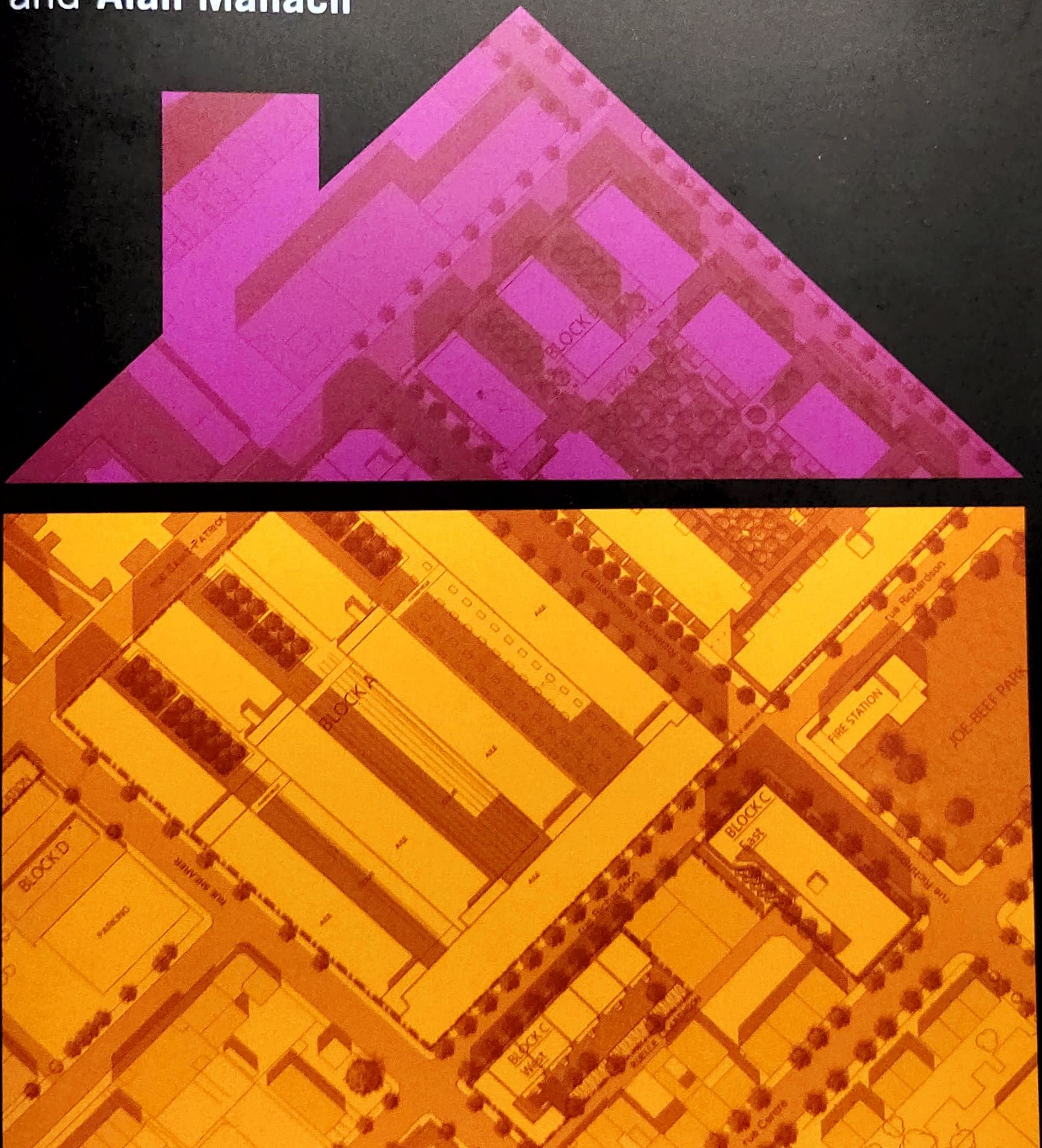
Inclusionary Housing in International Perspective

Affordable Housing, Social Inclusion, and Land Value Recapture

Edited by
Nico Calavita
and **Alan Mallach**



Library of Congress Cataloging-in-Publication Data

Inclusionary housing in international perspective : affordable housing, social inclusion, and land value recapture / edited by Nico Calavita and Alan Mallach.

p. cm.

Includes index.

ISBN 978-1-55844-209-2

1. Inclusionary housing programs. 2. Mixed-income housing. 3. Housing policy.

I. Calavita, Nico. II. Mallach, Alan. III. Lincoln Institute of Land Policy.

HD7287.95.I52 2010

363.5'83--dc22 2010010496

Designed by Peter M. Blaiwas

Vern Associates, Inc., Newburyport, Massachusetts, www.vernassoc.com

Composed in ITC Galliard and Trade Gothic.

Printed and bound by Puritan Press, Hollis, New Hampshire.

The text paper is Rolland Enviro100, an acid-free, 100 percent recycled PCW sheet.

Mixed Sources

Product group from well-managed forests, controlled sources and recycled wood or fiber

FSC www.fsc.org Cert no. SW-COC-003135

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Spain's Constitutional Mandates
The Right to Housing, Land Value Recapture, and Inclusionary Housing

Nico Calavita, Joaquim Clusa, Sara Mur, and Robert Wiener

Francisco Franco, Spain's dictator for more than 35 years, gained power at the end of the 1936–1939 Spanish Civil War. During the initial period of his long tenure, Spain was isolated from the rest of the world and excluded from the United Nations. In 1955 Cold War politics prompted the United States to renew relations with Spain, which then opened its territory to American military bases. Franco ended his autarchic economic policies in 1959, stimulating a period of economic growth. As millions of people migrated to the major cities from the south and the countryside, Spain experienced the rapid expansion of cheaply built high-rise towers on the urban periphery and increased densification in city centers.

Following Franco's death in 1975, the transition to democracy led to national elections in 1977 and, the following year, the establishment of the Spanish Constitution. The new constitution attempted to settle age-old issues of centralism, nationalism, and separatism that Franco's dictatorial regime had buried, but certainly not resolved. The result was the creation of 17 autonomous communities, of which four—Basque Country, Catalonia, Galicia, and Andalusia—were more autonomous than the others. High levels of autonomy, however, have not quelled aspirations for complete separation in Basque Country and the region of Catalonia.

The Partido Socialista Obrero Español (Socialist Workers' Party; PSOE) won the elections in 1982 and governed the country for 14 years. In 1996, a series of scandals brought to power the rightist Partido Popular (People's Party; PP), which then lost to the PSOE in 2004, in part because of its handling of the railway bombings that shook Madrid a few days before the elections.

other regions, and then by the national government in 2007. The constitutional, economic, and political contexts of inclusionary housing play out differently in the various regions and cities, however. The harsher the effects of the housing crisis and the less market-oriented the political regime, the more likely it is that the region or city will attempt to increase the inclusionary set-aside.

Such decisions cannot be made in a vacuum, however; they require an economic analysis to establish what percentages are feasible under particular development scenarios to ensure that they are both fair and economically achievable. This section presents two economic analyses, prepared by Joaquim Clusa and Sara Mur of the firm, Murclusa, for La Marina, a redevelopment project in the City of Barcelona in Catalonia, and for a general plan update for the City of Vigo in Galicia.

Barcelona: La Marina Plan

In preparation for the 1992 Olympic Games, the City of Barcelona transformed its public infrastructure and facilities by building a new ring road and drainage system; reclaiming the waterfront; and building new public plazas, parks, and sport venues. These facilities benefited from significant central and regional government grants, with much of the investment concentrated in selected locations termed *new city centralities* (Marshall 2004).

The Olympic housing program redeveloped a number of Barcelona's old manufacturing areas to create three Olympic villages containing about 4,500 units to house athletes, journalists, and referees. These units were sold on the open market after the Games, even though the city's population—especially the number of its young people—was decreasing due to its high housing costs. While highly successful at many levels, the transformation of Barcelona in the 1980s and early 1990s left untouched its affordable housing deficit. The housing bubble between 1997 and 2007 only exacerbated the city's housing affordability problems.

After the 1992 Games, the city's renewal policy focused on major projects. The most emblematic of these is a 252-hectare area where Barcelona meets the Mediterranean and the Rio Besós. The planning culminated in 2004 with the Forum Universal de las Culturas, which succeeded in upgrading and integrating existing infrastructure (e.g., plants for sewage treatment and alternative energy) with a convention center, hotels, and other facilities as well as with the redevelopment of La Mina, a public housing project in need of renewal. The main goal of another project, the Poblenou 22@ Plan, was to attract high-tech industries to a centrally located district that has a mix of housing and disused industrial plants. A recently approved plan in the northeast for La Verneda, a large manufacturing area, has the potential to create 8,000 housing units and 6,000 jobs. La Marina de la Zona Franca, an area in the southwestern part of Barcelona, has some housing, but was comprised mainly of industrial plants, some of which are still active. It was seen as an area where housing, including as much inclusionary housing as possible, could be concentrated.

The plan. The 2005 renewal plan for La Marina was recently renamed, in Catalan, La Marina del Prat Vermell, which translates to "the red field by the sea." From a planning standpoint, especially considering the city's housing situation, the existing low-density manufacturing uses were seen as a misuse of this centrally located area with social and economic locational advantages. With its location seven subway stops from Plaça de Catalunya, considered the geographical and social center of the city, La Marina was an ideal site for a mixed-income housing project with related services and employment to help meet the city's housing needs (figure 7.2).[9]

The plan had two objectives. The first was to create a significant amount of inclusionary housing in an attractive environment, and the second was to foster an appropriate jobs-housing balance by creating more new jobs in the service sector to replace the existing manufacturing and warehousing jobs that were likely to disappear or move in the near future..

The challenge in preparing the plan was to ensure a fair balance of density, environmental quality, and economic feasibility. From an economic feasibility standpoint, it was important to ensure balance for the three partners in the development process: (1) the social interest represented by the municipality, in the form of adequate public facilities and inclusionary housing; (2) a fair return for the landowners, which the city established as the existing use value; and (3) reasonable profits for the developers. The difficulties associated with each partner are those of paying for the new infrastructure and public facilities; compensating the existing owners, including the cost of relocating active industrial operations; and ensuring sufficient developer profit. These issues were addressed by increasing the densities allowed by the existing plan and replacing existing uses with uses of higher value, thus increasing the value of the land. The changes in density and use also had to compensate for the inclusionary housing prices, which would reduce the site's market value.

The plan, developed between 2004 and 2006, called for an overall FAR of 1.85 over the 75-hectare (188-acre) area and had the following features:.

- 1.3 million square meters of floor space;
- 11,865 total housing units;

9. The team that prepared the Modificació del Plá de La Marina de la Zona Franca included Ramón Massaguer, Oriol Clos, Isabel Meléndez, José A. Tajadura, Neus Aleu, Joan Abad, Enric Lambies, Marta Perelló, and Ricard Fayos.

- 3,802 units of social housing, including 1,086 units of rental housing for young families and the elderly, 2,716 units of *régimen general* and *especial* VPOs, and 2,445 of *concertado* VPOs; and
- 10,000 service jobs in 315,420 square meters of floor space (26 percent of the total).

It called for a land use distribution of 35 percent for residential and commercial development; 30 percent for roads; and 31 percent for public spaces and green areas, including a health center, schools, library, and senior center (figure 7.3).

Each of the 15 blocks, averaging 1.8 hectares in size, was treated as a separate entity so each one could be developed independently. This created several challenges because the plan for each block had to provide compensation to its former owner(s) through a reparcelization process. Then each new development

Figure 7.2 La Marina Planning Context

The plan for La Marina area is labeled "A"; "B" indicates various revitalization interventions in the Zona Franca area. To the right of the Marina plan area is the hill of Montjuic, home to many of the sport facilities for the 1992 Olympics. Right of Montjuic is the medieval center and the expansion designed by Ildefons Cerdà during the second half of the nineteenth century.

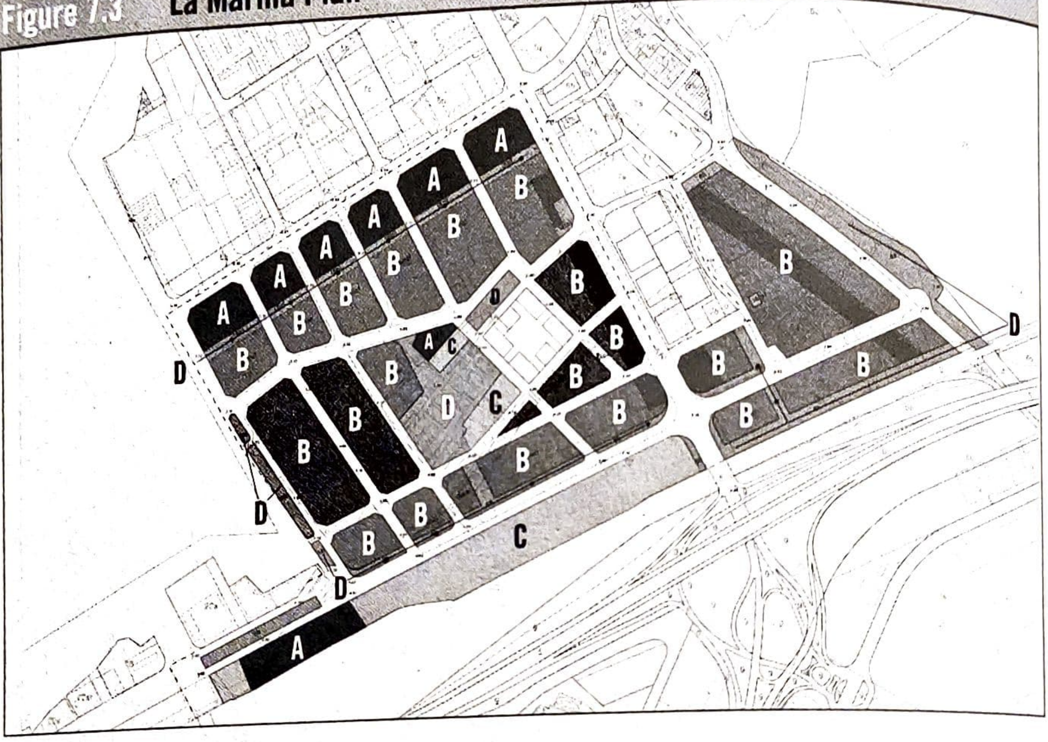
Source: Ajuntament de Barcelona, Sector d'Urbanisme, Direcció de Plans i Projectes, Departament de Planejament en Transformació.

had to pay an infrastructure charge of approximately €45 per square meter to get a building permit.

Economic analysis. To comply with various laws and regulations, the economic feasibility analysis of the entire site had to determine the minimum development density needed to finance the inclusionary housing, the public facility costs, the development costs (including a major road and two new metro stations), and the dedication of 10 percent of the potential land value to the municipality. The analysis also had to calculate compensation for landowners, manufacturing facilities, and moving costs. The compensation for property owners was based on the existing value of the land as an industrial site.

The critical factor in making the redevelopment economically feasible is the differential between the proposed net density (2.30 FAR) per block and the existing density (1.0 FAR). This differential creates enough additional real estate value to make possible the compensation costs and the infrastructure costs, factoring in the inclusionary housing and 10 percent land dona-

Figure 7.3 La Marina Plan



This plan shows the road network and generalized land uses, including where private development including VPOs will take place (labeled A and B). Buildings as high as 15 stories are labeled A. Public facilities are labeled C, and D indicates open space. When detailed plans for each block are prepared, three additional hectares of open space and 4.8 hectares of public facilities will be identified. All told, 13.3 and 11.15 hectares, respectively, will comprise the entire plan area.

Source: Ajuntament de Barcelona, Sector d'Urbanisme, Direcció de Plans i Projectes, Departament de Planejament en Transformació.

tion, which represent a decrease in potential market-rate floor space since VPO prices are approximately one-third of the market prices. The calculation also has to be sufficient to give the developer's investment an internal rate of return of 12 percent per year, based on mortgage market regulations established by the central government. On the basis of the economic analyses, it was calculated that of a total of about 12,000 units, approximately 5,700 would be market, 2,500 VPO *concertado*, 2,700 VPO *régimen general* and *especial*, and 1,100 social rental housing. All told, it amounted to more than 50 percent inclusionary housing.

The plan for La Marina was approved without much controversy. The majority of the landowners and manufacturers ultimately agreed to the plan, and none appealed to the courts even though their requests for greater density and a smaller inclusionary percentage were not accepted. The roughly 100 families living in the area accepted compensation in the form of new affordable apartments. The only opposition came from certain public interest groups that sought to maintain the manufacturing character of the area.

Discussion. The increase in the inclusionary requirements and infrastructure charges in the plan for La Marina reflects the escalating "public-ification" of land values as contemplated at all levels of government, from the national planning laws of the entire post-Franco era, to Catalan regional laws of the last several decades, to the planning practices of the City of Barcelona itself. This constitutionally derived institutional context opened a new approach for the social recovery of land value increases and the guarantee of adequate housing for all families. The extent to which the "private city" was made to pay more for the benefit of the "public city" (public infrastructure and land for VPOs) reflects the extent to which real estate prices, and consequently land prices, had increased as a result of the real estate boom from 1997 through 2007. Whether those arrangements remain sustainable under existing conditions remains uncertain.

It should be noted that the inclusionary requirement increases the potential demand for housing because it makes housing accessible to a larger population, thus potentially playing a countercyclical role now that the 1996–2007 bubble has ended. In that context, the internal rate of return for a developer of inclusionary housing can be even higher than that in the free housing market, because the VPO units have shorter selling periods and are being built on land bought according to the derived demand price principle, without speculative expectations of future housing price increases.

Vigo: The General Plan

In contrast to the plan for La Marina, which highlights how an aggressive jurisdiction recaptured all the land value increment to pay for infrastructure, public facilities, relocation costs, and the highest possible percentage of inclusionary housing in a neighborhood, the Vigo case outlines the process and economic analysis that led to higher percentages of inclusionary housing than the minimum required for an entire city. The political context, however, permitted only a partial recapture of land value increases.

Territorial setting. The municipality of Vigo is located in the northern part of Spain, in Galicia. This region has 2.8 million inhabitants, 315 municipalities, and the qualification of being a "convergence region" according to the European Union; that is, this region has a lower income per capita than the EU average. As one of Spain's busiest ports, with a strong manufacturing base, Vigo is the largest city in the region, in terms of residents (300,000), housing (135,000 units), and economic activity (143,000 jobs). Its metropolitan region includes 44 municipalities and 829,000 inhabitants.

Vigo is in competition with two other cities in Galicia—Santiago de Compostela, the region's administrative capital, with 160,000 inhabitants; and A Coruña, which has 240,000 inhabitants—as well as with the city of Porto in Portugal. Vigo underwent a significant restructuring of its manufacturing base in the 1980s, which brought new vitality to its economy, now centered on the automobile industry (a Citröen-Peugot plant), fishing, and ship construction. Vigo's employment rate is higher than the average both in Galicia and in Spain as a whole.

The municipality has high residential densities in its center and low-density suburban development covering 60 percent of the entire municipal territory (110 square kilometers). Vigo also suffers from important infrastructure and social services deficits. Approximately one-third of the population is housed in illegally built structures. Because of its leap-frogging and low-density pattern of development, the provision of municipal services in outlying areas is more expensive than in the rest of the city. One of the goals of the plan update was to redevelop or eliminate the illegal housing developments and obsolete manufacturing uses, while at the same time creating a more compact city.

Galician planning laws. The legal basis to support the effort to increase the inclusionary housing percentage in Vigo was *Ley* 6 of 2002 of the Galician region, which established a minimum reservation of 20 percent of the residen-

An aerial photograph of Vigo reveals contemporary urban sprawl and illegal settlement.
Credit: Xerencia de Urbanismo, Concello de Vigo.

tial floor space in all new developments. Municipal plans could increase the percentage with no limit, provided "equilibrium of profits and charges" is maintained individually and among each district of similar value in the municipality (articles 131.1 and 112). In June 2008, the Galician government approved an amendment to the 2002 law to conform to the national 2007 *Ley del Suelo*, but it went even further: all developable sectors of a Galician municipality with more than 20,000 inhabitants must have at least 40 percent inclusionary housing. The effort described here took place before the 2007 national and 2008 regional laws were enacted.

The municipal plan and approval process. The municipal plan is a build-out plan that preserves 39 percent of the total municipal territory as permanent open space while densifying the sprawling suburbs with infill and redevelopment. The floor space potential is 18.7 million square meters, with 76 percent (14.2 million square meters) dedicated to residential uses—a total of 116,061 new units, including 57,475 units of inclusionary housing. The build-out was projected to occur in about 20 years for commercial land uses and 26 years for residential uses, using the average production figures for the period from 2001 to 2006. The so-called initial approval of the municipal plan was made by the Vigo City Council in 2004. This proposed plan generated around 60,000 written objections and comments, especially from property owners who would be affected by the redevelopment of illegal settlements. After many public hearings, however, the plan was approved in May 2006 and was sent to the regional government for final approval.

The regional government has the right to demand changes to municipal plans, and in January 2007 it issued a series of "adjustment conditions" to be made by the city council, especially related to the expansion of areas designated for new development and the phasing of future development. After the May 2007 elections, the new majority on the Vigo City Council took advantage of the opportunity offered by the need to revise the plan as mandated by the regional government, and decided to increase the inclusionary housing percentage from the original 23 percent to a minimum of 40 percent. At this point it became necessary to undertake an economic analysis of the implications of this percentage increase. On the basis of that analysis, the revised percentage in the municipal plan was approved by the regional government on 16 May 2008. This last step closed an extremely complicated planning process of nearly eight years' duration that involved four different mayors.

Inclusionary housing objectives. The city council's objective was to incorporate an inclusionary housing reserve of at least 40 percent of the floor space in all new development sectors. As described before, urban development in Spain is structured through PAUs—partial plans prepared for relatively large sectors where landowners share in the urbanization costs and profits in proportion to the land owned. Each of the sectors in Vigo presents its own opportunities and constraints, which results in their having different land values. Given these differences, it was decided that the inclusionary housing requirement could not be applied equally to all sectors, but rather had to be tailored to the development potential and costs associated with each of the 380 sectors.

An initial economic analysis in Vigo found that an average inclusionary housing requirement of 40 percent would be possible based on the recapture of 25 percent of the increases in land values of the period from 2003 to 2007. The landowners would still enjoy an increase of about 75 percent in value for their properties. The reason for the 75 percent guarantee was political. Many different landowners hold property in the areas where illegal housing has been built (the average property size is about 600 square meters), and they wield significant political power because ownership in Galicia is held sacrosanct and is viewed as a means to economic independence.

While the owners retained 75 percent of their land value potential—based in part on increased development rights—they were still unhappy with the proposed changes, and the developers enlisted their support to fight the new plan. The harsh political conflict that ensued was expected, but the deepening housing affordability crisis coupled with Spain's constitutional mandates made it possible for the decision makers to hold firm. They could point out that the reduction in potential land values was actually much less than it could have been under the law.

Each sector's economic feasibility was measured using the land residual value method that is often used by developers to decide how much they should pay for land they wish to develop. It assesses all costs involved with site development, including the developer's profit and the market value of the buildings to be sold or rented. The costs are deducted from the revenues, and the remaining amount indicates the maximum the developer should pay for the land. In some cases the residual value might be negative, requiring public subsidies for development.

The 75 percent increase guarantee to landowners generated various inclusionary housing percentages in the different sectors, with the lowest percentage in the central district. As mentioned above, the objective of the numerical exercise was to guarantee a linear increase of 75 percent in relation to the 2003 land residual value in each sector, resulting from the 2004 first approval of the plan calculations.[10] This 75 percent figure was determined to guarantee a minimum of 39 percent inclusionary housing in the central districts with the highest real estate prices, and higher percentages in other areas of the city.

Figure 7.4 shows how redevelopment costs and land costs increased between 2003 and 2007, with an increase of €4,220 million in land values. The increase of inclusionary housing from 23 percent to 47 percent of residential floor space reduced the windfall for landowners by 29 percent, to €2,618 million. The increase of 24 percentage points also produced a 29 percent reduction in new expected land values of €1,583 million, which is the amount of the planning gain.

The economic feasibility of new development is a function of the real estate market. In the case of Vigo, the economic consequence of the increase in the inclusionary housing reserve is the reduction of the expected land

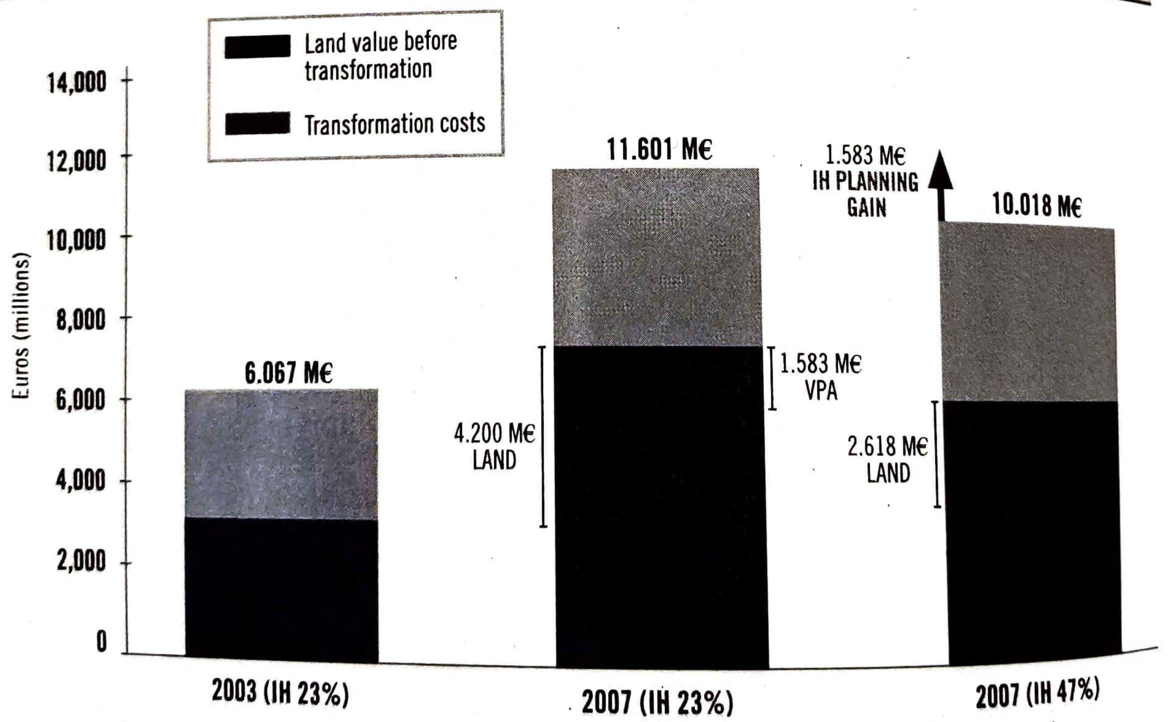
10. See www.murclusa.cat for a description of the algorithm utilized to calculate the percentage of inclusionary housing in each sector.

values that result from the lower price of €1.517 per square meter, which is 63 percent of the average price of market-rate housing (€2.408 per square meter). The public sector, then, enjoyed a part of the gain generated during the 2003–2007 period by the increase in real estate prices that otherwise would have gone to landowners.[11]

Discussion. The Vigo City Council's decision in 2007 to increase the inclusionary housing percentage to 40 percent exactly one year after the previous council pegged it at 23 percent might appear to have been rendered moot by the regional government's subsequent requirement of 40 percent everywhere. But it is important to appreciate Vigo's approach. Not only did the council want to increase that percentage by recapturing some unearned increments in land value, it also strove to achieve an equitable distribution of costs and benefits by doing fine-grained analysis of hundreds of sectors. This approach allowed the city to implement, to the highest politically and economically feasible degree, the right to decent and affordable housing and the principle of social cohesion.

11. Large Vigo developers took the city to court in October 2009 seeking to lower the inclusionary housing percentage requirement to 20 percent, arguing that the existing conditions in the housing market make unfeasible the percentages approved in the 2008 municipal plan. In June 2010 the city of Vigo provided the court with an economic study elaborated by the same original economic consultant who had challenged the developers' consultants' study. The new study concluded that developments are feasible even with the present prices.

Figure 7.4 Vigo General Plan: Land Value Components with Transformation Costs, 2003–2007



Source: Consultora Galega (2007).

CONCLUSION

Spain has gone further than any other European country in its pursuit of inclusionary housing. The process was initiated by autonomous governments in the Basque Country and Madrid in the mid-1990s and continued in other regions in subsequent years. It culminated with the national *Ley del Suelo* of 2007, which required that a minimum of 30 percent of buildable residential land be dedicated to social housing.

Spain's achievements can be explained by several factors. First, the country has a long tradition, initiated under the Franco dictatorship, of strong public intervention in the real estate market. A principle exists that the right to land ownership and development is to be accompanied by obligations and duties, and land speculation has been singled out as a process to be discouraged. Second, with the advent of democracy, this tradition was enshrined in the 1978 Constitution, in which Article 47 calls for "regulating the use of land in accordance with the general interest to prevent speculation," and for the sharing by the community of "the increased values generated by the urban activities of public bodies." Article 47 also declares: "All Spaniards have the right to enjoy decent and adequate housing" and that public authorities shall endeavor to make that right effective.

Third, since the mid-1990s it has become increasingly clear that past policies were sorely insufficient to accommodate increasing demands for affordable housing, which led to calls for greater action by the government. Finally, the rapid and substantial increase in immigration raised concerns about social and geographic segregation. All these factors, with additional impetus provided by skyrocketing housing prices, contributed to a kind of perfect storm that legitimized high levels of intervention in the real estate market aimed at recapturing unearned increments in land value to benefit the larger society. The result was inclusionary housing.

The actual creation of social housing, however, has been a slow process. Inclusionary housing has been implemented through the dedication of *reservas*, but considerable time can pass before these land set-asides translate into homes for residents. Even in the Basque Country it took almost 10 years to establish the *reservas* system, and it took even longer in Catalonia. Ironically, the delay was caused by the very problem inclusionary housing was intended to correct. With homes appreciating rapidly, developers could make fortunes in market rate housing, and they fought any action that would curtail their development activity. But, the result could have been merely a postponement of inclusionary housing construction, as localities have obtained ample land *reservas* and developers are now eager to build VPOs.

For this potential to be fully realized, however, loans need to be provided by banks to builders and buyers of VPO units. Unfortunately, with the financial crisis gripping the country, banks are increasingly reluctant to make loans. Regions and larger localities have created a variety of quasi-independent entities that build social housing, an approach peculiar to Spain. Very few nonprofit organizations in Spain either build social housing, as in the United States, or buy it from developers, as in England or France, and then also manage the housing. These roles are performed in Spain by quasi-public entities, but efforts to increase the presence of nonprofits exist as well. Another example of Spain's more interventionist state is the ARE program in Catalonia, by which the regional government accelerates the development of privately owned land for the production of inclusionary housing.

In Spain, as in France, the fostering of spatial integration, or avoidance of social segregation, is of great concern. For example, Catalonia has legislated extensively to foster urban solidarity and avoid concentrations of VPOs. Most striking is a mandate probably inspired by the French *Loi SRU*. It requires that in the 2008–2028 period all Catalonian municipalities greater than a certain size achieve a minimum 15 percent of nonmarket housing.

While there is a strong belief in Spain that the cost of inclusionary housing will be absorbed by the landowner, to ensure the political and economic viability of projects it is still important to provide economic analyses of the costs and benefits of various levels of inclusionary housing for the three parties involved in urban construction: the landowner, the public, and the builder/developer. Probably because its planning system is so entangled with financial issues, Spain is a country where the economic implications of planning decisions are carefully analyzed, including those concerning inclusionary housing.

The two case studies presented in this chapter show how different circumstances and contexts led to different levels of land value recapture, while ensuring that developments were still economically viable. La Marina in Barcelona was based on a complete recapture of potential development value, and Vigo's plan was to recapture 25 percent of land value increases from 2003 to 2007. Given the collapse of the real estate market after 2008, it remains to be seen what kinds of revisions, if any, will be required in those two plans. Nevertheless, these case studies point the way to a practice that should be adopted by jurisdictions in other countries to assist in the decision-making process that leads to inclusionary housing interventions.

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