The fast track to high-density building rights

Local authorities offer developers additional building rights in exchange for public works, such as paving roads.

By Ari Mirosky | Jul.14, 2008 | 12:00 AM

Is a deal between a municipality and a private developer, under which the developer builds public infrastructure connected to his project in return for increased building rights, a good planning move in the long run?

The public’s skeptical attitude toward the local authorities - which stems, inter alia, from the complex relationship between the authorities and the developers - apparently prompts many to oppose such agreements. Still, a recently published study of several such agreements in Tel Aviv actually warmed to the idea.

In principle, the system seems to benefit the public. The developer receives additional building rights in a project already on his drawing board in exchange for his commitment to execute public works that upgrade the municipality’s infrastructure. Often, this results in infrastructure that would not have been built without such deals, due to budgetary difficulties. It is important to remember, however, that no developer will accept such a tradeoff unless it is ultimately worth his while - or unless a local authority forces it on him in some way.

The public is caught in the middle. It benefits only if such agreements result in added value equal to the impact of the developer's additional construction - and if broader regional plans are not negatively affected because the deal ignored the addition's effect on its surroundings.

Measuring success

Some of these issues were examined in the study, titled "Between public goals and private projects: Agreements between planning authorities and developers, the Tel Aviv example." The study, published by the Center for Urban and Regional Studies at the Technion Israel Institute of Technology, was conducted by Aviva Zuberi, a real estate appraiser with an M.A. in urban planning, and Prof. Rachelle Alterman, an urban and regional planning expert at the Technion and holder of the David Azrieli Chair in Architecture/ Town Planning.

Zuberi and Alterman began their study in 1992 and tracked five projects built in Tel Aviv since then: Beit Kalka on Menachem Begin Road; the Africa Israel House at the corner of Ahad Ha'am, Herzl and Rothschild Boulevards; the former Israel Military Industries compound on Revivim Street, bordering on Pinhas Rosen Road; the Mashtela neighborhood; and the Rival St. compound. Each project's plans were scrutinized, along with the agreements between the municipality, the developer and the builder and the fairness and benefit of each agreement.

In 1990, Beit Kalka's developer asked the municipality to approve an additional 360 square meters for the building. The request was submitted after the fact, and the municipality conditioned its approval on the payment of NIS 40,000 - the full value of the building's increased value due to the addition. The city earmarked the money for the purchase of a plot of land for nearby buildings. Technion's study found that although the city received the funds, the plot was apparently not purchased. That agreement was therefore not a success in terms of public benefit.

With regard to its fairness, however, the researchers concluded that the agreement favored the city, which enjoyed a negotiating advantage due to the developer's desire to increase its building rights.

A taller building

In 1991, Africa Israel Investments decided to build an office tower on land it owned, based on approved plans granting 300% construction rights. The city offered to increase that figure to 360%, which would allow construction of a 25-story office building with 12,500 square meters of space. In exchange, it wanted the developer to do some preservation work on an underground road connecting Rothschild Blvd. with Ahad Ha'am St., and build a public parking lot.

That plan, however, ran into opposition. In 1995, the regional planning and building committee's legal advisor decided to invalidate the arrangement, saying it was improper. A conflict then developed between the regional planning committee and the local planning committee, which had proposed the agreement.

Ultimately, the company was awarded some additional building rights in exchange for just the preservation work. The final permit was for a tower covering 11,800 square meters.

Four years later, in 1999, Africa Israel submitted a new plan. It proposed increasing its building rights to 450%, enabling a tower covering 15,600 square meters, in exchange for all the original public works apart from the underground road.

In 2000, Africa Israel completed construction of the tower, but asked the city for a postponement of the public works. However, the company gave the city guarantees to ensure that the buildings would be preserved and the other public works carried out, and most of the projects have in fact been executed.

In this case, the researchers felt that the agreement was fair, as it was reached in negotiations between the company and the city and was even subject to public review, via the regional planning and building committee. Moreover, the deal benefited the public because it promoted important urban goals, including the preservation of buildings and the construction of parking spaces.

Still, the agreement did not save the developer any time, and Africa Israel claimed that the arrangement caused it losses.

Furthermore, after the study was published, Africa Israel tried to avoid its commitment to build the parking lot, contending that its controlling shareholder, Lev Leviev, is an Orthodox Jew who does not want to assist in the desecration of the Sabbath and Jewish holidays by facilitating driving on Shabbat.

The IIM compound on Revivim St., which covers 4.4 dunams, was initially supposed to contain 400 residential apartments. Following planning problems, however, this number was reduced to 350, along with less commercial and office space. Construction began in 1991.

The developers were ordered to build a 2,000-square-meter preschool for public use, develop 3.2 dunams in the project's vicinity for public needs, and transfer $1 million to the city for construction of another public building. In exchange, the city promised not to exercise some of its rights to expropriate land in the compound.

In 1998, the developers sued the city for reducing the number of apartments in the project, even though the developers had initiated the reduction. The researchers commented that this case shows the city's lack of experience in drafting such agreements. Even so, all in all, they determined the project to be both beneficial and fair.

Problems at Mashtela

The Mashtela story is different, as it involves a whole series of agreements rather than a single one.

In 1992, a plan was approved for rezoning 266 dunams of agricultural land in northeastern Tel Aviv, in what is known today as the Mashtela neighborhood. Fifty percent of the land was owned by the Israel Lands Administration and 40% by the municipality. The city planned a...
relatively densely populated neighborhood of 1,200 apartments, with building permits contingent on the construction of public buildings in the neighborhood.

This was not a deal between the city and developers. Nevertheless, increased building rights were granted, and the timing of the plan’s approval and the sale of the land - at the height of the real estate bubble in the 1990s - enabled the city to set the terms for construction of the neighborhood.

Several agreements were made: between the IIA and the Industrial Buildings Company for development of the local infrastructure; between the IIA and the city, concerning the management and marketing of the land; between the IIA and developers who won its tenders; and between the developers and Industrial Buildings, over payment for the infrastructure development.

**School never built**

The agreements were not fulfilled in their entirety. The public institutions were not completed; among other things, an elementary school agreed upon in advance was never built. Unexpected problems prevented its construction and hampered the neighborhood’s development. According to the Technion’s study, this failure significantly reduced the benefit of the agreements.

The final project examined by the study was the Rival St. compound. This area previously housed artisans’ workshops, but in the 1990s, the city decided to convert it to high-tech, offices and stores, which would generate more jobs.

In order to attract developers and upgrade the area’s transportation infrastructure, the city decided to grant increased building rights of 200% to 300%, depending on the size of the lot in question. In exchange, the developers were required to widen and improve roads in the area and evict the businesses currently operating there.

The value of the work undertaken by the developers was not supposed to exceed the upgraded value of the lots, but in practice, the cost of evicting the existing businesses alone turned out to be higher than the value of the increased building rights.

Nevertheless, the agreements met the test of fairness and benefit - as proven by the current state of the compound, whose character has changed completely over the past decade.

So how successful is this system? Zuberti and Alterman support such agreements, concluding that overall, the city acted fairly and the projects were beneficial, apart from a few reservations.

Many countries have legal mechanisms that facilitate such deals, and they are concluded quite often.

In Israel, such a mechanism is still being developed, with the Tel Aviv municipality serving as the trailblazer. And the city is learning from its mistakes: Among other things, it has decided to employ the services of an external legal advisor.

Lately, however, this emerging mechanism has met with opposition - surprisingly, from Tel Aviv’s own city engineer, Hezi Berkovitz. He voiced his views during a discussion of the Bar Hasaga project, under which developers would be encouraged to build inexpensive apartments in the city for young couples, for both purchase and rental, in exchange for permits to build additional apartments.

"I have a problem with solving problems by granting additional building rights," said Berkovitz. "I have a binder full of problems. National Master Plan 38 is just one of them. Practically speaking, even an additional 35% on a project is a problem."