

Value Capture for Public Amenities

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Land for public use is a vital need in any city, which is why government guidelines and legislation are applied to procure them through various policies such as land expropriation, consolidation and re-division. As land in city centers becomes increasingly scarce, and growth pushes cities to their limits, allocating land for public use becomes more challenging and requires new solutions. Examples include progressive taxation, redefining property rights, incentivizing owners, and introducing value capture instruments. Value capture enables cities to utilize unearned increments, meaning the increase in property value as a result of government intervention to which a property owner has not contributed. Statutory planning can create value uplift that can be harnessed through value capture tools to supply a range of public benefits to the community, including land for public utilities. Value capture instruments such as density bonuses or land readjustment, can help decision-makers create public amenities including soft and hard infrastructure.

Keywords: value capture ; policy assessment ; vertical development ; public amenities

1. Value Capture and Its Ability to Mobilize Value Uplifts

The theoretical foundation of this paper relies on the growing literature on value capture. The term refers to a range of policies and regulatory tools designed to tap unearned increments, value uplift, or improvement in property values ^{[1][2][3]}. The underlying premise behind the application of these tools is that an owner or developer enjoys value increases to his/her property that are the result of market fluctuations or the actions and interventions of public bodies such as local government, zoning boards, and other planning agencies ^{[4][5]}. As such, the government has the moral justification, as well as the power, to reap some of these values, extract them, and convert them into cash, in-kind services, or other public goods. The literature deals with a range of value capture instruments including betterment levies, land readjustment, impact fees, exactions, dedications, direct takings (expropriation) of property, tax increment financing, infrastructure and utility fees and levies ^{[1][6][7][8]}. While some countries have a strong tradition and a range of instruments to capture value, others are still taking their first steps. Cross-national learning is essential, because it can provide knowledge and inspire public officials to adopt best practices that work elsewhere ^{[9][10][11]}. However, a “one-size-fits-all” approach in comparative policy studies should be avoided, and the optimal tool box has to be adapted to country specific circumstances ^[12].

Value capture instruments mobilize value uplifts and internalize certain positive or negative externalities caused by development and its approval by government agencies ^{[8][13]}. However, before value is tapped by government, it is first created through a range of market-led, private, or public interventions such as changes in regulation, or via direct public investment ^{[7][13][14]}.

The literature on value capture describes its multiple objectives, beyond the overarching goal of internalizing costs and benefits. On the ground, and usually on the local (urban) scale, value capture is utilized to finance capital improvements ^[5], as well as new public services such as linear infrastructure including roads, water pipes, and sewers ^[6]. Value capture allows governments and municipalities to create a pool of money to finance a range of other services as well, including the construction of civic buildings and public facilities ^{[3][15]}, and to buy (or set aside) land for a variety of public utilities.

Furthermore, value capture tools have been used to generate monetary or in-kind contributions for the supply of land (or floor space) for public purposes ^[16]. They are also designed to deal with the scarcity of land through a range of policy interventions ^[17]. As an example, a developer and local government can negotiate on or off-site contributions of land ^[9]. Similarly, a developer can agree to supply land for open public space ^[18] or childcare facilities ^[19]. Other value capture tools, such as the community infrastructure levies in the UK, have been used to finance the building of public schools and parks ^[20].

2. Exactions and Other Pathways for Allocating Public Land through Value

Capture

'Exaction' is a broad term describing requirements that the developer provide some kind of public good, including on-site or off-site facilities ^[9] or cash contributions in order to obtain permission to build ^[21]. In the United States, required exactions must be related to the impact of the development ^[22] and are used to defray the cost of additional services required as result of the new development ^[23]. Exactions can be negotiated voluntarily with developers or required by strict formulas and legislation.

The literature on value capture has pointed out the unique contribution of exactions through land readjustment and negotiated contracts to financing urban amenities ^{[24][25][26]}. While exactions through land readjustment are often carried out in accordance with a range of compulsory laws and rules, negotiations are voluntary and may not be bound by any legal provisions that limit the discretion of the negotiating parties. Like land readjustment, negotiated agreements are used "to exact public benefits in excess of what would otherwise be permitted by regulatory takings rules" ^[18] (p. 727). In some European countries, negotiated agreements have secured the provision of social housing on what was previously private property ^[13]. In New South Wales (Australia), these agreements have allocated land for a variety of purposes such as recreational spaces and public parks ^[27]. In the UK, contractual obligations paved the way for increasing the amount of affordable housing ^[28], for providing rights of way, and community buildings ^[29]. In the US, they have been used to provide a range of amenities and to regenerate downtown areas ^[24]. Additionally, agreements can require developers to construct the facilities themselves to specifications approved by the city, and then allocate the completed facility for public use ^[29] (p. 39).

Critics of these contributions have claimed that they are arbitrary, unequal, and make some projects unviable by demanding too much from developers ^{[22][30]}. Critiques also focus on the nexus between public requirements (the exaction, fee, or required allocation) and the property in question. The link between proposed development and the demands made by the local government is a recurring issue ^[31]. At times, these demands are accused of being unrelated to the development or its scale. Specifically, local governments have been criticized for requiring off-site amenities that are not necessarily linked to a given project. Municipal requirements are sometimes charged with encouraging profiteering by government ^[32]. As the value captured (and the public land that is provided) depends on land prices, exactions can take place where a single project can generate profits to a developer or value uplifts in general. Without uplift, the ability to require exactions and land allocations in general, diminishes. Otherwise, government requirements (such as land, cash, or built-up floor space for public use) may reduce the project's affordability ^[33] (p. 110). This situation has led governments to conjure up a range of incentives and compensation such as density bonuses ^[34].

3. Value Capture, Incentives, and Verticality

The majority of scholarly contributions on value capture and exactions do not link them directly to verticality, let alone to the ability to join together public and private utilities. Some scholars, however, point out the link between value capture and densification. For example, Friendly ^[19] shows how "in Sao Paulo, within the context of vertical growth and city expansion...developers hoping to build at higher-than-permitted densities may gain additional floors" due to local legislation that provides bonuses "in exchange for financial compensation towards social benefits" (p. 2). Some value capture instruments implicitly assume that value can be created vertically, and land may be provided to the public in the form of floor area. Several scholars identify the transfer of development rights (TDR) as a planning tool that facilitates value capture by providing non-financial compensation to owners ^[35]. When private (or even public) rights are moved to another location, developers may receive density bonuses or even enjoy value uplift in the new location. In exchange, they may be required to provide public benefits in the form of floor space for public facilities. Thus, the transfer of development rights embodies vertical possibilities lying dormant in value capture tools, enabling it to accommodate vertical solutions to urban challenges such as regeneration, climate change, urban sprawl, creating mixed-use development, and protecting greenfields ^[36].

However, very few scholarly contributions focus specifically on the ability of value capture to generate public floor area in mixed-use vertical environs. Nevertheless, experts have documented this practice in East Asia. For example, in Saitama City (Japan), through land readjustment, the city's right to build public facilities on a given plot was converted into public floor space in a joint private and public venture ^[37]. Density bonuses, too, have been particularly instrumental in achieving vertical urbanism ^[38]. Through rezoning, re-parcelling, or other measures, these bonuses can encourage the provision of public services in a vertical-like development that contributes to mixed-use and compact development ^[39]. Existing studies show that this approach is especially evident in transit-oriented development ^[40]. For example, in San Francisco,

generous density bonuses were given in one of the most ambitious transportation projects on the West Coast—the Transbay Transit Center. The project regenerated the surrounding area, created a new transportation hub, and provided public rooftop parking on top of a train station ^{[41][42]}.

Likewise, in Seoul, Korea ^[43], property owners agreed to construct a mixed-use building in exchange for density bonuses. The building accommodated private and public spaces (including a pedestrian walkway, plazas, and a garden). In Vietnam, the city of Ho Chi Minh gave up public ownership to enable the development of a mixed-use high-rise tower (REE Tower), in which public open space was provided to the city in exchange for density bonuses ^[44]. In the United States, cities like Seattle have experimented with density bonuses to create compact development by enticing developers to incorporate public facilities in their high-rise buildings ^[45].

Although the population density in Germany is not as high as in Israel, there is a general priority for inner-city development in order to reduce suburbanization. For this reason, several tools—such as urban contracts—have been employed, some of which enable the vertical allocation of public facilities.

The general framework for urban contracts is regulated in Article 11 of the German Building Code. The most important group of contracts are the “contracts to cover the follow-up costs”. They can be used to cover the costs of the municipality in the past or in the future which are a condition for or consequence of the proposed development. It is generally accepted that this regulation enables German cities through developer obligations to use value uplift and recover the cost of social infrastructure like kindergartens and primary schools ^[46]. Specifically, Munich was one of the first cities to utilize developer obligations which are basically defined in a decision of the municipal council. The city adopted a ‘socially equitable land use policy’ (*Sozialgerechte Bodennutzung—SoBoN*) in 1994. This declaration increases the transparency and ensures equal treatment of all those involved. For this reason, the model has been adopted by many municipalities in the past 25 years.

In general, German developers have to pay for the demand for day-care facilities and primary schools. The need is determined according to the newly created living space, and a statistical key is provided for calculating the number of these public facilities. In most cases, however, larger public amenities are built to cover the demand of the surrounding area or to achieve reasonable sizes. In this case, the expenses are split and the developer has to pay for the share of expenses related to her development project.

Developers in Germany have to finance and support said public facilities in one of the following ways: (1) bear the actual construction costs of the social infrastructure (usually limited to day-care facilities and primary schools) or (2) replace this obligation with a proportional financial contribution of EUR100 per square meter of newly created living space (residential floor space); alternatively (3) developers themselves could take over the construction of the day-care facilities at their own expense. If the second route of financial contribution is chosen and the development plan stipulates that the day-care facilities will be integrated into a larger building (“integrated facilities”), an additional purchase agreement is required. Usually, the developers build such a facility at the request of the city and transfer partial ownership to it in accordance with the German Condominium Act (*Wohnungseigentumsgesetz, WEG*). In this case, the city bears the construction costs in accordance with national standards (DIN). If the public facility is inserted into a condominium, the floorspace on which it is located has to be provided to the city for free. This is in line with the principle of transferring ownership of common-use areas free of charge. Furthermore, the contract must provide a suitable security in the event of the developer’s insolvency ^[47].

Under the German context, the participation of developers in the construction costs of the social infrastructure is currently limited to participation in the financing of day-care facilities and primary schools. A statutory amendment is currently under review as to whether other facilities should be included or the financial contribution should be raised. Either way, the total public value capture is limited to 2/3 of the increase in land value. If higher follow-up costs result, the surplus is to be financed using the municipal budget.

Similar to other countries, value capture instruments in England also enable planners to finance and provide public amenities that are vertically mixed with private amenities. Since the early 1990s, the main mechanism of capturing value for the public interest in England has been through developer contributions ^[48]. These contributions are made in accordance with section 106 of the Town and Country Planning Act 1990, or through the Community Infrastructure Levy (CIL) ^[49].

Both routes can help planners secure contributions to infrastructure, community facilities or public open space, all of which can be combined with private use of land. The National Planning Policy Framework (NPPF) in England stipulates that obligations of developers to provide public amenities should be kept to a minimum, applied only when essential and reasonable ^[50]. As in other countries, this brings to the fore the question of correlation between the proposed development

and the required public infrastructure, and the availability of sufficient incentives for developers to sign agreements under Section 106. For example, the planners of the King's Cross regeneration project managed to link development to certain public amenities needed in the area. In particular, developer contributions were used to create floor space for two schools in the Plimsoll Building at King's Cross. These schools were incorporated into a residential building while at the same time alleviating some of the pressure on school development in London. The city procured these schools through a Section 106 agreement which shows how vertical allocations can provide a viable solution in dense urban environments, while enabling local government to become more responsive to fiscal and physical constraints ^[51].

Notably, while the contributions of developers under Section 106 are based solely on negotiations and there is no formula provided, the negotiation nevertheless relies on a viability appraisal, which is a process of assessing whether a site is financially viable. This is done by looking at whether the value generated by a development is more than the Benchmark Land Value. The viability appraisal is a confidential document (not publicly available), which must be shared with the local authority for negotiation. If viability appraisals show that it is not financially viable for developers to afford the required public amenities, the type and scope of contributions will have to be negotiated between developer and local authority.

Compared to Section 106 agreements, the CIL route is allegedly more transparent. The developer's contribution is not based on negotiations. It is calculated per square meter using a formula and the developer makes cash payments to the local authority. The calculation involves multiplying the CIL charging rate by the net chargeable floor area (based on Gross Internal Area) and factoring in an index figure to allow for changes in building costs over time.

From these examples, it appears that it is possible to link value capture instruments to policies that increase the availability of floor space for use by the general public. Value capture can facilitate the vertical expansion of developable land ^[44], and encourage ancillary benefits such as the creation of a mixed-use city. Negotiated agreements, regulation, and land readjustment can promote vertically by providing public floorspace in high-rise developments. These instruments, however, bring about the nexus question between the city's requirements, the amenities needed, and the planning gains of the developer.

While some studies tie together vertical urbanism, value capture, and the provision of public floor space, few describe the regulatory and contractual mechanisms that facilitate the mixture of public and private amenities in a single location, let alone one building. With the exception of some countries like the US, Germany and England, the cogs in the value capture machine remain somewhat concealed. It is unclear how certain public utilities are produced in a mostly private surrounding. Moreover, it appears that each country, let alone city, has its own rules (if any) on where and how many public facilities should be provided in privately owned buildings. Where negotiations between public and private parties determine the extent of the produced value and value capture, they might result in random and individual solutions that sit "uneasily alongside the long-standing tradition of uniformity in land use planning" ^[52] (p. 86). Where regulations (not negotiations) set the rules of value capture, their nuts and bolts remain ambiguous too.

Given this knowledge gap, it becomes important to shed light on value capture arrangements that facilitate the placement of public floor space in private buildings in vertical settings. The findings show that several countries apply regulation to capture enough value which is then used by developers to supply public amenities in built environment.

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