

Structural Impediments to Urban Redevelopment in China*

**A Comparison of American Zoning and Chinese Detailed Control
Plans**

Saul Wilson

skwilson1@g.harvard.edu

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Abstract

While similar to American zoning in many technical aspects, Chinese detailed control plans play a substantially different role in the distribution of property rights. Whereas American zoning was invented long after privately held property was widespread, and hence represented a diminution of extant property rights, Chinese detailed control plans clarify what property rights the state will sell to developers. As a result, the American zoning regime is more tolerant of developers seeking changes to zoning, while the Chinese system generally sees such behavior as an effort to get discounted access to state resources. Nonetheless, developers in both countries seek to influence planning restrictions: American developers do so through open negotiations with local governments, while Chinese developers are forced into more surreptitious lobbying. In the long run, inflexible planning restrictions make it very hard for anyone but the government to legally undertake even the smallest urban redevelopment projects in China; on the other hand, the state is able to get a higher share of land use value. Hence, while Chinese detailed control plans may formally resemble American zoning, they perform different functions with sharply different implications for urban development and redevelopment.

1 Introduction

Chinese detailed control plans, or 控规, are often seen as derivatives of American zoning, and indeed as quite similar to their conceptual forefather. While in many technical regards they do resemble American zoning—they seek to regulate the built environment, and do so using many of the same metrics and quotas—Chinese 控规 and American zoning play very different roles in assigning property rights. In the American regime, private property rights predate zoning historically: the legal justification for zoning is the need to separate incompatible land uses; it would in fact be unconstitutional for zoning to altogether vitiate private property rights without compensation. The role of 控规 in China is strikingly different: legally, they are intended to be prepared *before* property rights are assigned to a developer. Whereas American zoning is intended to constrain extant property owners from inconveniencing their neighbors, Chinese 控规 play a much more explicitly economic role, setting the terms on which development rights will be sold by the state, and hence contributing greatly to the ultimate sales price.

Of course, any pretense that American zoning does not create economic winners and losers would be ludicrous. Likewise is the pretense that Chinese 控规 are written by a neutral state before any commitments of development rights have been made. The reality in both countries is that developers are deeply invested in shaping the planning restrictions, because these planning restrictions determine their profitability. Generally embedded in local political networks and holding out the promise of sought-after economic development—as well as bearing more immediate gifts—developers tend to have significant influence over planning decisions. They must do so, however, under quite different planning and legal systems in America and China. The American system, in which private property ownership was acknowledged long before modern zoning was even

invented, welcomes property owners and developers into discussions about planning restrictions. The Chinese system, on the other hand, spurns such involvement, emphasizing the scientific nature of planning¹ and categorizing as corrupt or at least suspect any involvement by end-users in the planning for a parcel they ought not yet even know will be theirs. Since that involvement occurs nonetheless, developers (and planners) become shrouded in suspicion. Both systems involve substantial corruption; both involve extensive negotiation between the government and developers. The short-term difference is largely in what gets labeled suspect behavior.

The long-term implications of the two systems are more substantive. The American system makes adjusting the planning restrictions on a parcel feasible, although often enough it is traumatic for all involved. The Chinese system makes it extraordinarily difficult to adjust planning restrictions on a parcel that has already been sold and built upon. The result is that urban redevelopment is, almost of necessity, state led. On the one hand, this allows the Chinese state—or its agents—to capture land value increases that in America would be handed to a developer with the connections to arrange a zoning amendment. On the other hand, this constitutes a substantial impediment to urban redevelopment.

This paper is primarily theoretical in nature, and the evidence I draw upon is meant to be illustrative rather than exhaustive or even particularly systematic. I begin with a review of the history of zoning in America, then comment briefly on the history of its analogues in China. After looking at the development of zoning, I discuss the resulting culture of planning and land development that prevails in the two countries, and the legal environment in which that culture operates. I endeavor to show what I have observed

¹Of course, American planning also experimented with ascribing “scientific” accuracy to its outputs, an experiment that ended in a great deal of trauma and lost authority for the American planning community. See, e.g., [Taylor, 2015].

above: that the American culture and legal environment facilitates extensive involvement by developers in the setting of planning restrictions, whereas the Chinese environment seeks to preclude just that. I then show that developers *do* play a major role in setting planning restrictions in both countries, no matter the restrictions placed on their participation. Lastly, I discuss in more depth the implications for urban redevelopment.

2 A Short History of Zoning

The systems of planning restrictions adopted by America and China are deeply rooted in their radically different systems of land ownership, and these systems clearly influence discourse in the two countries. It is by now extraordinarily trite to remark that all Chinese land is state-owned, and hence a world apart from American privately held land. Fortunately, that is not my point. For the purposes of this argument, American land might as well be state-owned and Chinese land privately held. The key distinction is the sequencing of property rights assignment and planning restrictions. Under the American system, private property rights—ownership, but they might just as well be use rights—predate the development of zoning as a policy; zoning continues to evolve on top of the existing distribution of property rights. In the Chinese system, property rights—technically limited to use rights, although the latest news from Wenzhou suggests these use rights are quite nearly indefinite!²—are assigned to private users only *after* planning restrictions have been nailed down.

This paper would be little different if China auctioned land *ownership* rather than *use rights*. Indeed, we may look to an American example to show that, when land is *sold* with

²See 国土部回复温州住房产权到期问题: 自动续期 不收费. 《人民日报》2016年12月23日. The Ministry of Land and Natural Resources established an “interim” 两不一正常 policy under which home owners in Wenzhou whose land use rights had expired could continue to use the land without any additional paperwork or fees *and* could trade their houses normally.

planning restrictions attached, it is very hard to change those planning restrictions after the fact. When Massachusetts filled in Back Bay in the mid-1800s, the state sold parcels of land for development. This land came with a litany of deed restrictions: stipulating that houses be at least three stories, that they be set back at least 22 feet from the road, and so on. And these deed restrictions lasted in perpetuity. To quote the Massachusetts Supreme Judicial Court, “in purchasing [a] lot, [the purchaser] did not acquire the absolute and unqualified dominion over it. On the contrary, [...] it was a part of the title which he accepted, that he should be limited in the use of the land in some very important particulars.”³ Over a hundred years later, Back Bay land owners still comply with these deed restrictions.

The converse is evident in Hong Kong, where land is owned by the state and private property holders have only use rights. Although some planning restrictions are embedded in the terms of the land lease, and modifications to these must be purchased, many planning restrictions are in regulations and plans. These can—and are—changed much as they would be in the American freehold system (see [Lai and Fong, 2000, 17-36] and [Lai et al., 2010, 7-13]).

Hence it is the sequencing of planning restrictions and private property rights, not the distinction between use and ownership rights, that matters: If the planning restrictions come before the transfer of property into private hands, they are extraordinarily difficult to change. If they come afterwards, as they do for American zoning, then they are easier to modify. We turn, then, to a history of American zoning to highlight that private property rights predated planning restrictions.

³See *Linzee v. Mixer*, 101 Mass. 530, decided in 1869.

2.1 America

American zoning developed gradually, even before the birth of the country. As early as 1692, the British Parliament was regulating building materials in the Americas in the name of fire prevention [Metzenbaum, 1957]. Fire codes of various sorts—including those stipulating fire zones where certain types of construction were required or forbidden—developed over the ensuing centuries [of Boston, 1986, 9-10]. So too did various informal and common law means of maintaining spatial order. Andrew Cappel has shown that, at least in an upscale neighborhood of New Haven, development before zoning closely resembled that which zoning ultimately demanded [Cappel, 1991]. In part, this is because homebuilders mimicked one another; it is also because they all hired the same small handful of architects. (This tale should ring true to anyone who has walked around a Chinese village.) Industry did not stay out of the neighborhood Cappel studied simply because of informal coordination; it was also threatened with and subject to nuisance lawsuits: under common law, a landholder had a right to enjoy his own property without undue inconvenience from a neighbor. This hodgepodge of coordination and coercion maintained some order in land use, although to a lesser extent in less well off areas [Clowney, 2005]. The key here, however, is not whether it worked or not: it is that the legal component of the system was founded on a mix of nuisance law and fire prevention—terrain in which the government could exercise its “police power” without outside controversy. Nuisance law, in particular, is as much about protecting property rights as it is about constraining them. The system overall was one in which property rights were highly privileged.

The police power that underlay codes for the prevention of fire became of increasing importance as land use restrictions ballooned in number and sophistication in the early 1900s. Police power in the United States is the power reserved to state legislatures;

it is the power to legislate to prevent harm to the public, broadly construed. (I am not a lawyer, and admit some confusion about what exactly the term “police power” delimits. Much of that confusion can probably be blamed on the *changing* definition of the term over time.) As is common in American constitutional law, the definition of police power has expanded substantially during the past two centuries, perhaps beyond recognition. In 1909, the U.S. Supreme Court upheld Boston’s application of spatially differentiated height limits, citing the police power used in service of fire prevention and safety—and acknowledging explicitly that spatially discriminatory land use regulations might be necessary given local conditions (*Welch v. Swasey*, 1909). The Court cited approvingly the Massachusetts Supreme Judicial Court’s contention that this was not an aesthetic regulation; had it been motivated by aesthetic purposes, the state court would have struck it down.

A spate of such cases came before courts in the early 1900s, as cities adopted increasingly onerous land use regulations, both broad-based and of a geographically discriminatory manner—proto-zoning in some cases, and full-fledged zoning starting in the 1910s. Zoning itself came before the Supreme Court in 1926, and the question put to the Court sums up the fundamental legal debate undergirding American zoning: was the zoning ordinance “invalid in that it violates the constitutional protection ‘to the right of property [...] by attempted regulations under the guise of the police power, which are unreasonable and confiscatory?’” That is, was zoning infringing excessively on property rights that already existed? Implicit is the acknowledgment that zoning came *after* private property rights were assigned. The question courts had to wrestle with was whether local governments had the authority to restrict those property rights in the name of preventing nuisances and protecting the public welfare. In *Euclid v. Ambler*, the Court again found

that municipalities had that authority: separating industry from residences, and apartments from detached homes, served public safety goals, or at least could reasonably be said to do so. The court went so far as to suggest that the locality had a legitimate stake in preserving the “the residential character of the neighborhood and its desirability as a place of detached residences.”

This sketch of the legal development of zoning in America is by no means complete. But the key question posed by zoning is clear: to just what extent can local government restrict property rights that are already in private hands? The answer has been that local government is generally free to do so, provided that such regulation can reasonably be construed as in the general welfare.⁴ Moreover, it can do so without compensation, unless it makes utterly unusable the property at issue. The only real restriction is that local governments must maintain a pretense that they are not targeting individual properties.⁵

2.2 Comparison with China

The history of 控规 in China is much shorter, developing out of detailed plans (详细规划) in the 1980s as local governments wrestled with how to sell land. Detailed plans, in use under socialism, served as blueprints for socialist work units; they were about organizing space and providing services. They existed in a planning ecology that emphasized hierarchy and public goods: detailed (control) plans are to this day *supposed* to comply with master plans, and both layers of planning specify the allocation and placement of public goods such as schools, hospitals, and roads.⁶ American zoning is

⁴The Court actually did strike down a zoning decision in *Nectow v. City of Cambridge* in 1928 on the grounds that “the health, safety, convenience, and general welfare of the inhabitants of the part of the city affected will not be promoted by the disposition made by the ordinance of the locus in question.”

⁵See *Village of Willowbrook v. Olech*, 2000.

⁶Thanks to 高广达 and Michael Leaf for reminding me of the importance of public goods in the 控规 process.

neither hierarchical—many cities do not even have a master plan, and those which do are often under no legal obligation to follow it—nor focused on public goods provision.

The transition from detailed plans to detailed control plans (控规) added to this hierarchical system of public goods planning a market-oriented development control component. As Shen Yun’s research into the earliest 控规 shows,⁷ they were developed precisely to make property rights legible to prospective developers, particularly foreign ones, and to guide their development in ways that yielded a city in line with planners’ aesthetic and practical targets. They did so by using quotas those foreign developers could understand, like floor-area ratio (FAR). This in turn allowed them to present land in a manner developers were willing to purchase, facilitating the transfer of use (development) rights from the state to private land users. In short, 控规 were developed as part of the effort to sell land, and were written—often with very “plannerly” concerns—before the land was sold. Unlike American planning restrictions, even if they are written for land already in private hands, their provisions do not alter the options available to the land holder.

3 The Culture and Law of Planning in America and China

We have seen now that the historical roots of land use and planning restrictions in China and America are quite different. I turn now to focus on the different cultures of planning that have resulted, as well as the sharply divergent legal restrictions planners, local governments, and developers face.

⁷沈 (Shen Yun), 《控制性详细规划在改革开放初期的诞生与演进——以上海虹桥新区开发和温州旧城改造为例》. 同济大学硕士论文, 2017.

3.1 Culture

American zoning remains deeply concerned with the nuisance caused by new construction. A typical zoning change will excite the neighbors, who will express concerns about the impact of new shadows, greater traffic, and similar urban ills. Yet zoning in America retains some aspiration to universality: planners seek to avoid (generally illegal) “spot-zoning,” where special treatment is given to an individual land parcel. That is, zoning strives to remain about zones: large *sections* of a city, or at least corridors crossing it, with similar development tolerances. In theory, it becomes about individual parcels only when those parcels pose a particular threat of nuisance. Of course, few fantasize that zoning is not also a distributive process, assigning development opportunities and hence also profit to certain land holders. The result is a culture in which developers tussle with neighbors; neighbors seek to protect their property—often, their property values—from nuisance, and developers seek to maximize their profits. The municipal government stands somewhere in between, afraid of angry neighbors, afraid of unemployed constituents, and afraid of disgruntled developers withholding campaign contributions.

The radically different roots of Chinese 控规 show through in their continuing *developmental* orientation. Where American zoning was at first loathe to admit purely economic or aesthetic aspirations, 控规 are often written to meet the legal requirements for selling land, as well as laying out the details of public goods allocation. Because planning restrictions are assigned to publicly held land before it is sold, and because it is sold parcel by parcel, there is no need for *zoning*, per se. Rather, the core purpose of a 控规 is as a basis for generating 规划条件, or planning conditions, which are associated to each parcel of land sold. (It is worth noting that 控规, then, are not “Chinese zoning,” but rather Chinese parcel-level planning restrictions that borrow vocabulary from American

zone-level zoning ordinances.) The price of land is heavily influenced by the planning restrictions placed on a parcel, and hence much of the purpose of Chinese 控规 is marketing and balancing the immediate revenue from one parcel with the potential ramifications for neighboring parcels that might be sold in the future. Moreover, 控规 must do so constrained by requirements that everything from schools to hospitals to cultural centers be allocated proportional to population. (Undeniably, 控规 do have a secondary role—particularly in areas that are already densely developed—of precluding and resolving objections from neighbors.) Importantly, since the price of the parcel is a product of the planning restrictions placed on it, any changes to those planning restrictions are seen as either theft from the developer or—more often—a gift to him.

3.2 Legal Environment

The legal environment of planning in China and America reflects—and is reflected by—these differences in the culture of planning. Whereas Chinese planning law is remarkably strict, endeavoring to protect the state’s revenue from land sales by preventing developers from getting their hands on more property rights than they paid for, American planning law is highly tolerant of modifications to zoning.

3.2.1 China

In China, local governments have essentially free rein to set planning restrictions on land they have not yet sold; at this stage, the developer should not yet be identified, and hence there is no real legal channel for developers to participate in the planning process other than the token public involvement process. Once the land is sold, changing planning restrictions is supposed to be challenging and, in some locales, outright illegal. Across

the country, changes to the land use specified in the original land sales contract require renegotiating the contract, and often paying an additional land conveyance fee.⁸ When changes to the underlying 控规 are involved, as they often are, a time-consuming process of amending that plan is also necessary.⁹

The existence of a somewhat laborious legal procedure for changing planning restrictions is by no means a prohibition. But three problems remain. First, the central government routinely pesters local governments about their changes to planning restrictions, implying that this is not the type of planning behavior they ought to undertake. Second, it is extremely difficult to set a “fair” price for a changed planning restriction, when the price of the land, which is presumably location-specific, was set by auction with the original planning restrictions a given.¹⁰ Third, and most fatal to any prospects of (legally) altering plans after the sale of land, is a series of outright prohibitions placed on changes to planning restrictions by municipalities themselves.

Shijiazhuang is particularly strict. Its Urban Planning Ordinance declares that “The binding planning restrictions on land use type, FAR, and ancillary facilities for state land the use rights of which were sold publicly may not be changed.”¹¹ Zhejiang’s Provincial Urban Planning statute similarly forbids changes to planning restrictions for residential, commercial, or office projects that would impact land use type; increase FAR, height limits, or construction density; or reduce the provision of green space as well as basic and public infrastructure.¹² Heilongjiang, Hunan, and Jiangsu provinces are only slightly more generous, providing that key planning restrictions for developers may only

⁸城市房地产管理法，第十八条、第四十条、第四十四条

⁹城乡规划法，第三十八条、第三十九条、第四十三条、第四十八条

¹⁰Hong Kong has faced a similar problem pricing modifications to land lease conditions. See [Corrigall, 2013, Linn, 2013].

¹¹石家庄市城乡规划条例，第三十七条

¹²浙江省城乡规划条例，第三十四条

be changed when “the public interest requires.”¹³

It is Xinjiang’s provisions on the topic that provide the most insight, however.¹⁴ Rather than outright banning such changes, Xinjiang strongly discourages them, then lays out an unusual process for considering applications by developers. A public hearing must be held, “with invitation to stakeholders impacted by the construction project, *as well as all those who bid for the original parcel*, and so forth.” Then, the land must be *resold*. If it cannot be resold, the original purchaser must pay double the cost per square meter of construction space for each new meter permitted. Xinjiang’s provisions are decidedly abnormal,¹⁵ but their value is in the logic they reflect. That the winner of the auction for the parcel of land came out on top is presumed to be related to what he was buying—namely *this* parcel with *these* planning restrictions. If the planning restrictions are to be changed, the whole auction is called into question, and efforts must be made to make sure the other bidders—and the government itself!—are not cheated of a fair competition.¹⁶

Most Chinese localities are nowhere near so strict. Many prohibit changes to planning restrictions, except under criteria so loosely defined that any skilled developer could presumably justify his application. Xiamen goes so far as to instruct the Planning Bureau to seek input and proposals from developers *before* setting final planning restrictions—that is, before selling land.¹⁷ But in this regard Xiamen is an exception: the norm is to leave developers out of the formal process for setting planning restrictions, and to make

¹³黑龙江省城乡规划条例，第三十八条；湖南省实施《中华人民共和国城乡规划法》办法，第二十七条；江苏省城乡规划条例，第四十五条

¹⁴新疆实施《中华人民共和国城乡规划法》办法，第三十三条

¹⁵It appears that Liaoning considered adopting very similar provisions before choosing not to. See 辽宁省实施《中华人民共和国城乡规划法》办法（征求意见稿），第四十三条, absent in the adopted version. Ningxia is currently considering a similar provision. See 宁夏回族自治区实施《中华人民共和国城乡规划法》办法（草案），第二十八条.

¹⁶Zhejiang’s People’s Congress cited exactly the same concerns to justify its ban on plan modifications, also noting the risk of rent seeking by local officials. See 丁祖年，《〈浙江省城乡规划条例〉释义与应用》，浙江省人民出版社，2011.

¹⁷厦门市城乡规划条例，第二十四条. See also 王伟、谢英挺，积极有效的开发控制规划实践与探索——以厦门为例，《城市规划》.

clear that once those restrictions are set and the land is sold, developers are violating the spirit of the law if they seek to change them.

3.2.2 America

By comparison, the American legal environment is a free-for-all. As described above, zoning has been, from the get-go, about applying planning restrictions to land already in private hands. It has followed naturally that zoning can be adjusted without land changing hands. Several states—in particular, Maryland—have adopted criteria for such adjustments based around a “change-or-mistake rule.” This provides that zoning may only be adjusted if there has been a “substantial change in circumstances since the initial zoning designation was adopted, or that there was a bona fide mistake in that designation significant enough to warrant a correction” [Hirokawa, 2012]. It should take very little imagination to see how such a threshold—already stricter than that applied by some other states—could be attained. It should be even easier to understand when you consider the infrequency with which American municipalities undertake wholesale rewrites of their zoning codes. In Baltimore, for example, the 1971 zoning code remained in place, amended countless times, often on a parcel-by-parcel basis, until 2016! An applicant for a zoning change in 2016 could easily show that ‘circumstances had changed substantially’ in the preceding half century.

Zoning codes have adopted two more formal avenues for addressing these countless project-based amendments. The earliest was the subdivision plan, which allowed developers to seek planning approval to subdivide a large property *if* they provided adequate public goods, such as roads and utilities. Such subdivision plans were used extensively to convert farmland to urban and suburban communities [Listokin and Walker, 1989, 127-

175]. More recently, planned unit developments have become increasingly popular. These allow local governments to stipulate the broad outlines of an area’s intended use, and wait for a developer to propose a detailed plan. Again, we see a much greater willingness to explicitly tailor land use restrictions to the needs of developers, even when the development project is quite large (see, e.g., [Mandelker, 2017]).

While remaining quite open to changes in zoning, aspects of the American planning system became more similar to the Chinese system, with an increasing emphasis on promoting economic growth and other “plannerly” motivations. While in the early 1900s, the courts inched towards allowing municipal land use regulations, in the past half century or so, that grudging tolerance of municipal interference in land use has become a warm welcome. While in 1909 the Supreme Court had echoed local trepidation about aesthetically motivated land use restrictions, in 1954 it proclaimed that “[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled” (*Berman v. Parker*, 1954). In 2005, the Court went further, concluding that “[p]romoting economic development is a traditional and long-accepted function of government” (*Kelo v. New London*, 2005). Such rulings have facilitated a shift in how planning is used for economic development. Local governments can freely take land and resell it to promote economic development, provided they offer just compensation. And they do. Hence American local governments, too, have entered the business of taking land, improving its market value by rezoning it, and selling it to a new user. The similarities with China are striking. But this is still not the meat-and-potatoes of American planning, even if it is widespread enough to be worthy of note.

4 How Planning Restrictions Are Actually Made

The core of planning in America—and in China, too—is bargaining between developers, governments, and neighbors. In America, and in many parts of China as well, an old plan is often sitting on the shelf, made for some “plannerly” purpose. But in practice, such plans are out of date, and everyone knows it. Except when the project is very small or when the plan was quite permissive to begin with, the task is to replace it with something that suits the project the government is trying to attract or that the developer is trying to sell. In America, and to a lesser extent in China, it tends to be the developer who is trying to pitch his project.

Indeed, much to the annoyance of the Ministry of Housing and Urban-Rural Development, planning restrictions are routinely subject to modification in China, even after land has been sold. When the Ministry instructed localities to investigate projects permitted for construction from the beginning of 2007 to the first quarter of 2009, localities *self-reported* that 11% of projects involved adjustments to plans or FAR, and of those 24% involved violations. All in all, 12 billion RMB of additional land conveyance fees were collected as a result of localities checking their own records for those 27 months.¹⁸ It is hard to independently explore the frequency of such planning changes, because they are kept remarkably hushed up. A list of changes to land sales in Beijing, however, is posted online: it is 5,519 changes long. Some of these changes seem cosmetic in nature, but at least 59% entail a change in land price, 53% a change in gross floor area, and 39% a change in land use. By way of comparison, there are only 8,424 land sales listed, meaning almost two-thirds may have later received changes in planning (assuming no project’s planning restrictions were changed more than once). Two-thirds of those, in turn, received either

¹⁸建规[2010]57号

a change in gross floor area or land use. Post-sale changes in planning restrictions are widespread, if not rampant.

Such changes are often sought by developers, even if they are occasionally also imposed by governments. Developers seek them through legal and illegal avenues. Given the difficulty of changing planning restrictions after land has already been sold, developers and local governments often make informal arrangements *before* land is sold, thereby undermining the land auction process [Cai et al., 2013]. Many cities have developed sophisticated—and quite possibly illegal—work-arounds to make their 控规 less binding, allowing for more efficient market feedback into the planning process. As we all know, hundreds of officials are in prison for taking bribes from developers to change FAR restrictions. The point, however, is not that a great deal of these efforts to change planning restrictions are illegal. It is rather that they are completely natural, but the planning and legal systems in China make them very difficult to accomplish cleanly. Developers generally know better than anyone that the land they possess would be more valuable if they could change the planning restrictions, and sometimes they are even presented with truly flawed planning restrictions. But to change these legally varies from difficult to impossible. Even if they do change them legally, the system looks askance at changes in planning after land has been sold. As the Ministry of Housing and Urban-Rural Development remarked in 2008, “when cases of ‘under-the-table manipulation’ of FAR and corruption in FAR management occur, it gives urban-rural development a bad name.”¹⁹

Zoning in America is by no means a clean business, either. For obvious reasons, it is hard to come by statistics on corruption, but one exhaustive review of American local newspapers in the 1970s found reporting on 372 cases of local corruption, of which 83 related to land use control—second only to government contracting [Lyman, 1979]. Soiled

¹⁹建规[2008]227号

as American land use regulation may be, however, developer involvement in the planning process does not arouse the suspicion it would in China. Rather, it is routine. Indeed, it is how zoning changes tend to come about, and the public process of urban planning is built around semi-transparent developer involvement. Consider, for example, the zoning amendments proposed in Baltimore City in 2017. Of the 46 amendments put before the City Council, only six were substantive *zoning* amendments. Thirty-six, or over three-quarters, were amendments relevant only to a particular parcel, proposed either by the owner of that parcel or by a prospective user, generally a developer or tenant. That is, the vast majority of the zoning being done in Baltimore—and this is true in many places—is in response to a developer or land owner’s request. American zoning, all pretense aside, is only sometimes about proactively guiding development (and then primarily for small-scale projects). Much of the time, and particularly for larger projects, it is about facilitating bargaining between developers and neighbors, their relative strength dictated by the state of the local economy.

The evidence I have presented here is largely anecdotal, but the picture should be clear: in both China and America, planning restrictions have large, immediate financial implications for developers, who therefore seek to influence their preparation. The difference lies in how the planning systems in the two countries handle this instinctive response on the part of developers. The Chinese system attempts to forbid it; in order to accommodate it, the American system undermines its own effort at coordinated planning. These responses are rooted in the distinctive history and purpose of each system: the Chinese system of planning restrictions stipulates what property rights will be sold, while the American one restricts property rights that were already widely distributed. Ex post changes to Chinese planning restrictions therefore undermine one of their key

purposes—to establish a sales price for land—but are par for the course in the American system.

5 Implications for Urban Redevelopment

I want to argue not merely that the sequencing of privatizing property rights and planning restrictions underlies these differences, but also that these differences have significant implications for urban redevelopment. The difficulty of adjusting planning restrictions on a Chinese land parcel that is already in private use makes it particularly challenging for a landholder to redevelop his or her own property. The result is almost exclusively state-led urban redevelopment.²⁰ As Zhao Yanjing, then Planning Director of Xiamen, and his colleagues have pointed out, it is also remarkably difficult for the *government* to adjust these planning restrictions when they have to work under current law and with current land users; the result is that urban redevelopment often enough does not get off the ground, and government chooses to focus on developing new areas.²¹ When redevelopment does get off the ground, it is often at great expense and inconvenience to the local government. Homeowners believe the government is wealthy, and the government tends to commit to redeveloping a particular area before beginning land takings; combined, this grants homeowners (in some locales) significant leverage to bargain for high compensation.²² Matters are only further complicated by the habit of developing extremely large parcels of land with highly dispersed property rights through condominium arrangements

²⁰See, e.g., 李建波、张京祥, 中西方城市更新演化比较研究. 《城市问题》2003年5期68页.

²¹See 赵燕菁, 存量规划: 理论与实践. 《北京规划建设》2014年4期153页 and 洪国城、邱爽、赵燕菁, 制度设计视角下的城市存量规划与管理. 16页.

²²One would expect the Chinese government, as a monopsony, to buy land at less than market prices. However, the government is often quite inflexible in its choice of land to buy, creating a work plan listing *large* areas for redevelopment and then persisting in following it. The result is that homeowners who are willing to sell out are sometimes denied the opportunity, and those who are targeted for urban renewal have more bargaining power.

that, in practice, often require unanimity before structural modifications can be made. (The implications of large-parcel condominium development for future urban planning and redevelopment in China is a topic worthy of research in its own right.)

This is quite different from American urban redevelopment. Large-scale American urban redevelopment projects also often depend upon eminent domain, with the local government taking large swathes of land before selling them back to developers. But small-scale urban redevelopment is widespread in America, and requires only the tolerance of government through permissive or even merely responsive zoning. Such small-scale urban redevelopment involves the purchase of one or several adjacent parcels by a developer, who then replaces them with a slightly larger structure. Developers avoid unreasonable costs by shopping around to find land with willing sellers. Repeated many times over a neighborhood, this can fundamentally change the character of the neighborhood. Just as importantly, it does not require any outlay of capital by the government; nor does it involve local government in the thorny business of taking people's homes. But if a land owner is unlikely to get planning permission for anything ambitious, this avenue to urban redevelopment is closed off.

Bottom-up urban redevelopment does occur nonetheless in China—but generally informally.²³ Urban villages are evidence of the spectacular changes in urban form that occur under less regulated circumstances; even with somewhat tenuous property rights, “villagers” have invested significant sums in developing higher density housing and even various amenities. But urban villages also highlight the incompatibility of the American urban redevelopment model with the Chinese system of planning restrictions: urban villages have undergone so much bottom-up urban redevelopment precisely because they do not have to pay additional land conveyance fees every time they modify a building.

²³Thanks to 司洋 at Inner Mongolia University of Technology for this insightful observation.

In Shenzhen, even state-owned enterprises have undertaken such informal urban redevelopment [Chen, 2017]. The government is therefore losing out on a massive source of revenue.

Urban redevelopment, then, is like the other aspects of parcel-level planning restrictions discussed in this paper: there are trade-offs. The American system promotes bottom-up urban redevelopment by giving most of the profits to developers and land owners, although local governments in stronger markets try to claw back these profits through negotiation; the Chinese system routes a higher share of those profits to the state, but in the process precludes legal bottom-up urban redevelopment. There is probably a happy medium somewhere in between—indeed, I remain unclear just how much of a boon urban redevelopment really is for Chinese localities. As Chinese planning shifts from its longstanding focus on opening up new land for urban development to a greater emphasis on urban redevelopment, it is worth exploring the ways in which planning restrictions shape the prospects of success.

References

- [Cai et al., 2013] Cai, H., Henderson, J. V., and Zhang, Q. (2013). China’s land market auctions: evidence of corruption? *The RAND Journal of Economics*, 44(3):488–521.
- [Cappel, 1991] Cappel, A. J. (1991). A Walk along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926) Note. *Yale Law Journal*, 101:617–642.
- [Chen, 2017] Chen, T. (2017). *A state beyond the state: Shenzhen and the transformation of urban China*. nai010 publishers, Rotterdam. OCLC: ocn972286392.

- [Clowney, 2005] Clowney, S. (2005). A Walk Along Willard: A Revised Look at Land Use Coordination in Pre-Zoning New Haven Note. *Yale Law Journal*, 115:116–185.
- [Corrigall, 2013] Corrigall, J. (2013). Hong Kong’s lease-modification policy is fundamentally flawed. *South China Morning Post*.
- [Hirokawa, 2012] Hirokawa, K. H. (2012). Making Sense of a Misunderstanding of the Planning Process: Examining the Relationship between Zoning and Rezoning under the Change-or-Mistake Rule. *Urban Lawyer*, 44:295–344.
- [Lai and Fong, 2000] Lai, L. W.-c. and Fong, K. (2000). *Town planning practice: context, procedures and statistics for Hong Kong*. Hong Kong University Press, Hong Kong.
- [Lai et al., 2010] Lai, L. W.-c., Ho, D. C.-w., and Leung, H.-f. (2010). *Change in use of land: a practical guide to development in Hong Kong*. Hong Kong University Press, Hong Kong, 2nd ed edition.
- [Linn, 2013] Linn, B. (2013). Lease modification rules logical and rational, says lands director. *South China Morning Post*.
- [Listokin and Walker, 1989] Listokin, D. and Walker, C. (1989). *The subdivision and site plan handbook*. Rutgers, State University of New Jersey, Center for Urban Policy Research, New Brunswick, N.J.
- [Lyman, 1979] Lyman, T., editor (1979). *Corruption in land use and building regulation*, volume 1. U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, Washington.
- [Mandelker, 2017] Mandelker, D. R. (2017). New Perspectives on Planned Unit Developments. *Real Property, Trust and Estate Law Journal*, 52:229–290.

[Metzenbaum, 1957] Metzenbaum, J. (1957). The History of Zoning—A Thumbnail Sketch. *Western Reserve Law Review*, 9:36–42.

[of Boston, 1986] of Boston, C. (1986). Downtown Zoning: Intermin Planning Overlay District. Draft, Boston, Mass.

[Taylor, 2015] Taylor, Z. (2015). *The Politics of Metropolitan Development*. PhD thesis, University of Toronto.