping decisions about future urban development.

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AUTHOR(S): **Richard James Dunning**, Thomas Moore
University of Liverpool, United Kingdom

SESSION: Housing Security and Social Welfare I

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: The Land Beneath My (Mobile) Home: The Struggle to Definancialize Park Homes in England

KEY WORDS: property rights, mobile homes, financialization, housing, England

ABSTRACT:

Over the last 70 years mobile (park) homes in England have been experiencing land and home financialization. The literature frequently describes housing financialization as a present continuous process, in which the financial aspects of housing increase their dominance over other aspects, yet it is clearly also an historic process. Some types of housing have been experiencing the increasing prevalence of financial control for years and even decades, so what happens after housing financialization? In this presentation we explore the role of property rights in enabling and constraining attempts at financialization of park homes in England, to explore the historic process of financialization and to highlight how the government has struggled to respond to calls for de-financialization because of the complexity of land and property rights being intertwined. We conclude by arguing that historic reviews are useful for drawing out permutations of property rights and processes of financialization, that could provide new research questions into contemporary processes.

22

AUTHOR(S): **Besmira Dyca**
Wageningen University and Research, Netherlands

SESSION: Valuing and Managing Land by Water

PRESENTATION:
DAY: May 2
TIME: 3:45 p.m.
ROOM: Kalamazoo

TITLE: Come Hell or High-Water, Prices Will Not Go Down? A Systematic Review of Residential Property Markets' Reaction to Flood Risk and Flood Events

KEY WORDS: residential property market, flood risk reproduction, bounded rationality

ABSTRACT:

Expected utility theory is frequently used to examine decision-making around insurance, people's willingness to pay to avoid risk and so on. However, this theory falls short when it comes to explaining hikes in property prices in areas exposed to flood risk or after a flood event. The relationship between residential property market and flood risk and events is complex, especially when accounting for the positive impact that proximity to water bodies generally has on residential properties. Quantitative findings from empirical studies point to a wide range of results, from −75.5% price discount to the +61.0% price premium for properties exposed to flood risk. A clearer understanding of this relationship is important, especially when considering a growing interest in integrating land-based instruments as part of flood risk management plans. Predicting and understanding the results of such planning instruments on the properties they affect is very important but difficult, if a clearer link between property markets and flood risk is not established first.

This study identifies and explains the factors that affect the way residential property markets react to inland flood risk and flood events globally, through a Systematic Literature Review (SLR) including 92 studies. Interim findings were discussed and validated during two rounds of interviews with 6 international experts, selected from the pool of authors covered by this SLR. Findings point toward a number of ontological factors, including (1) existing market elasticity and cycle, (2) submarket dynamics in flood events, as well as public policies affecting market efficiency, such as: (3) flood risk information disclosure, (4) floodplain management and implementation, (5) flood damage recovery schemes and (6) insurance market design.

Additionally, a number of factors are related to bounded rationality: (7) information dissemination and understanding, (8) cognitive factor, (9) personal experience with flood, (10) Distance from water bodies and (11) Economic, Social and Cultural factors. Results highlight also epistemological factors which affect the accuracy with which empirical studies evaluate this relationship. These include (1) sampling, (2) time of study, (3) accuracy of assessing residential property value, (4) representative structural attributes, (5) accounting for the quality of building at sale time, including floodproofing and post-flood renovations, (6) selection of representative neighbourhood and location attributes, (7) accounting for amenity value due to waterfront proximity and (8) of other locational factors, (9) the accuracy of defining flood risk, (10) accounting for property specific inundation, (11) severity of flooding, (12) flood history and (13) outdated flood risk information. These findings inform the effect that some government interventions in floodplain have in skewing the market and distorting people's attitude towards risk bearing information disclosure and insurance design. The importance of advancing research on the role of these policies in supporting unsustainable floodplain development patterns is highlighted. Finally, findings also point toward bounded rationality as a theoretical lens which can contribute to better understanding people's decision-making behaviour and can inform future policy making.

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AUTHOR(S): **Caitlin Sloat Dyckman**[1], Anna Treado Overby[2], Stella Watson Self[3], David L. White[4]
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SESSION: Easements, Exactions, and Takings

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Exurban Conservation Easements in the Context of a Climate Change Adaptation Diagnostic Framework

KEY WORDS: conservation easements, climate change adaptation, equity

ABSTRACT:

Biodiversity loss from human land use conversion into agriculture, forestry, and exurban residential development is starkly evident in the U.S. and globally and is only projected to worsen as climate change becomes the dominant driver by the middle of the 21st C (IPCC AR6 2021). There has been an increase in private land conservation predominantly through perpetual conservation easements (CEs) across exurban landscapes. CEs are deed restrictions on private lands that alter a property owner's ability to use their property for extractive and intensive land use. A governmental or a non-governmental land trust (LT) holds the CE, enforcing against the property owner if they violate the terms. With the volume of privately held land and over 40 million acres conserved through CEs in the U.S. (Owley et al. 2018), the perpetual CE is an instrument that can support or thwart equitable climate change adaptation.

CEs reveal the fundamental tension between biodiversity conservation needs and physical space for development (especially with climate refugees), as well as agricultural production. Already challenged for their social equity in restricting public access, the costs associated with their placement, and the potential displacement of other land uses (McLaughlin 2005), they rest in a liminal state. Planners often categorize them in the nebulous land use of "open space," but they're neither the purview of public governance or private market systems and represent a diffused, semi-neoliberal and semi-public strategy depending on the purpose of the CE itself and the intent of the CE grantor. Their heterogeneity (purpose, holder), perpetual intergenerational duration, and physically static nature may benefit but may also impede landscape scale climate adaptation under rapidly shifting biomes (IPCC AR6 2021). CEs may connect with publicly conserved lands and act as climate refugia for natural and human systems alike. CEs are—and will increasingly be—at the heart of conversations about how to equitably adapt in exurban fringe adjacent to rapidly growing urban areas.

Using the Moser and Ekstrom (2010) diagnostic framework, our work identifies the barriers that CEs present to equitable climate change adaptation (Moser and Ekstrom 2010; Shi 2020). We also propose possible solutions to improve their capability and planners' engagement with their use. Our methodologies include a secondary comprehensive data analysis of existing and emerging scholarship on CEs and primary data collection through interviews CE holders. The interviewees were a representative sample of LTs (n = 20) in eco-regionally representative and exurban areas across the U.S. Our results affirm or refute and expose additional barriers and adaptations beyond those revealed in the literature, suggesting that CEs have variably equitable adaptive potential depending on the nature of the climate change threat and the tradeoffs in land availability and the physical environment itself. CEs may be creative fiscal and physical mechanisms to address vulnerable areas and effectuate retreat from hazards. Some LTs use careful judgment/balance competing societal demands and potential for displacement with CEs. There is also a need for planners to understand the CE capacity for transformative adaptation (Shi 2020) and their limitations.

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AUTHOR(S): **Robert Goodspeed**, Justin Schell, Michael Steinberg
University of Michigan, United States of America

SESSION: Social Justice and Inclusion

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Room D

TITLE: Justice InDeed: Exposing and Responding to Racially Restrictive Covenants in Washtenaw County

KEY WORDS: racially restrictive covenants, racial equity, segregation

ABSTRACT:

In the early 20th Century, racial segregation was fostered and enforced in most U.S. cities through the use of racially restrictive covenants–provisions in property records which prohibited Black people and other racial and religious groups from purchasing certain properties (Gotham, 2000, Jones-Correa, 2000). The use of racially restrictive covenants became widespread in the 1920s, after racially restrictive zoning was struck down by the U.S. Supreme Court as unconstitutional in 1917. In 1948, the United States Supreme Court ruled that courts, as government bodies, could no longer enforce racially restrictive covenants—although the Court did not say they were illegal (Shelley v. Kraemer). In 1968, Congress passed the Fair Housing Act, outlawing housing discrimination by private parties and making racially restrictive covenants patently illegal. Although these covenants are not enforceable, we believe they cause real harm now when they are discovered during real estate transactions, they provide an opportunity for community education about systematic racism, and they are are relevant to inform current housing policy debates.

Racially restrictive covenants still exist as part of the deeds to thousands of homes in Washtenaw County, which contains the cities of Ann Arbor and Ypsilanti. Justice InDeed is a group of researchers, students, residents, and community activities who are working to educate the community about the role these covenants and other racist housing policies played in causing segregation and economic inequality, repealing the covenants, and encouraging the adoption of policies to repair the damage caused by systemic housing discrimination in Washtenaw County.

Our presentation will share our efforts to map the covenants which exist in local property records, as well as our ongoing organizing and advocacy work to repeal them and foster broader community education. Our preliminary research, conducted with records from the County and a local title insurance company and limited to covenants affecting an entire subdivision, has mapped 121 subdivisions which either allow sales to “Caucasian” buyers only, restrict sales to “Colored” people. A few contain additional restrictions, such as prohibiting sales to Jewish people. We are working with County officials to extend our research by scanning the entire corpus of digital property records using optical character recognition algorithms to document covenants associated with individual properties, a methodology pioneered by the Mapping Prejudice project in Minneapolis (Walker and Derickson, 2022, Ehrman-Solberg et al, 2022). In addition, Justice InDeed has been involved in working with neighborhoods who can voluntarily repeal these provisions through mechanisms contained within the property records, as well as supporting the passage of a statewide law creating a process for individual homeowners to repeal covenants. In addition Justice InDeed is involved in a variety of community research and education efforts, including presentations in high schools, collaborations with community leaders, and involvement in broader historical research about black community formation.

A multifaceted, community-engaged project, the presentation will highlight the role of law and property rights systems in producing racial inequality in the American context, as well as how investigating how understanding this history is essential to pursuing greater racial equity today.

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AUTHOR(S): **Vera Götze**[1,2], Josje Bouwmeester[1], Mathias Jehling[2]
[1]University of Bern, Switzerland; [2]Leibniz Institute of Ecological Urban and Regional Development (IOER), Germany

SESSION: Governing Densification II

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: What Markets Can't Explain: Low-Income Households in Densification Projects in Utrecht, the Netherlands

KEY WORDS: densification, affordability, negotiated planning

ABSTRACT:

Compact city policies are relied upon by governments worldwide to reduce land consumption stemming from urban growth. However, recent studies have addressed the potential trade-off between densification and housing affordability. Concerns have been voiced that densification leads to a one-sided housing supply, structurally excluding low-income households. It is therefore necessary to study who lives in densification projects and under what conditions densification creates housing for all income groups.

To this end, we explore household incomes in dwellings constructed between 2012 and 2020 in Utrecht, the Netherlands, where the combination of long-standing densification policies and liberalised planning makes for an interesting case.

Using income data on household level, we measure to which degree newcomers' incomes differ from the regional average. To explain income variation in densification projects, we then run a regression model using variables related to neighbourhood status, location and densification process. Projects where predicted and actually measured household income differ strongly, are finally evaluated qualitatively, allowing us to consider factors as landownership and applied planning instruments.

Contrary to expectation, our results show that infill developments address a large spectrum of socio-economic groups. Lower-income households are especially prevalent in redevelopment projects in previously low-status neighbourhoods. But even attractive locations show substantive shares of low-income households in newly constructed dwellings. Through further qualitative examination of such surprising cases, we find that landownership and planning regulations play an important role in steering the housing offer. Our contribution adds nuance to the concern of new-built gentrification and provides insight into which conditions enable more inclusive forms of urban densification.

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AUTHOR(S): **Thomas Hartmann**
TU Dortmund University, Germany

SESSION: Governing Densification II

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: Land Policy for Urban Densification: Instruments and Strategies

KEY WORDS: densification, land policy, instruments, Germany, planning law

ABSTRACT:

Urban densification is promoted by planners in many European cities as a solution to many problems –housing shortage, reduction of land take, etc. Land policies implement spatial planning by intervening in the allocation and distribution of land with public policy instruments, i.e. influencing property rights in land so that the plan can be realized. Land policies are composed of different instruments that in combination can form strategies of land policy. These instruments are largely rooted in planning law.

There are, however, inherent characteristics of many planning laws that hinder urban densification: The embedded idea of functional separation and the intrinsic growth-orientation of planning. The origin of spatial planning in industrializing towns and cities was based on the idea of separating land uses that provide nuisances to each other. Functional separation (also referred to as Euclidian planning) is entrenched in the idea of land-use planning (which is more obvious in the US-American term 'zoning'). Yet, densification promotes mixed uses within urban areas. In addition, most planning laws are designed for urban development at the urban fringes, where property rights are often less complex and less fragmented and higher planning gains can be realized. Also contractual land policies (urban development contracts) or active land policies work best for greenfield-development. Functional separation and growth-oriented planning are in conflict with urban densification (Hartmann et al. 2022). This is a challenge for land policies that ought to implement densification.

In response, some planning laws are reformed and new instruments are introduced or changed – such as recently in Germany with the 'building land mobilization law' (*Baulandmobilisierungsgesetz*) (Hengstermann & Hartmann 2021). How suitable are the new and existing instruments to tackle the challenge of urban densification and how can they be embedded in a strategy of land policy?

This contribution provides an inventory of instruments and strategies of land policy for densification. The focus in on German planning law. Instruments range from formal public policy regulation (e.g. land readjustment, pre-emption rights, or property taxes) to property rights approaches (e.g. freehand-purchase, incentives etc.). In this study, these instruments are assess regarding their effectiveness, efficiency, legitimacy, justice, and practicability for realizing urban densification and they are then discussed in how they contribute to certain strategies of land policy for urban densification.

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AUTHOR(S): **Dongsheng He**, Guibo Sun, Chris Webster
The University of Hong Kong, Hong Kong S.A.R. (China)

SESSION: Housing, Real Estate, and Land Values

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: New Metro and Housing Price and Rent Premiums: A Natural Experiment Study in China

KEY WORDS: metro, housing premium, natural experiment, causal inference, China

ABSTRACT:

This paper used a stringent natural experiment, leveraging longitudinal housing price and rent data before-and-after two newly operated metro lines in Shenzhen, China, to provide robust causal inference on the effects of new transport infrastructure on housing premiums. Local planning knowledge was used to enhance the natural experiment research design. We assigned control groups from housing surrounding alternative line alignments that were planned but not implemented, and treatment groups were from housing in the new stations' catchment areas. Substantive planning knowledge of how the metro was planned, particularly the pursuit of land finance and engineering efficiency, helped us ensure as-if-randomness of the treatment-control group assignment. We applied hedonic difference-in-difference (DID) models to assess the average treatment effects with parallel trend tests. The results showed that for one metro line, housing prices and rents increased significantly after the metro went into service, while only the housing rent premium was observed for the other line. In addition, housing rents of treatment groups showed a price gradient over distance to metro stations in both metro lines, which might suggest that housing rents would be a more reliable measure to estimate the housing premiums from the metro interventions. This study offers a crucial understanding of the causal links between metro access and housing premiums. The findings provide insights into designing value capture approaches to offset metro development costs in China and elsewhere.

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AUTHOR(S): **Andreas H. Hengstermann**[1], **Vera Götze**[2,3]
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SESSION: Land Policy and Land Valuation II

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: Planning Matters… On Your Bank Account!

KEY WORDS: Swiss planning law, land policy, added value dompensation, de-zoning

ABSTRACT:

Land is a commodified good that can be traded between private parties at market conditions. Accordingly, land is attributed to a price. This value arises from local conditions (e.g., soil quality) to macroeconomic developments (e.g., financial policy, economic development). Planning is one essential factor that determines how land values develop. Concretely, every development phase, from agricultural land to a plot ready for construction, increases the land value. National planning systems, through defining development phases, thus affect when land prices rise, by how much, and who profits from these value increases; these are important framework conditions for sustainable spatial development. Despite its enormous importance, this nexus between planning and land value has received too little attention in the recent planning literature. This study aims to systematically analyse the various value steps determined in planning law and their impact on land value by updating and adapting a German model from the 1960s (Bonczek & Halstenberg, 1963).

We adapt the model to the context of the Swiss land regime as it is characterised by (1) very high land values and a correspondingly massive price development, and (2) a well developed debate on how to deal with these value increases (public value capture).

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AUTHOR(S): **Marco Hölzel**, Walter T. de Vries
TUM Technical University of Munich, Germany

SESSION: Promoting Public and Private Rights through Policy and Law

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Room D

TITLE: Planning and Politics: The Revision of the Bavarian State Development Programme (LEP)

KEY WORDS: planning, politics, planning process, regional planning, spatial planning

ABSTRACT:

Planners plan and politicians decide on these plans and concepts. Especially when the scale becomes larger and the issues more abstract, away from immediate concern. The process of planning seems to be a political negotiation. Opponents play the instruments of publicity, press relations and press conferences on one side and the forces of power on the other.

Starting in 2019 the responsible Bavarian State Ministry for Economic Affairs, Regional Development and Energy conducts the process of a partial revision of the Bavarian State Development Programme (Landesentwicklungsprogramm LEP). An initiative called 'Wege zu einem besseren LEP' (Paths to a Better LEP) had already been formed during the previous revision. Professional and business associations, professional chambers and environmental and youth organisations are active in this initiative. The conflicting perspectives lie in the state government's adherence to a growth orientation with all its consequences for spatial planning on the one hand, and the approach of the Better LEP initiative for a reorientation of state planning towards sustainability, balance and environmental protection on the other.

Planning theory evolved in Germany after WW2 between restorative approaches (Meitinger & Pfeil, 2014) and modernising (Durth & Gutschow, 1993) to structuralist approaches. In the rational planning approach, which is still valued, planning is seen as a tool. Planning should prepare decisions or, conversely, planning should enable the achievement of politically determined goals (Meyerson & Benfield, 1955, S. 314). In the 1960th Lucius Burghardt considered the roll of the public in planning (Burckhardt, 2014). Each member of the society has to be responsible for decisions regarding the community, as Klaus Selle is referring to the Lorenzetti Code (Selle, 2013).

If Planning is regarded as a political process, this was mainly done on city or regional scale. This research investigates the negotiation of the LEP like a local planning processes regarding power, influence and tools.

We investigate the negotiation during the revision process of the LEP on one hand by the publicly available documents, e.g. drafts, press release etc. and on the other hand by interviews with actively involved people from different perspectives. The analyse of the sources is regarding strategies, tools and the self-conception of the stakeholders.

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SESSION: Housing Security and Social Welfare II

PRESENTATION:
DAY: May 2
TIME: 3:45 p.m.
ROOM: Hussey

TITLE: Urban Planning, Land Expropriation, Forced Eviction, and Resistance in Taiwan

KEY WORDS: urban planning, land expropriation, forced eviction, resistance, civil society

ABSTRACT:

Many cases of land expropriations (or eminent domain) through urban planning have taken place in Taiwan for many years, and they have become serious issues in Taiwan society. For example, Taiwan society was astonished in June 2010 because of a horrible case took place at Dapu of the Miaoli County. The local government abused the power of urban planning and land expropriation in order to establish a new community next to a science park. Farmers were expelled by policemen from their homes and farmlands. Rice in paddy fields ready for harvest soon was totally destroyed by bulldozers. The other terrible case occurred at Siangsihliao of the Changhua County approximate at the same time. Many elderly peasants were forced to leave their homes and farmlands because the government planned to construct a science park at their homes.

Another case takes place in Taoyuan because of the Taoyuan Aerotropolis, which is the biggest project that the state plans to perform in recent years. The state and the Taoyuan city proclaims that it is a brand new smart, green, ecological, resilient and international city, and it will creates many new jobs and trillions in revenue. The total area of the Aerotropolis project is around 4,791 hectare. Unfortunately, the Aerotropolis is not established in undeveloped vacant land. There are approximately 15,000 houses and 46,000 residents face losing their homes and land. It means many houses will be demolished, and many people will be displaced from their homes. In addition, there are many similar cases taking place in different counties.

Local residents and farmers have organized grassroots organizations and gone to Taipei several times to petition and protest against authorities saying that they don't want to be kicked off their land and home. They also proclaim that their opinions have not been included in the decision-making processes, and urban planning and land expropriation has seriously violated their human right. Many researchers also indicate that the policy of land expropriation is an ethical failing, and such harm toward local residents is not justifiable. Regrettably, in order to promote economic growth the state is willing to sacrifice human right. Forced eviction or displacement has become a serious social problem in Taiwan.

Through participant observation and in-depth interview with those displaced peasants and residents the authors try to explore human development issue and ethical problem in this paper. The authors support the argument of responsible development (Penz, Drydyk and Bose 2011) and maintain that those actually or potentially displaced must be regarded as part of a comprehensive set of development rights. The paper describes how local grassroots organization and NGOs promote these ideas and assist those displaced in their resistance activities. The paper also maintains that local grassroots organization and NGOs play important role in Taiwan human development since they bring normative and ethical values into public discourse and decision-making of urban planning and public policies in Taiwan.

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AUTHOR(S): **Edward Joseph Sullivan**[1], **Caleb Huegel**[2]
[1]Portland State University, United States of America; [2]Oregon Land Use Board of Appeals

SESSION: Spatial Planning for Growth Management and Resource Protection

PRESENTATION:
DAY: May 5
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Natural Resource Protection in the American State of Oregon

KEY WORDS: land use, planning law, environmental law

ABSTRACT:

Oregon is the tenth-largest US state with almost 250,000 square kilometers and a geography that ranges from a 584 km coast, two significant mountain ranges, a desert and many natural resources with a population of 4.2 million, three-quarters of which live in the Willamette River Valley (161 by 97 km). As with almost any place in America, there are political and legal conflicts over the rights to possess and use natural resources on private lands, as well as the use of those resources on public land. There is a vigorous property rights movement throughout the United States, which comes into conflict with indigenous rights, minimum instream flow requirements, and other public rights. It is useful to have a legal regime that minimizes these conflicts and provides a level of consensus over the use of natural resources.

Over the past half-century, a consensus has been crafted to bring together various interests to support public planning and regulation of fifteen different natural resources. In addition to the broad constituency for wilderness and fish and wildlife protection, this consensus includes hikers and boat enthusiasts using scenic waterways and hiking trail, supporters of historic and cultural preservation schemes and, a successful outreach to purveyors of energy and mineral resources and to the more conservation-oriented Portland Metropolitan area. The result was a system that is sufficiently successful to hold its own against private property rights absolutists.

This paper will deal with natural resource protections in the context of the Oregon planning system in discussing their history, evolution, and mechanics. It will analyze planning policies and protection measures, and evaluate the current system and its prospects for improvements.

32

AUTHOR(S): **Dottie Ives-Dewey**
West Chester University, United States of America

SESSION: Rural Planning and Renewable Energy

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Kalamazoo

TITLE: Rural Land Use Planning in Pennsylvania: An Evaluation of the Impact of the Statewide Smart Growth Agenda

KEY WORDS: rural planning, land use, smart growth

ABSTRACT:

In 2000, Pennsylvania adopted Growing Smarter legislative agenda that included a comprehensive set of initiatives to encourage local land use planning. State legislation was amended to enable new planning tools including multi-municipal planning and zoning, and to strengthen existing tools. The legislation also required state agencies to consider local land use ordinances and comprehensive plans in making infrastructure permit and funding decisions. This research investigates the sustained impact of legislative initiative over a 20-year period, with particular attention to impacts in rural areas in Pennsylvania. Specific research questions include: Did the legislation result in an increased use of land use planning tools in rural areas? Are there spatial differences in the use of tools across different types of rural communities, and what accounts for those differences?

The research is based on a 2020 survey of county and local governments in Pennsylvania. Planning officials were asked to identify land use planning tools used, how plans influence decision-making, the perceived effectiveness of tools in achieving local planning goals, and obstacles to their use. Key person interviews were completed for a selection of rural municipalities.

Use of comprehensive plans increased 20% across all rural municipalities in Pennsylvania from 2000 to 2020. Intergovernmental planning increased, including multi-municipal planning across local governments. There was not, however, a parallel increase in zoning and other implementing tools. Across different types of rurality, there were varying experiences in the use of plans and regulations. Whereas rural communities in the metropolitan fringe or “exurban” communities increased use of conventional planning tools, “deep” rural locations generally did not.

Findings suggest a general shift in planning focus in rural areas driven by a rising concern regarding disaster planning, hazard mitigation, and economic development, with variation across different rural areas related to local contextual factors. Many rural communities, especially in “deep” rural areas lack the capacity to undertake local comprehensive planning and zoning. Unique and varying rural land use challenges pose special challenges and have important implications for improving local communities and addressing issues of regional, state, and global concern.

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AUTHOR(S): **Thomas Jacobson**
Sonoma State University, United States of America

SESSION: Easements, Exactions, and Takings

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Imposing "Exactions" on New Development to Address Wildfire Risk: New Uses for Old Tools

KEY WORDS: wildfire, development impacts, exactions, funding wildfire risk management

ABSTRACT:

Wildfire is an increasingly serious resilience problem in many parts of the world. The array of approaches to reducing this risk is extensive: vegetation management, structure hardening, prescribed "controlled" burns, improved evacuation infrastructure, enhanced water supplies, "avoidance" by identifying areas of especially high wildfire risk and limiting or prohibiting certain kinds of development there, improved site design, preserving and creating greenbelts and other wildfire buffers, etc. Funding for these efforts has come, and will likely continue to come, from a variety of sources -- various agencies of federal and state government, city and county governments, utility providers, NGOs, homeowners groups, etc. Still, as the need for these efforts becomes more clear and likely to expand, questions about funding become more important. As addressing wildfire risk takes center stage in many planning discussions and processes, state and local governments are challenged to develop a broader array of tools for that task. While some of those tools may be altogether new, others will be retrofitted versions of approaches with well-established track records.

One tool of the latter group is "exactions" -- conditions imposed on development, including land dedication requirements, “impact fees,” and on-and off-site improvements -- intended to offset the effects of that development. Exactions are well recognized in various state planning regimes in the U.S. and have been a part of its land use planning landscape for many years (parkland dedication requirements for new residential development and traffic impact mitigation fees to fund needed new transportation infrastructure are classic examples). Exactions are fundamentally based on the principle that new development can be required to "pay for itself," in the sense that it can be responsible for offseting any impacts of the development. These impacts can take the form of the need for new facilities, environmental consequences, and the like. And, put simply, the legal limitations on exactions in their various forms is that they must bear a relationship to the impacts of the development project and not simply government's desire for community benefit.

While it is certainly true that wildfire risk can exist independent of development, allowing new development in areas of greater wildfire risk, and the associated demand for greater wildfire protection, creates a need for heightened wildfire mitigation. And, development itself can have the effect of increasing the likelihood of wildfire ignitions and hotter, more dangerous fires. Thus, we can say that wildfire-related impacts can be the outcome of new development.

The questions addressed in this paper focus on the potential for exactions to be imposed on new development to address the impacts of that new development on wildfire risk. Toward that end, it will look at traditional methodology for establishing and imposing exactions and the adaptations (e.g., the involvement of fire scientists) needed to make them effective and legally defensible tools for managing wildfire risk. It will utilize the perspectives of constitutional legal analysis, impact fee methodology, and the evolving science of identifying and addressing wildfire risk to inform potential avenues of planning practice.

34

AUTHOR(S): **Jinwon Jeon**
Yulchon LLC, South Korea

SESSION: Comparative Analysis in Theory and Application

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: Methodology and Structure of Comparative Urban Planning Law

KEY WORDS: planning law, comparative planning law, property rights

ABSTRACT:

This article attempts to systematize comparative urban planning methodology by reviewing the discussion of comparative legal methodology and applying it to the field of urban planning law. The following is the article's primary point: We need a “realistic goal” for the comparative planning law, and it could be to focus on the system's modifiability. The goal of comparison could not be to find “general, desirable principles” or “better” solution, as asserted by some comparative law theorists, but rather to find just a “motive” to design a solution. It is either difficult to establish universal legal values underpinning planning law or inappropriate to evaluate superiority because it is based on territorial sovereignty and policy judgment of each system.

It is inevitable to start by selecting a “functionally equivalent” system for investigating the object of comparison. However, the process and analysis of comparison must be complemented by a study of the “context” on land use relations. However, the context cannot be extended indefinitely for the realistic goal, so it must be systematized. From the original context of planning law, the tension between the rights and obligations of planning authorities and property owners, this article presents five contexts for comparative analysis: “Strength of Property Rights,” “Distribution of Planning Power,” “Level of Deferential Review,” “Plan- or Development-led System,” “Level of Participation.” These contexts should be examined to understand the similarities and differences observed through comparison, and they should be regarded as crucial in the practical use of comparative study results.

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AUTHOR(S): **Eran Kaplinsky**
University of Alberta, Canada

SESSION: Easements, Exactions, and Takings

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Nothing Gained: A Critique of the Law of Constructive Taking After Annapolis Group v Halifax Regional Municipality

KEY WORDS: Canada, takings, compensation, zoning

ABSTRACT:

In its recent decision in *Annapolis Group Inc. v. Halifax Regional Municipality* [*Annapolis Group*], the Supreme Court of Canada provided new guidance on the law of so-called "constructive" taking. The courts had held previously (*Canadian Pacific Railway Co. v. Vancouver (City)* [*CPR*]) that a claimant was entitled to compensation only upon proving (1) an acquisition of a beneficial interest in the property or flowing from it; and (2) a removal of all reasonable uses of the property. In *Annapolis Group*, the majority of the Court held that the first part of the test does not require that the state acquire a legally recognized interest in the property, but merely some "advantage". The dissent regarded this reformulation of the CPR test as an unwarranted departure from precedent and insisted that the acquisition of a proprietary interest be maintained as part of the test for constructive takings.

The dispute in Annapolis Group arose from the municipality's failure to adopt the necessary planning instruments that would allow the claimant developer's lands to be serviced and developed in the future. In the result, the developer was left with extensive land holdings that could not be developed. The Nova Scotia Court of Appeal struck the developer's claim against the municipality for failing to satisfy the constructive taking test in the absence of an acquisition by the municipality. The Supreme Court allowed the developer's appeal and held that the case should be allowed to proceed to trial.

Annapolis Group is an important precedent that lowers the threshold for compensation claims for planning injuries in Canada. In some important respects the decision is consistent with the extant Canadian jurisprudence, namely, that the right to compensation is not immutable and may be defeated by clear legislative intent, or by a finding by the court that even a single reasonable use of the property was left to the owner. At the same time, however, vexing questions persist. One challenge is the uneasy manner of reconciling *Annapolis Group* with the ratio and outcome of key decisions in the area, including *CPR* itself, which is at the core of the dissent's criticism of the subversion of the acquisition test. A second challenge concerns the import of the "advantage" to the state which a claimant must demonstrate. Specifically, from owner's perspective and given the imperatives of justice and fairness, it makes no difference if the state gains a proprietary interest in the property, merely an advantage, or nothing at all. I will trace the root of these questions to a line of Canadian cases which holds, perhaps incorrectly, that the right to compensation for regulatory injuries hinges on the characterization of state action as a "taking" and remark on an alternative approach the courts might have adopted.

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AUTHOR(S): **Michael Kolocek**
ILS - Dortmund, Germany

SESSION: Housing Security and Social Welfare II

PRESENTATION:
DAY: May 2
TIME: 3:45 p.m.
ROOM: Hussey

TITLE: Property Rights and Social Cohesion in the Rhineland: Planning in Times of Uncertainty

KEY WORDS: land use conflicts, social cohesion, property rights

ABSTRACT:

The Rhenish Mining Area is one of three remaining lignite regions in Germany. Since the beginning of lignite mining in the middle of the last century, people living in the Rhineland have faced various relocations. More than 50 villages have been abandoned with thousands of persons losing their homes. However, in the last 30 years, the mining plans changed several times. While some villages were removed, others remained because new mining plans required less areas for mining. The uncertainty about the future of their villages led to high levels of psychological distress for the affected residents (Krüger et al. 2022).

In 2020, the German parliament passed legislation to end coal-fired power generation by 2038. Two years later, it was decided that lignite mining in the Rhineland will end even earlier, by 2030. The phase-out of lignite-based power generation has enormous economic consequences for the region, including the affected villages. The federal state of North Rhine Westphalia and the German government are supporting the transformation process with huge investments in different sectors, planning to make the region a model for a de-carbonised yet industrial development (Polivka et al. 2022).

The paper is based on a research project about social cohesion in three villages in the municipality of Erkelenz. The villages are affected by lignite mining in three different ways: One village was not planned to be removed, but is close to the open-pit mine. Another one was initially foreseen for removal, but after new mining plans in 2014 now planned to remain. The third village is a so-called “resettlement village” for people from five former villages originally foreseen to be abandoned. In 2022, residents of the “resettlement village” learnt that their former villages will not be removed after all. Their former properties are already in the hand of the energy company. While villagers will be able to buy their properties back, it remains unclear how many of them actually will do so.

The paper presents and discusses findings of a survey in the three villages, conducted in 2022. The main questions are: How do ongoing land disputes affect people’s trust in local and regional actors? How do people react when they lose their homes and learn that, due to new decisions, this loss was not necessary after all? How do the developments in the villages affect land markets?

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AUTHOR(S): **Katharina Künzel**, Julius Korekt, Niklas Artmann, Sören Blankertz, Lilly Böhrk, Josephine Render
Department of Spatial Planning, TU Dortmund University, Germany

SESSION: Governing Densification I

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: Urban Densification: Understanding Landowners' Inertia

KEY WORDS: densification, landowners, rationales, housing

ABSTRACT:

Urban densification is promoted by many municipalities in the interest of sustainable development and alleviating housing shortages. Accordingly, municipalities develop land policies to support this objective. A prevalent and inherent assumption of municipal land policies is that property rights are predominantly an economic asset, and landowners strive for maximising profit. Yet, landowners' inertia in developing their land according to the building rights is one of the main obstacles of effective implementation of urban densification.

There is still a limited understanding of the interests and behaviour of landowners. A more comprehensive understanding of the rationales of landowners is necessary for the municipality to implement more effective densification policies.

This contribution addresses this gap in knowledge by examining landowners' interests and behaviour. The research is based upon a quantitative and qualitative research design with empirical evidence from Germany. First, the interests of owners of vacant lots are explored based on qualitative interviews. Subsequently, a Q-method provides insights in the subjectively experienced motives of vacant lot owners through a statistical factor analysis.

The study revealed two most critical factors influencing landowner behaviour (acceptance of responsibility, and freedom of decision-making) and distinguished five types of landowners. They differ in their interest and behaviour of dealing with their vacant lots. It is then discussed and concluded how this plurality of landowners and how they perceive and use property rights requires plural densification land policies in order to address the dilemma between housing provision while containing urban sprawl. This contribution thus enhances the debate of designing responsive intervention strategies when dealing with property in land.

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AUTHOR(S): **Dasha Kuletskaya**
RWTH Aachen University, Germany

SESSION: Land Policy and Land Valuation I

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Hussey

TITLE: Concepts of Use-Value and Exchange-Value in Urban Research

KEY WORDS: use value, exchange value, value dialectic, land value

ABSTRACT:

This article looks closely at the concepts of *use-value* and *exchange-value* and their application in urban research. Critique of the prioritization of the exchange value under capitalism lies at the heart of a vast body of academic literature on the right to the city. However, most publications apply these terms not in their original meaning as categories of political economy, but as normative evaluative categories, which leads to their moralization. To address this problem, this paper traces the transformation of use-exchange-value dialectic from its origin in Marxian value theory, throughout the writings of Lefebvre and Harvey to its current application in urban research. Consequently, it highlights three different ways how the concepts of *use-value* and *exchange-value* can be applied in urban research, including the critique of property on land. Based on several case studies, this paper argues for a detailed scrutiny of value dialectic as a productive analytical tool for urban research.

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AUTHOR(S): **Rebecca Leshinsky**
RMIT University, Australia

SESSION: Housing Security and Social Welfare I

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: Tensions and Stresses in Condominium Developments: A View from the Voices of Stakeholders

KEY WORDS: multi-unit housing, complaints, conflicts

ABSTRACT:

Tensions in multi-unit residential condominium developments are expected with numerous people from all backgrounds living in proximity, and there is no say in who can buy in to such private developments. This is entwined with strict statutory governance structures that disallow those lot owners who are in arrears in their levies and fees from participating in voting at annual general meetings. Further, in the state of Victoria, residential tenants in condominium buildings have no say in the day-to-day governance and operation of the development. Melbourne's six pandemic lockdowns exasperated these tensions and stresses with strict public heath orders including forced lockdowns compelling residents to work from home and restricted outside movement with time and distance curfews. Melbourne continues to be also plagued by residential building defects and the cladding crisis. This chapter explores these concerns from the voices of condominium property managers and owners and committee members from a sample of high-rise residential developments and master planned estates. Stakeholders participated in four focus groups in 2021 whereby they raised concerns and tensions in multi-unit living which are relevant to other like developments in Australia, as well as other global cities. The findings identified several issues related to the pandemic that forced home quarantine, emergency condominium management processes not accounted for in condominium governance, as well as other ongoing stresses caused by short stay accommodation, building defects particularly related to fire prone cladding, and the management of extreme events such as fires, storms, and power outages. The chapter concludes with a call from stakeholders for more crisis and disaster management planning for residential multi-unit developments to be able to cope with ongoing and future unexpected events.

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AUTHOR(S): **Rebecca Leshinsky**[1], Balkiz Yapicioglu[2]
[1]RMIT University, Australia; [2]Arkin University, Cyprus

SESSION: Planning Design and Implementation II

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: In the Age of Bling: A New Look at Property Development Bumping into Consumer Protection and Compliance

KEY WORDS: property development, consumer law and compliance, education

ABSTRACT:

This paper re-situates the development phase of construction projects, in an age where too many high-rise buildings, across the globe, are riddled with defects and non-compliance. Often, it is only after construction that such defects are discovered. All industries attract entrepreneurs, and this is essential to springboard novel ideas for goods and services. Without such risks we would not have electricity, cars, open heart surgery or the internet. Anti-trust laws and consumer protection have placed checks and balances on practices that risk exploiting others, be it humans or scarce resources. We have introduced into our university teaching examples of property developers who, at times, stretched the envelope too far in the context of land use planning & development and urban design. From conception to occupancy, compromise on design and construction is often driven by finance and supply issues. Some practices are deemed by the courts to have gone too far. In this paper, we rely on case study examples to argue that property students need better upfront skills and knowledge. Inter alia, this is in consumer law as it intersects with property and land use planning and development, as well as negotiation and conciliation, to ensure greater care and skill goes into avoiding risk of defects and misuse of planned materials and design of developments. Such education must be a bottom up approach provided by skilled educators to inform students on areas such as: misleading advertising, respecting heritage fabric, how to achieve high class sustainable design and construction including attention to high ceilings, flexible spaces, high-quality fixtures and fittings, good natural light access, cross-flow ventilation, double glazing, low-energy lighting, a high level of insulation, a high level of sound separation, non-toxic building materials and robust and low-maintenance surface materials. Compliance with promised and expected standards is essential, even after contractual variations. Via a text analysis approach, the authors have examined news stories and recent examples of case law from comparative jurisdictions to collate and analyse case study narratives of excessive bling property development behaviour. It is anticipated that the paper will begin a fresh conversation to better prepare property professionals as to the importance of smart up-front planning in the development stage, including involving advisors throughout the development phase of a construction project, to ensure new builds/retrofit consumer expectations are not compromised

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AUTHOR(S): **Alan Mallach**
Center for Community Progress, United States of America

SESSION: Theories of Private Property Rights and Institutional Change

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Room D

TITLE: The Problematic Future of Socialist-Era Housing in Post-Socialist Eastern Europe: Legal, Planning and Policy Challenges in Light of Demographic and Economic Change

KEY WORDS: post-socialist countries, large housing estates, privatization, demographic change

ABSTRACT:

Between 1945 and 1990, millions of flats in large multi-family estates were built by the then-Socialist regimes in the post-Socialist countries of eastern Europe (including East Germany and the Baltic nations). These housing estates, vast ensembles of panelized concrete buildings typically 5 to 15 stories in height, are the dominant housing type in nearly every Eastern European city, often housing the majority of the urban population. Except in Germany, after 1990 these properties were sold, generally at nominal prices, to their tenants. In recent years widespread demographic decline juxtaposed with increased private construction, including both dense urban and sprawling suburban residential development, has raised serious issues with respect to the condition and future of much of this stock, including physical deterioration, financial instability affecting condominium entities and centralized energy providers, social relegation such as the conversion of some estates to Roma 'ghettoes' and others to *de facto* senior citizen housing, rising vacancy rates, and outright market failure. With steep declines projected in the number of households in Eastern European countries, all of these problems are likely to become far more severe over coming decades. While local variations exist between individual countries in configuration and extent, all post-Socialist nations are facing similar challenges.

This subject lies at the intersection of planning, law and property rights. The all but total privatization of this sector after 1991, coupled with the economic and demographic changes since then, and the inadequacy of legal and planning mechanisms, have created conditions where intervention to address any of these issues has become difficult if not impossible. In my paper, I will trace the development of this sector to the present, and then explore the nature and extent of the future legal and planning challenges, focusing in particular on the intersection of legal and planning issues with the implications of projected economic and demographic change. I will contrast the picture in selected Eastern European nations with the radically different model in Eastern Germany, where ownership of these estates remained in the hands of quasi-state housing corporations, and where public sector interventions, including extensive demolition under the aegis of *stadtumbau ost*, have led to significantly different outcomes.

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AUTHOR(S): **Shishir Mathur**
San Jose State University, United States of America

SESSION: Adjudication or Judicial Planning?

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Room D

TITLE: Assessing the Legality of Employing Transportation Utility Fee: Need to Overlay Landmark Court Decisions on State-level Determinants

KEY WORDS: municipal finance, transportation planning, state law, tax vs fee, transportation utility fee

ABSTRACT:

A transportation utility fee (TUF) is based on the principle that users should pay for transportation infrastructure and services just as they pay water and electricity charges. It can be paid regularly, for example, monthly or annually.

There is a growing interest nationwide in employing a TUF. It was used by ten jurisdictions in the early 1990s, more than 30 jurisdictions across five or more states by the mid-2010s, and is currently being used by close to 100 jurisdictions.

The biggest challenge to using a TUF is to prove that it is a fee, not a tax. In four instances (Brewster v. City of Pocatello, Idaho 1989; Covell v. City of Seattle, Washington 1995; Heartland Apartment Association v. City of Mission, Kansas 2017; Utah Sage, Inc. v. Pleasant Grove City, UT 2020), state Supreme Courts struck down TUFs, ruling that they are a tax. In addition, in State v. City of Port Orange, Florida (1994), the Florida State Supreme Court ruled TUF unconstitutional because, among others, the state statutes did not authorize it. In all these cases, the courts have considered the legality of TUFs in the context of state law. Hence, there is a need to consider the takeaways from landmark TUF-related court cases and state-specific determinants while designing a TUF program. This research, which sits at the intersection of planning, municipal finance, and law, begins to fill this knowledge gap by using California as a case study to demonstrate how court decisions can be overlaid on state-specific determinants to identify a set of legally-robust options for levying TUF.

The specific research questions: Research Question 1: What are the major takeaways from the TUF-related court cases about designing a TUF program? Research Question 2: What options emerge for levying TUFs when the takeaways from the court cases are overlaid on the state-specific determinants?

This research employs the following two-step methodology. To answer the first research question, it analyzed the precedent-setting court cases on this topic and identified the major takeaways from these court cases about designing a TUF program. To answer the second research question, it uses California as a case study to show how researchers, transport planners, and policymakers can overlay the takeaways from the court cases on the state-specific determinants to identify the options for levying a TUF in a state. It does so in the case of California by analyzing state-level statutes that limit the use of taxes and fees and interviewing experts to identify the options California jurisdictions have for levying TUFs.

These options include implementing TUF as a fee, a property-related fee, a special assessment, a general tax, or a special tax. It also discusses each option's feasibility along the following dimensions: voting requirement, legal, political (includes stakeholder support), administrative, revenue yield, and equity. Then, it overlays the takeaways from the court cases on these options to distill the key findings and supplements the analysis with interviews with local government staff administering TUF programs.

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AUTHOR(S): **Nir Mualam**
Technion- Israel Institute of Technology, Israel

SESSION: Planning Design and Implementation II

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: Mixed Use / Public-Private Agreements: Vertical Allocations of Public Floorspaces in High Density Development

KEY WORDS: vertical development, densification, public space, value capture, public private partnership

ABSTRACT:

The shortage of available land in densified metropolitan cities demands maximizing its utility. Public authorities are required to find creative solutions to satisfy the growing demand for the supply of public space. The allocation of public services in privately owned buildings constitutes one instrument to answer these challenges.

This paper introduces this tool by looking at the phenomenon of Vertical Allocations; specifically, we examine how municipalities appropriate floorspace in newly built multi-purpose structures, which are mostly privately owned. While designating these floors for public use, such as schools and kindergartens, municipal bodies assume responsibility for these new public resources. Based on interviews with experts as well as secondary resources (reports, legislation) we explore the link between value capture and public floorspace in mixed use development. We also discuss the characteristics of this phenomenon, its challenges, and opportunities.

Specifically, Vertical Allocation of public floorspace presents special challenges, among which are uncertainty and challenges from joint ownership. Given rapid population growth, scarcity of land, and other challenges surrounding Israel's implementation of Vertical Allocations, the Israeli experience with this type of mixed use can serve as a teaching model and a test case for the rest of the World.

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AUTHOR(S): Ana Peric[1], **Zorica Nedovic-Budic**[1,2]
[1]University College Dublin, Ireland; [2]University of Illinois at Urbana-Champaign, US

SESSION: Planning Design and Implementation II

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Kalamazoo

TITLE: How Planning Culture Shapes Urban Megaproject Development: Evidence from Chicago

KEY WORDS: urban megaprojects, collaboration, planning culture, Chicago

ABSTRACT:

Regardless of the socio-spatial setting in which they emerge, urban megaprojects exhibit similar features. These are mainly seen in architectural and urban design, neglecting the place identity but following the rules of transnationally accepted visual expression. In financial terms, megaprojects involve powerful economic actors, which tend to override the concerns of local authorities, citizens, and planning professionals. As the control mechanisms of urban megaproject development are usually weak, effective collaboration among the stakeholders with conflicting interests is difficult to achieve. Hence, megaprojects require attending to more than procedural instruments (rules and regulations). More precisely, awareness about deep-rooted factors, such as underlying beliefs, values, ways of doing things, and fundamental societal orientations, plays a crucial role in understanding the complexity of megaproject development. These two groups of factors – procedural and intangible – form a planning culture.

To explore how specific planning culture shapes urban megaproject development, we focus on the case of Lincoln Yards, a contemporary urban megaproject development in Chicago. Previously used as a privately owned industrial area in the close vicinity of the Chicago downtown, in 2017, the Framework Plan, i.e., a spatial vision for the future development of the broader area, including the Lincoln Yards, proposed the land-use change: from manufacturing district to mixed-use area. Considering the attractive position of the site, access to central infrastructural nodes, and a demand for new residential, office and recreational spaces ('live, work and play'), the Lincoln Yards became the case coloured by great controversy and tremendous public attention.

To elucidate the case, we apply the actor-centric perspective to highlight the individual human capacity for social learning and possible incremental regulatory and institutional change. Using the in-depth qualitative case study based on documentary and discourse analysis and interviews, we explore individual visions, stakeholders' everyday routines, and deep-rooted societal values as the core layers of an actor-centric planning culture model. More precisely, to assess these layers, we examine the following variables: professional argumentation and non-expert cognitive frames ('ways of thinking'); level of stakeholders' mutual trust and the extent of (joint) visions; current people's practices and routine actions; the nature of the planning approach; power relations in stakeholders' interactions; and, societal ideological orientations. By elucidating the nature of collaboration through the cultural lens, the case study, finally, provides some lessons learned to improve planning practice.

45

AUTHOR(S): **Richard Norton**
University of Michigan, US

SESSION: Adjudication or Judicial Planning?

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Room D

TITLE: The Case of *Higgins Lake*: Requiring Static "Normal Lake Levels" in Michigan Through Judicial Decree, Contra both Statute and Reality, for the Benefit of Shoreland Property Owners

KEY WORDS: lake levels, dynamic nature, shoreland property rights, judicial policymaking

ABSTRACT:

Half a century ago, the Michigan Legislature passed a law that allows property owners surrounding an inland lake to petition a circuit court to establish by judicial decree a "normal lake level" for the lake. Upon petition, the court is to determine a level that provides "the most benefit for the public; that best protect[s] the public health, safety, and welfare; that best preserve[s] the natural resources of the state; and that best preserve[s] and protect[s] the value of property around the lake." MCL 324.30701(h). In making such a determination, courts are to consider further seasonal variations, the hydrology of the watershed, and downstream flow needs, especially for fisheries and wildlife. Once a normal lake level is set, the lake becomes a "regulated lake," and the county within which the lake is situated is obligated to maintain the ordered "normal lake level" by, for example, operating a dam at the downstream reach of the lake. In doing so, however, it cannot cause downstream harms or violate permits issued by the state.

Some property owners surrounding Higgins Lake sued Roscommon County alleging that the county was not taking sufficient actions to maintain Higgins Lake water levels at the court ordered "normal level," particularly during the summer months. The county responded that it was not able to maintain that level because of extended drought, and that—because of permit requirements—it was also obligated to provide a minimal throughflow for downstream fisheries and wildlife. In deciding whether to issue an order of mandamus (i.e., an order by the court compelling the county to do a better job), the circuit court reasoned that the requirement to maintain a "normal lake level" under the statute must be tempered by the realities of nature, and that the county could not satisfy the property owners without violating its permit. It refused to issue a mandamus order. On appeal, however, the Michigan Court of Appeals reversed, essentially ruling that "normal" means "static," without reference to natural variation (and essentially ignoring the county's permit requirements), and it remanded the case for further proceedings (i.e., ordering the trial court to issue the mandamus). Recently, the Michigan Supreme Court declined to take up an appeal of the Court of Appeal's decision. The ruling that "normal" means static, without regard to natural variation, and that a county has a duty first and foremost to maintain that level no matter what, is thus (currently) good law in Michigan.

There is a well-established (and growing) literature critiquing the courts (especially the federal courts) for going beyond merely adjudicating complaints that government is being abusive in exercising its authority. Rather than checking governmental abuse, the concern is that the courts are instead substituting their own policy preferences for those of (elected) legislatures, typically refusing to defer to the expertise of the administrative branch (the planners) in doing so, and typically doing so in order to vindicate private property rights (or other individual constitutionally recognized rights) above all other considerations. Drawing from that literature, this paper will assess the Michigan courts' actions in *Higgins Lake* for their appropriateness, both legally and with regard to reality, especially given that the variable dynamics of natural lake systems will only become more variable—and even less likely to ever be static—because of global climate change.

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AUTHOR(S): **Ünsal Özdilek**
University of Quebec, Montreal, Canada

SESSION: Urban Green Space

PRESENTATION:
DAY: May 4
TIME: 1:30
ROOM: Kalamazoo

TITLE: Green Land Rent Underpinnings in Value State Mechanisms

KEY WORDS: green land rent, value, land value capture, land valuation methods

ABSTRACT:

In the physical world, there is a recognized value on unused and nonrenewable resources on land, and those who use it pay this equivalent value in land rent. Rent is governed by the value state mechanisms of expectation of future value of resources and information, or the 'used' value which comes from expectation. As knowledge of resource access increases, the rent reward from these resources is used, often at the expense of the natural world. At the same time, society has increasingly placed a premium on abstract knowledge needed to translate natural resources into intellectual capital, which has accelerated resource extraction and environmental decay. Solutions have been suggested to minimize the negative impacts of these changes, yet they are limited and context-specific. This study proposes that classic rent can be used as a fundamental measure to justify its relation to the value state and its expectation and information dynamics. Furthermore, we suggest that the changing form of rent as a consequence of natural access and depletion require a sustainable approach to preserve equilibrium through a concept called Green Land Rent (GLR). GLR proposes a sustainable economic measure to protect and share limited resources by considering economic factors of expectation and information. We support our concept of using GLR by presenting empirical estimates of a property's separate land and building values as well as referring to historical trends. We also clarify and expand on the policy applications, institutionalization, and practical solutions related to the concept of rent. Overall, we argue that a better understanding of the concept of rent and its relation to value state and information dynamics can guide policy and institutionalization efforts towards sustainable resource use and preservation.

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AUTHOR(S): **Emilia Malcata Rebelo**, Gustavo Teixeira
University of Porto - Faculty of Engineering, Portugal

SESSION: Housing, Real Estate, and Land Values

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: Housing Financialization: Impacts on Planning, Law and Property Rights - The Case of São Paulo, Brazil

KEY WORDS: financialization, real estate, stakeholders, housing supply, housing typologies

ABSTRACT:

The global economic crisis of 2007-2009 and the Eurozone crisis triggered the interest in studying the relationship between financialization processes and the urban environment (Klink and Souza, 2017). Harvey, in his theory of capital switching, dubbed this crisis as the "financial crisis of urbanization" (Christophers, 2011; Lee and Cheng, 2011).

Capital switching refers to the flow of capital from one sector of economic activity to another (Harvey 1982, 1985). Thus, whenever there is over-accumulation of capital in the primary circuit (industrial and productive sectors), capital flows into the secondary circuit (infrastructure and buildings). Financial institutions freely invest and divest capital in the built environment, as they consider real estate as an asset (Aalbers, 2008).

But this free movement of capital requires real estate assets to be readily negotiable and highly liquid. After the deregulation of real estate markets, the use of new instruments - of a financial nature - aimed at overcoming the immobility and illiquidity of real estate products began to spread (Abreu et al., 2020). These instruments opened the real estate market to investors (Nichols, 2019).

In this sense, the financial system uses mortgages and securitization. These consist of a set of mechanisms that transform a physical asset with low liquidity and high transaction costs into a financial asset with high liquidity and ease of negotiation (Abreu et al., 2020).

In this scope, this article seeks to analyse the main impacts of the increasing financialization processes on the real estate market, especially in the housing sector, that have been perceived by the stakeholders involved in supply. Within this scope, interviews with stakeholders were pursued in the city of São Paulo (Brazil), which illustrate the perception of financialization from the perspectives of planning, law and property rights.

From this research it can be concluded that financialization processes have been targeting the supply of residential real estate preferably to investors, which changes urban morphologies and building typologies, and affects the behaviour of the stakeholders responsible for supply, who become more focused on financial objectives than on the provision of living spaces.

48

AUTHOR(S): **Heidi Gorovitz Robertson**
Cleveland State University, College of Law, United States of America

SESSION: Rural Planning and Renewable Energy

PRESENTATION:
DAY: May 2
TIME: 1:30 p.m.
ROOM: Kalamazoo

TITLE: Irrationalizing the Local Role in Energy Development: Oil and Gas v Wind and Solar in Ohio

KEY WORDS: preemption, local control, renewables, wind and solar, oil and gas, energy development

ABSTRACT:

With respect to allowing local jurisdictions to regulate energy development projects, the Ohio legislature treats renewable energy quite differently from energy derived from fossil fuels. The Ohio legislature granted local jurisdictions broad authority to regulate or reject wind or solar energy development projects. As a result, local jurisdictions, some in Ohio's best areas for harnessing wind power, have made it impossible to site wind energy projects within their boundaries. In contrast, that same legislature has increasingly and definitively prevented local jurisdictions from weighing in on siting and other issues related to oil and gas production. So, local jurisdictions have little control over the regulation of oil and gas development projects and cannot ban or block them.

To illustrate this inconsistency, imagine one Ohio city wants to be sure that any oil and gas development that occurs within its boundaries is safe and conducted in locations best suited to that use. Citizens are concerned about noise, traffic, methane emissions, and more. The city wants to control siting of oil and gas development projects through zoning controls, set-back requirements, and more. But by serial amendments to the state oil and gas law the Ohio legislature said 'no,' the city cannot make those oil and gas development-related siting decisions. Instead, the legislature assigned those decisions directly and exclusively to the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management. The rationale was that those energy development-related siting decisions should be made by the state agency because the state economy would benefit from a uniform regulatory system for oil and gas energy development.

Imagine another Ohio jurisdiction wants to be sure any new wind or solar energy development does not occur too close to its homes and schools. It's concerned about noise, vibration, radiation, and construction traffic. It wants to control siting of wind and solar energy development projects by creating set-back and lot size requirements. Here, rather than preempting those decisions, the state legislature issued a resounding 'yes!' In fact, the Ohio legislature enshrined explicitly in state law the ability for local authorities to veto siting of wind and/or solar energy-development projects on the grounds that those energy-related siting decisions should be made locally.

Why would the legislature allow local jurisdictions to block renewable energy development while outright prohibiting local jurisdictions even influencing even the siting of oil and gas development projects? Why would the legislature seek a uniform regulatory system for one form of energy development – fossil fuels, but find local control important for another - renewables? This seems inconsistent, even irrational. This article lays bare the legal and logical inconsistencies in the Ohio legislature's recent treatment of local regulatory authority for renewable energy development projects as compared oil and gas development. It asks what drives the state legislatures' decisions to preempt, or not to preempt local control of energy development-related siting decisions. The issues raised herein clearly pertain to law, to the planning efforts of local jurisdictions, and to the property rights of landowners and local governments.

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AUTHOR(S): **Cornelia Roboger**
TU Dortmund University, Germany

SESSION: Land Policy and Land Valuation II

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: The German Land Value Tax: A Potential Instrument of Land Policy for Efficient Land Use

KEY WORDS: land value tax, property tax, land policy, densification, inner development

ABSTRACT:

The land and housing markets in Germany can currently be characterized by a high demand for housing. This leads to significant increases in prices and a shortage of affordable housing. One approach to dealing with the excess demand on the markets is the activation of hitherto undeveloped land in the built realm (densification), where landowners have not yet developed the permitted building potential. Activating such land is essential for more efficient land use while also offering more supply to the markets. Despite being vital for social and environmental objectives, activation of the potential areas frequently fails. One reason for that is a lack of effective instruments due to political, legal and administrative difficulties. There is thus a need for instruments that can break the impasse and activate such land. Although property taxes are primarily fiscal instruments, they can create incentives for spatial development and land use.

Currently, the German property tax system is being reformed and a land value tax (*Grundsteuer C*) is being introduced as an optional instrument for municipalities. A land value tax can potentially be an instrument of land policy for more efficient land use. This contribution seeks to explore how the German land value tax can indeed be used as an instrument of land policy to contribute to the activation of inner urban development potentials in Germany. Therefore, a mixed method approach is used, including a rapid review on effects of a land value tax and the political discourse of the German reform. The aim is to understand how land allocation was considered in the tax reform. In addition, representatives of municipalities are interviewed to better understand the practical obstacles and effects of the land-based taxes in German municipalities as an instrument of land policy.

The results show that the allocative effect has not been properly considered in the reform of the property tax by the German legislator, despite the common agreement of the international debate on the effects of such taxes. The interviews confirmed the relevance of the tax through empirical evidence. Municipalities suggest that a land value tax is best integrated into an overall strategy of land policy. Existing instruments can be supported by the incentive and financial pressure of the tax. However, the debate that has been initiated in Germany mostly focuses on the distributional effects of property tax models instead of the allocative effects of taxes. This seems to be a missed opportunity, which is discussed in this contribution. So, it can be concluded that the choice of property tax is indeed relevant to the goal of efficient land use. The land value tax has a significant impact on the activation of inner development potential. Still, the political will to implement and effectively use the tax is a basic requirement for its impact. In summary, it can be shown that a land value tax can support effective land use if it is functionally applied as a land policy instrument.

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AUTHOR(S): **Marina Sapunova**
KIT Karlsruhe Institute of Technology, Germany

SESSION: Governing Densification II

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Hussey

TITLE: Densifying Modernist Living Space of the 20th Century as a Development-Led Urban Renewal Policy in Post-Soviet Russia

KEY WORDS: urban renewal, densification transformations, spatial transformations, ownership / property, private-led planning, public interests

ABSTRACT:

The modernist living space of the 20th century is one of the most transformative in post-Soviet Russia today. On the one hand, its low density stimulated the emergence of infill development, a vast space for changes and compaction in the 2000-the 2020s. On the other hand, the depreciation of buildings makes it easy for the state to promote the image of "morally obsolete" housing that needs to be rebuilt. Behind the visible densification, there is a transformation of the other part concerning property rights and then the property regime reshaping. Coupled with the drastic lean towards the authoritarian government over the last decade, the power imbalance in urban planning is also highly centralized.

Despite the announcement of private property, land and urban planning legislation in the first post-Soviet decade in Russia, a significant part of the built-up areas still needs a land survey. At the same time, the apartments are mainly privatized by the tenants (around 90%). This creates high costs for the renewal projects, on the one hand, and the problem of latent stakeholders, on the other. As a result, we can observe that multi-apartment high-rise housing becomes the dominant option for renovating built-up areas, significantly changing both its morphotype and ownership structure. We also note that the governmental authorities announce such a change as made in the public interest and to improve the quality of life.

An urban renewal policy is one of the mechanisms for the complex territorial transformation. At first, these were programs where the developer bore the costs of negotiations with the owners. In the last five years, programs have been transformed towards state regulation and participation. In regional cities, this is exacerbated by the severe costs of weak local self-government. The paper collects evidence of the spatial transformation of the modernist residential areas in the post-Soviet period of the emergence of property rights. Inflated targets, developers' market expectations of the project's profitability, and legislative incentives currently create a situation where the renovation of the built-up area essentially means replacing low-rise, low-density buildings with high-rise buildings. The discourse is predominantly focused on the efficiency of the use of the territory. Furthermore, efficiency, in this case, refers to the developer's commercial benefit and the municipality's likely land rent benefits.

The paper focuses on the modern housing legacy recognized by the authorities as dilapidated. Around 80% of the dilapidated stock is the low-rise multi-apartment housing dominantly built in the 1930-1970s. Spatially talking, these areas represent low-rise, low-dense non-heritage-listed residential estates outside the historical centres of regional cities. For the post-Soviet context, that is, countries that have gone through the abolition and restoration of the institution of private property, the risk of the dominance of the development agenda is relatively high. In addition, a few factors restrain this imbalance in the absence or weakness of other institutions. Using the Russian post-Soviet context as an example, I explore built-up area renewal programs, their evolution, and their impact on the density and property regime under imbalanced authoritarian power.

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AUTHOR(S): **Andre Sorensen**
University of Toronto, Canada

SESSION: Theories of Private Property Rights and Institutional Change

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Room D

TITLE: Planning, Institutions, Urban Governance, and Legal Geographies: Municipal Jurisdiction and the Production of Differentiated Property Institutions

KEY WORDS: institutions, institutional genesis, institutional change, property, jurisdiction

ABSTRACT:

This paper develops an historical institutionalist (HI) theory of planning, property, and law. The starting point is the claim that HI offers a distinctive perspective on institutional genesis and change (Sorensen 2015, Sorensen 2018, Sorensen 2022) that helps us move past the 'institutional design' versus 'institutional evolution' debate (Moroni 2010, Alexander 2011) towards a more grounded historical and comparative perspective that suggests different research questions. The assumption is that urban planning and governance institutions in particular jurisdictions have major impacts on the distribution of benefits of urbanization processes, access to public goods and services, affordability of housing, urban quality of environment and quality of life, and the long-run adaptability of urban socio-technical systems. And that such major social institutions are contested, evolving historically both during periods of intense and rapid change (revolutions, socio-technical system change) and through more incremental and evolutionary processes that are also structured by prior events, choices and compromises. Institutional change is always both evolutionary and the product of attempts at institutional design. Major social institutions are subject to processes of contingent institutional change in which actors have incentives to attempt to achieve institutional change that benefits themselves, because institutions are always distributional, sometimes in highly unequal ways (Lowndes and Roberts 2013, Thelen and Mahoney 2015). Contingency is fundamental, as outcomes in each case are dependent on multiple historical factors, some of which might have been different, and leading to different sets of outcomes. Those who win such contests tend to have major incentives and a greater flow of resources to defend or enhance their privileged position. Institutions are therefore historically produced, and their efficiency, functionality or dysfunctionality cannot be assumed, but is an empirical and historical question. Sets of institutions in particular jurisdictions are interdependent and tend to co-evolve, and in cities such co-evolution will often involve hundreds of institutions that support long-term urban property value. Urban governance systems are therefore the product of historical contests and compromises, and there exist profound differences between jurisdictions (national, subnational, municipal) because of different patterns of historical development, in which different choices were made, different key actors were involved, different capacities developed, and with different timing in relationship to shared facts such as technological developments or world-historical events such as economic crises, evolutions, and wars. Because national governments determine many legal frameworks for sub-national jurisdictions, it is possible to compare planning and urban governance systems between different nations, but because of differences in timing, distinct local histories and development patterns, there are also often major differences between sub-national jurisdictions. I argue that this conception of institutional genesis and contested evolution is valuable both for comparative studies and in analysis of specific planning and property systems and legal geographies (Wideman and Lombardo 2019). Major questions focus on the nature of institutional change mechanisms, actors involved, timing of change events, and pathways of institutional evolution.

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AUTHOR(S): **Kenneth Stahl**[1], Kristina M. Currans[2]
[1]Chapman University, United States of America; [2]University of Arizona, United States of America

SESSION: Adjudication or Judicial Planning?

PRESENTATION:
DAY: May 5
TIME: 8:30 a.m.
ROOM: Room D

TITLE: Traffic Impact Predictions and Judicial Standards of Review: A Changing Paradigm

KEY WORDS: traffic impacts, parking, standards of review, AB2097

ABSTRACT:

Predicting traffic and parking impacts has become one of the most important aspects of land use and transportation planning. But the methodologies traditionally used to predict such impacts, based upon the "Institute of Transportation Engineers" (ITE) trip generation rates, have been widely criticized as unreliable even as they continue to be used. When challenged judicially, courts have tended to defer to the use of ITE because the standards of review courts conventionally use to evaluate agency land use and transportation decisions are extremely generous to agencies (Currans & Stahl Forthcoming). However, there are now signs that this is changing. Among the most significant developments is the state of California's recent passage of Assembly Bill 2097 (AB2097), which prohibits cities from requiring any parking minimums within ½ mile of a transit stop, unless the city can prove by a preponderance of the evidence that the absence of parking requirements will have a significant negative impact either on the production of affordable housing or on existing parking. The preponderance standard is a significantly higher standard of review than agencies have been accustomed to addressing in many traffic and development decisions and requires the agency to prove that the predicted outcome is more likely to occur than not.

The purpose of this paper is two-fold. First, we describe and analyze the standards of review conventionally used to evaluate traffic impacts. We start by comparing integrated transport and land use planning policies that utilize predictions about traffic impacts against the different standards of review typically employed. We differentiate and explore relevant decisions as categorized under the two conventional standards:

- Quasi-legislative decisions: based on formulae; widespread implementation; treated with deference unless entirely lacking in evidentiary support; and
- Quasi-judicial decisions: narrowly targeted projects; context-specific approaches; subjected to a higher but still deferential "substantial evidence" standard; requires decision to be supported by evidence that is credible and reliable.

After setting forth the taxonomy, we subject it to critical analysis, arguing that the boundary between quasi-legislative and quasi-judicial decisions is very porous and unprincipled. Many land use decisions that seem quasi-legislative because of their use of broad formulae actually require context-sensitive approaches, making those decisions more like quasi-judicial determinations that require higher scrutiny.

Second, we introduce into our taxonomy the higher "preponderance of the evidence" standard required by AB2097 and similar legislation and consider what it may mean for the evaluation of traffic and parking impacts going forward. We (a) explore industry methods used to evaluate impacts on parking and traffic (ITE 2019), (b) consider ongoing debates in planning practice around measuring and capturing parking (Millard-Ball et al 2021), and (c) argue that the preponderance of evidence standard requires cities to provide more evidence than corresponding "industry standard" practices are capable of providing. As we argue, the industry-standard methods do not – and are not even designed to – predict parking demand with any particular degree of likelihood, and therefore likely cannot satisfy the preponderance standard.

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AUTHOR(S): **Yiru Tan**
University of Bristol, United Kingdom

SESSION: Promoting Public and Private Rights through Policy and Law

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Room D

TITLE: The Evolution of the 'Sunlight Code' and Rights to Light in China: Sources and Contexts

KEY WORDS: sunlight code, rights to light, property rights, planning history, sunlight lawsuit

ABSTRACT:

Public land ownership and private property rights co-exist in China's property regime. Since land use rights are defined and granted by urban planning, there is a tension between planning powers and private rights in this hybrid regime. This paper will discuss the relationships between different actors in the regime through the dispute over the 'sunlight code' and rights to light in China.

The 'sunlight code' stipulates that residents on the ground floor should have access to sunlight for an adequate length of time and mandates a minimum building distance for sunlight. As a legacy of the Modernist movement, it has significantly influenced the spatial patterns in Chinese cities and raised widespread concerns in society. By enforcing the code, planning authorities guarantee the basic living conditions for citizens as a public good, while imposing restrictions on land use rights. On the other side, China's Property Law defines the right to light as a neighbor's right while confirming the sunlight code as the legal basis to resolve relevant private conflicts. The implementation of the code has not stopped disputes and has raised discontent among different actors, including residents who are its supposed beneficiaries. Disgruntled city dwellers have initiated "sunlight rights" lawsuits throughout China, claiming that construction permitted by planning bureaus blocks their access to sunlight and infringes their private rights.

From a cross-disciplinary perspective of planning and law, this paper will explore the evolution of the sunlight code and its role in mediating social interests under the changing socio-economic environment in Chinese cities. Existing literature has discussed the roles of property owners, governments, and courts in allocating rights to light in the US and the UK, through various approaches including easement, zoning, and judgment. This paper focuses on a different method of balancing interests operating in a hybrid property rights regime. Based on literature and historical archives, this paper discusses the influence of the *Zeilenbau* planning, established in *Das Neue Frankfurt*, on China's public housing construction under the planned economy. The *Zeilenbau* planning highlights similar social concerns to the sunlight code resulting in the comparable physical forms. Using the overview of legal documents and court judgments, it further demonstrates how the sunlight standard has been embedded into the legal framework and how different actors in a market economy, including governments, developers and residents, assert their interests by implementing, interpreting, and opposing the code.

The contribution of this study lies in investigating the role of technical standards in shaping the concept of rights to light and balancing public interests and individual needs. Furthermore, it aspires to trigger a discussion about the pluralistic trend in China's property law system, by highlighting the interaction between planning powers and private rights.

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AUTHOR(S): **Edward Joseph Sullivan**[1], **E. Dan Tarlock**[2]
[1]Portland State University, United States of America; [2]Chicago-Kent College of Law

SESSION: Climate Change and Law

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Kalamazoo

TITLE: Global Climate Destruction and the Urban West

KEY WORDS: climate destruction, planning law, water law, environmental law

ABSTRACT:

In many places, the American West is no longer range country; in fact, that area contains some of the densest areas of the country. Moreover, climate destruction is an imminent danger to the mountain, river, and plains natural landscapes and the urban areas often found on its rivers and coastal regions. The West has become more arid, and has less water (notwithstanding occasional flooding), so that wildfire dangers and air pollution incidences increase. Before the end of the century, Portland will become the new Sacramento.

The climate strategy for the American West must focus on adaptation, as avoidance strategies are no longer available. We suggest those strategies include densification, less car trips, greener infrastructure, less water-consumptive agriculture, and more efficient use of water and energy resources. We provide examples of each strategy.

Many of the adaption strategies focus on the use and allocation of water resources, which make more consumptive agricultural uses impractical for the same reasons that cities must change public and private water uses and promote reuse and recycling of existing water resources. New resources must be found, including desalination plants. Indirect effects of meeting water shortages include more compact urban settlements, the use of infrastructure concurrency requirements for developments, and the means of managing rural landscapes to minimize wildfire losses. Again, each strategy is detailed.

The authors draw upon their familiarity with Western state and local efforts to meet climate destruction and their knowledge of planning, water, and environmental law and science to evaluate the future of the American West to meet these challenges.

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AUTHOR(S): Edwin Buitelaar[1], **Erwin Van der Krabben**[2]
[1]Utrecht University; [2]Radboud University, The Netherlands

SESSION: Land Policy and Land Valuation II

PRESENTATION:
DAY: May 3
TIME: 10:45 a.m.
ROOM: Hussey

TITLE: Much Owed by So Few to So Many: Understanding Market Concentration in the Dutch Homebuilding Industry

KEY WORDS: market concentration, homebuilders, land policy, land-use regulation

ABSTRACT:

Markets for new homes typically can be subject to market concentration and are sometimes dominated by few homebuilders (Coiacetto, 2009; Ball, 2013, Quintero, 2022), due to the geographical delineation of these markets and the investment capacity that is required for homebuilders to operate. Land-banking strategies by nation-wide operating homebuilders may further exclude other, smaller firms from entering these markets (Adams & Tiesdell, 2010). Highly-concentrated markets may reduce competition and suppliers may be able to influence market outcomes, for instance by setting prices or creating scarcity by delaying the production of new houses (Adams et al., 2009).

The international literature on the issue of market concentration and market power in the homebuilding industry is sparse. A lack of micro data on individual homebuilders, especially population-wide data (rather than a subsample), seems to be the main reason for that (Dipasquale, 1999). With the advantage of having access to such data through the Dutch land registry, the aim of this paper is to come up with a way to measure market concentration and to get a better understanding of what might be behind that concentration. The Netherlands serve as a case to be able do so.

The research employs a mixed-method approach. First, we measure concentration at the (sub) regional level. We make use of a common measure for market concentration, the Herfindahl-Hirschman Index (HHI). We use robustness checks to asses how sensitive the outcomes are for the choices of the concentration measure and the demarcation of the market. Second, we select various 'extreme' cases of high market concentration and do qualitative research (i.e. interviews with local authorities in these cases) into what might be behind high concentration.

We find relatively high and robust levels of concentration across the Netherlands, particularly in medium-sized cities. In addition, we find that land-use regulation and land policy play an important role in the explanation of high degrees of concentration. It is not only regulatory stringency that leads to concentration, it is also the way in which development is allowed to take place. Land-use plans and public tenders in these cases pre-sorted large-scale and integrated forms of development, favoring large national developers over smaller (local) ones. Market concentration can be decreased by changing these practices, but that of course has to be set off to the benefits of such planning and land policy approaches.

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AUTHOR(S): **Francesco Venuti**
University of Eastern Finland, Finland

SESSION: Climate Change and Law

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Kalamazoo

TITLE: Nature-Based Solutions for Urban Stormwater Management and Property Rights: The Case of Finland

KEY WORDS: nature-based solutions, urban flood and stormwater management, EU law, land rights, urban planning, strategic planning, detailed planning

ABSTRACT:

Urban flooding is one of the most destructive consequences of climate change in the short term. Concurrently, up to 68% of the world population is expected to live in cities by 2050. Thus, using a business-as-usual approach is likely to lead to major flooding in European cities, particularly in Finland (Jurgilevich, Räsänen and Juhola, 2021). Nature-based Solutions (NbS), defined by the European Commission as 'actions inspired by, supported or copied by nature' (EC, 2015 p.5), can provide many co-benefits to humans and nature, such as resilience to floods, disaster risk reduction and sustainable stormwater management (SWM).

At the EU level, the new Strategy on Adaptation to Climate Change (EC, 2021) (SACC) contains a strong reference to NbS and an entire section of the strategy is dedicated to their promotion. Therein, NbS for disaster risk reduction are referred to as 'no-regret' measures due to their multiple co-benefits, which produce the so-called 'triple dividend' of adaptation: avoiding future human, natural and material losses; generating economic benefits by reducing risks, increasing productivity, and stimulating innovation; and the social, environmental and cultural benefits.

Notwithstanding the ambitious aspirations, the SACC and, more generally, the EU legal system do not provide tailored legal instruments to practically foster the implementation of NbS for urban flooding and SWM, leaving to Member States the decision on how to deal with the issue according to the characteristics of their legal systems. Furthermore, at the local scale the availability of land often represents the main obstacle, as NbS usually require more land than traditional grey measures. When the available land is less than what is required for NbS implementation, legal conflicts may arise between private and public stakeholders as, in most cases, the additional land is owned by privates (Hartmann, Slavíková and Mccarthy, 2019) and state actors have limited means to acquire it (Bogdzevič and Kalinauskas, 2021).

Finland represents an interesting case-study in this regard because Finnish municipalities frequently own a large portion of land within their areas of authority. For instance, the municipality of the capital Helsinki owns 65% of the unbuilt land and 80% of the land within the city's perimeter. However, these apparently favourable circumstances do not coincide with a wide, integrated and systematic implementation of NbS for flood and SWM in Helsinki. Thus, what are the other main obstacles that negatively impact NbS implementation in Helsinki urban planning? How do NbS-related aspirations and objectives set at the EU level play out in a local context where private land rights do not appear to arise as a problem?

Through the analysis of relevant EU sources and a series of interviews with city planners involved in urban strategic and detailed planning, this article aims to answer these questions. This article willshed light on the dynamics hindering NbS implementation from the perspective of professionals directly involved in it and identify the gaps between EU guidelines and the opportunities provided by Finnish urban scenarios.

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SESSION: Urban Green Space

PRESENTATION:
DAY: May 4
TIME: 1:30 p.m.
ROOM: Kalamazoo

TITLE: To Whom Does It Belong? The Commoning of Urban Green Space in a Densifying Neighbourhood in Bern, Switzerland

KEY WORDS: densification, urban green space, commons, public-commons partnership

ABSTRACT:

Densification is the result of a planning process leading to an intensification of land uses in the built environment. It therefore leads to increased pressure on urban resources, including green spaces. The formal and informal institutional arrangements that allocate use rights over these urban resources to different user groups change as a result of densification, thereby rearranging to whom things belong (Krueckeberg, 1995). While some have argued that these dynamics inevitably lead to more privatization and enclosure in cities (Lee & Webster, 2006), we are interested in identifying the mechanisms that contribute to processes of commoning. Urban commons, as collectively-used resources produced and organized through forms of self-governance by resource users, have the potential to counter some of the unjust outcomes of densification (Foster, 2011; Huron, 2015). Focusing on green spaces, we examine to what extent the planning of densification projects can contribute to the consolidation of the urban commons. We rely on a detailed case-study of a densifying neighbourhood in the city of Bern (Switzerland). Our findings suggest that the urban commons allow for community-based involvement in changing neighbourhood structures, although being an inherently dynamic and unstable type of property (Blomley, 2004). Urban green space is continuously reorganized across public, private, and shared domains. Stressing the local institutional context, we analyse these newly-emerged arrangements as forms of public-commons partnerships. We point out the significant role of the state, as 'enabler' of commoning processes (Foster, 2011), necessary to provide institutional strength to the urban commons. Based on our case-study, we show how densification can indeed contribute to processes of commoning, underlining, however, the difficulty of regulating inclusion and exclusion to urban green spaces in contexts of densification.

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AUTHOR(S): **Martin Wickel**
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SESSION: Climate Change and Law

PRESENTATION:
DAY: May 4
TIME: 3:45 p.m.
ROOM: Kalamazoo

TITLE: Vertical Governance of Climate Change Mitigation in Germany

KEY WORDS: climate change mitigation, governance, multi-level system, municipalities

ABSTRACT:

The governance mechanism of the Federal Climate Protection Act of Germany is sector oriented. The act provides for annual emission budgets for specified sectors (energy; industry; traffic; buildings; agriculture; waste and others) up to 2030, which describe a reduction pathway for the emission of greenhouse gases. At the same time, it creates mechanisms that apply when annual emission levels are missed, and the option of offsetting exceedances among sectors. The government can perpetuate the sectoral approach after 2030.

What is missing in the act is vertical dimension. Only a clause requiring states and municipalities to consider climate change as a factor in administrative decisions in implementing federal law points in this direction. States are allowed to pass their own climate protection acts. But they are not obliged to do so. Provisions, mandating municipalities to take action to mitigate climate change, are missing for constitutional reasons.

The state level draws a heterogenous picture. Most, but not all, states have passed climate protection acts. But the acts are not coordinated. It can't be shown how their reduction targets add up to the target of the federal government. All most all states refrain from imposing mandatory requirements on municipalities.

On this background, the question of vertical coordination of climate change policies arises. The Federal Climate Protection Act sets the target of greenhouse gas neutrality by 2045. This is based on the adoption of budget approach, i.e. Germany has left a limited amount of carbon to emit before the constitutionally binding target of the Paris Agreement is reached. The decarbonization of society and the adherence to the reduction pathway on the way to greenhouse gas neutrality can only be achieved in a joint effort of all levels of politics. This raises the question of whether the horizontal, sector-oriented governance mechanisms are sufficient. If this was answered in the affirmative, the system of climate government would rely on impulses of the federal government only. States and municipalities would merely implement policy set by the federal government. Or do states and municipalities have an independent role in climate change policy?

The presentation will address the question of what a vertical governance mechanism might look like in a multi-level political system with regard to climate change mitigation. The provision of planning instruments can play a central role in this. One focus lies on the role municipalities should play. Do they need to have own decision-making leeway and, if yes, in which areas?

The coordination of climate change mitigation across all political levels will become particularly relevant once the scope of political decisions narrows down. In the Germany this will be the case at the latest when the budget runs out. In this situation hard decisions in favor of climate change mitigation must be taken. Other interests as those of property owners must defer.

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SESSION: Land Policy and Land Valuation I

PRESENTATION:
DAY: May 3
TIME: 8:30 a.m.
ROOM: Hussey

TITLE: Optimizing Urban Development in the Sense of Kaldor-Hicks: The Case of Colombia

KEY WORDS: planning instruments, land value capture, cooperation, land management, Colombia

ABSTRACT:

In line with the rule of Kaldor-Hicks optimality [Hicks, 1939; Kaldor, 1939], each activity is effective if the sum of players' gains is bigger than the sum of players' losses and a compensation of losses that derive from the activity, by those who profit from it, is possible. In order to reach the Kaldor-Hicks optimality, a cooperation of all actors as well as the presence of relevant compensation instruments are required. An assumption of this research is that qualities of urban development may be enhanced by optimizing the process of urban development in accordance with the principles of the Kaldor-Hicks optimality. The aim of this research is to find out how the Colombian spatial management framework optimises the process of urban development in the sense of Kaldor-Hicks.

Urban development framework has been identified and modelled as relevant parts of the land-use planning, land management and real property rights regimes. Instruments that foster cooperation and enable compensation among stakeholders of urban development have been analysed. The functioning of urban development framework has been depicted and appraised on the basis of two case studies of detailed development plans located in Medellin: Naranjal and La Asomadera.

The results of the conducted research show that the Colombian spatial management system encompasses a wide variety of land management instruments aimed at improving cooperation of process stakeholders and enabling the compensation of losses involved with urban development. The instruments help to implement land-use plans and to finance public urban facilities [Maldonado Copello, 2006: 26; Pinilla, 2019: 47]. The most prominent examples of such instruments are unities of urban development action [*unidades de actuación urbanistica*], developer obligations [*obligaciones urbanísticas*] and land readjustment [*reajuste de terrenos*]. The instrument of unities of urban development action requires that landowners cooperate to jointly implement the detailed development plan [*plan parcial*] and carry out developer obligations using the land readjustment. All mentioned instruments are considered by the main Colombian planning act [Ley 388 de 1997] tools that implement the principle of just distribution of benefits and burdens [*reparto equitativo de cargas y beneficios*] that constitutes the axiological foundation of the Colombian planning and land management legal frameworks.

The practical case studies have shown that identified cooperation and compensation instruments may be successfully applied to bring about high quality urban development as well as densify both urban renewal and expansion areas, however the implementation process is long-lasting and uncertain, therefore only some parts of the investigated plans have been realised up to now.

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AUTHOR(S): **Slavka Zeković**
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SESSION: Housing, Real Estate, and Land Values

PRESENTATION:
DAY: May 4
TIME: 10:45 a.m.
ROOM: Kalamazoo

TITLE: The Post-Socialist Financialization and Illegal Construction in Serbia: Convergent or Divergent a New Assetization Game?

KEY WORDS: financialization of real estate, urban redevelopment, illegally constructed buildings, a new assetization game, urban planning

ABSTRACT:

This paper explores the post-socialist changes of urban development in Serbia from the perspective of two main trends (galloping neoliberal financialization of real estate and mass illegal construction) and their assetization game, especially after global crisis 2008. The focus of global finance is increasingly diverted from the real sector of the economy to the financialization of commercial properties, especially residential. The financialization of real estate/property has a significant role in the socio-economic development, as well as spatial patterns, especially in the urban redevelopment, i.e. urban built environment.

Under the influence of neoliberal doctrine, the financialization is also intensified in the post-socialist countries of Central and Eastern Europe (CEE). Although financialization research is relatively scarce in post-socialist European countries, it is almost completely absent in Serbia. The financialization was activated after the year 2000, intensified until the global financial crisis of 2008, and continued with extreme dynamics until today. The process of mass illegal construction, i.e. illegally constructed buildings (now more than 2.1 million buildings from 4.9 total buildings) continues in parallel with the financialization of properties in Serbia since 1960s. The inability of the socialist framework to provide affordable housing has allowed the large number of illegally constructed buildings to become an alternative method of meeting housing needs. In the post-socialist period, a new wave of illegal constructed buildings intensified, primarily caused by the privatization of the land-use rights and of socially owned housing. Its large scale was the main driver for the accommodation of immigrants after the breakup of Yugoslavia. The term "illegally constructed building"/ICBs is defined by Serbian legislation: Planning and Construction Act (2009, 2018), the Legalization Act (2013, 2015) and the Legalization of Buildings Act (2018).

In empirical analysis, a comprehensive comparative approach was applied, comparing financialization process at the Serbian national level with selected post-socialist countries of CEE. The research is based on four steps: first, on choosing different financialization domains according to the teachings of neoclassical economics (emphasizing the transition from a bank-based to a market-based financial system; foreign financial inflows; financialization of housing; urban financialization); second, on identifying and measuring financialization indicators for selected domains; third, comparing Serbia with similar CEE countries regarding the financialization indicators; and fourth, a brief overview of ICBs in the post-socialist period.

It is estimated that there is a certain correlation and interconnection between the financialization and illegal construction processes in Serbia. While the financialization process works on the formal market, the other process takes place on the informal/"black" market, and it seems likely that both processes could remain as parallel and autonomous forms of urban development in Serbia. However, the analysis of these processes indicates both their convergence and divergence. From the perspective of the theory of urban growth machine, it seems that both processes constitute main levers of the same machine, i.e. two counterweights in urban development that go "hand in hand". The state considers that the financialization of real estate is a stabilizer of the macroeconomic development and monetary policy in Serbia, with the tacit tolerance of ICBs.