Land Value Recapture in Italy

A Detailed History, TDR Practices and Case Studies

Falco, Enzo

Publication date
2017

Document Version
Final published version

Citation (APA)
Falco, E. (2017). *Land Value Recapture in Italy: A Detailed History, TDR Practices and Case Studies*. TU Delft OPEN Publishing.

Land Value Recapture in Italy

A Detailed History, TDR Practices and Case Studies

Enzo Falco

Department of Research for the Built Environment - OTB
Faculty of Architecture and the Built Environment - TU Delft
Julianalaan 134, 2628 BL Delft,
Netherlands

Publisher: TU Delft Open

Author: Enzo Falco

Title: Land Value Recapture in Italy: A Detailed History, TDR Practices, and Case Studies.

ISBN: 978-94-92516-70-1

TABLE OF CONTENTS

1. Introduction

Land value recapture has always been a controversial subject. In many countries there have been and there are different experiences that deal with the common objective of sharing with the wider community the benefits that derive from the development of land. Different approaches are the consequence of diverse private property regimes, planning legislations and histories of land ownership. However different the approach, the objective remains unchanged and prompts new research and practices. Approaches vary from the imposition of taxes on the increase in the value of land to compulsory acquisition at existing use value, transfer of development rights involving case-by-case negotiation, and in-kind contributions.

The importance of capturing at least a part of the increase in the value of land, also known as **betterment value**, has been discussed within planning literature with examples from all across the world (Alterman, 2010). Several expressions exist within the literature to refer to the increase in the value of land caused by government action. Betterment value, planning gain, windfall gain, unearned increment are some of the various terms used for expressing the same meaning (Bowers, 1992; Healey et al., 1995).

The issue that underpins the need to recover part of increases in land value has to do with the necessary condition to make developers and landowners contribute

to the construction of the public parts of the city and share with the wider community part of the unearned increment which has accrued to them. Hans Bernoulli (1946) in his major volume "Die Stadt und ihr Boden - Towns and the Land" pointed out the importance of public ownership of land for the implementation of plans and generally for the realisation of a good land policy.

In the preface to the Italian translation of Bernoulli's work, Luigi Dodi (1951) wrote: "*the awkward question of urban land [...] is at the basis of nearly all of the current planning issues and [...] affects the possibility of bringing about the ideal city*"[1]. Further, Bernoulli wrote: "*whoever talks or writes about Planning often easily skips this prejudicial problem and prefers looking at the most attractive part of urban design.*"

A short definition of betterment is thus deemed as essential for the purpose of this work and would help understand the differences that exist between betterment value and the broader concept of urban rent. The Uthwatt Committee report (1942 para. 260) defined betterment as:

> *"any increase in the value of land (including the buildings thereon) arising from central or local government action, whether positive e.g. by the execution of public works or*

[1] Author's translation. Original text: Dodi (1951:6) "*La grossa e spinosa questione del suolo urbano […] sta alla radice di quasi tutti i problemi urbanistici odierni e […] condiziona la possibilità o meno di realizzare la città ideale*".

> *improvement, or negative, e.g. by the imposition of restrictions on other land"*.

For the purpose of this work, betterment value can be described as the increase in the value of land that is determined by changes in the planning regime. This means that it is concerned with the rise in the value of land caused by the granting of planning permission for a higher value use (Healey et al., 1995). Thus, the focus is on betterment produced by the planning activity and decisions and specifically by the granting of planning permission. Other forms of betterment deriving for example from infrastructure improvements, provision of new services and all the other factors which determine the value of a piece of land (e.g. accessibility) are not taken into consideration in this work.

To express how, in general, the concept of the increase in the value of land is perceived and its impact on the society as a whole it may be useful to report the words of Campos Venuti in Oliva (2010a:15) who stated:

> *"land rent represents the main pathological factor of the real estate regime and it is responsible for all its perverse effects on cities, (...) the environment and landscape"*.

These effects involve: speculation; overdevelopment and reduction of resources available for other kind of investments in other sectors of the economy; the need to

provide for more infrastructure in general (e.g. roads, trains, buses and public services and facilities); increased stresses on individuals who have to travel longer to and from work, and so on.

Campos Venuti referred to the increase in land value in general, however this increase is produced, and does not distinguish between the causes which determine it. Saraceno, as reported in Oliva (2010a: 21), describes the phenomenon very clearly:

> "*there is no doubt (...) that landowners who benefit from the increase in the value of land cannot be considered among the production factors; the attribution of such increment to landowners would result in taking away a share of national income from the categories which produced it*".

Such increments accrued to landowners are not the fruit of personal investment or generally the consequence of individual efforts nor the result of some specific public investment. It is more the product of the expansion of the city at its edges and of an increase in economic activity, and it is the existence of the society itself, organised as a community, which is the reason why permissions for development projects and development control are needed. If a community is not able to capture betterment it may overall under-invest in new infrastructure or even decide to refuse granting planning permission which

would result in the entire society being worse off (Bowers, 1992).

Thus, the importance of collecting betterment derives from ethical as well as economic and practical issues. It is argued that the community which has produced betterment can justly claim it back; and a developer who has benefited from the granting of planning permission or from some form of public improvement and investment should be taxed in order to contribute to the costs borne by the local authority, which represents the community interest (Camagni, year unknown). Nevertheless, the distinction between betterment value due to the granting of planning permission and betterment as resulting from some public investment, e.g. a transport infrastructure or a school, is not at all straightforward. This makes it rather complex to collect betterment resulting from planning permission only.

Approaches to land value recapture and research questions

Within the literature different approaches to collecting betterment value can be found: capital gains tax in association with income tax, betterment levy, development charge, planning agreements and development obligations, use of transferable development rights practices.

Through a historical and a case study approach, this work will review taxation measures, planning-led

approaches mainly through compulsory acquisition, and Transfer of Development Rights (TDR)-based practices used in Italy over the last century to capture part of the increase in the value of land. This is also necessary to understand the reasons that have led municipalities (local planning authorities) to recently shift planning practice towards negotiation-based and TDR-based practices to achieve betterment recapture (Micelli, 2011). Specifically, the research questions to which this work will try to answer are: **What has led municipalities to adopt TDR-based practices for land value recapture? Why (objectives) and how (design) are TDR-based practices being employed by municipalities in Italy?**

In order to understand this shift, a great part of this work (Sections 3 and 4), including three case-studies, will be on such practices to account for more recent developments. Extracting such value from developers is very attractive to local authorities and infrastructure providers as a way of obtaining contributions to specific facilities and services for the benefit of the wider community. It is because of this that TDR-based practices are considered of great interest. Collecting betterment in this way rather than by means of a tax may seem more practical for several reasons. In fact, planning gain, either in-kind or in cash, differs from a general tax on development in the sense that it is ear-marked for a specific purpose or purposes. Moreover, not being collected by the national exchequer but being paid to the local authority within whose area the development takes

place, it remains within the local authority area so resulting in a higher degree of acceptability.

A brief overview of the genesis of TDR-based planning practice in Italy

Over the last fifteen years relatively new planning gain practices have been introduced in Italy to deal with the question of betterment value. The recent debate started off in 1995 at the XXI INU[2] National Conference held in Bologna, where proposals were made to reform the national planning system and introduce a mechanism which without any cost would help to acquire new land assets to be used for public purposes, such as the provision of green and play areas, affordable housing, parking areas and so on (Campos Venuti, 1995; Pompei, 1998). This solution would help to avoid using the instrument of compulsory purchase that at current land prices has become unbearable for local authorities. This fairly new practice, *Perequazione,* had already been previously proposed by the regulations for an inter-municipal plan in the province of Bologna back in 1962 but was never approved (Oliva, 2010a).

Perequazione, known in the international literature as *Equalisation* (Micelli, 2002), has a double practical scope. In the early debate it was meant as a means to equalise "planning conditions" among different

[2] INU – Istituto Nazionale di Urbanistica (The Italian *National Town Planning Institute*).

individuals who own land laying within a development project by attributing, regardless of the land use designated for their land plots, the same amount of development rights expressed by means of a floor area ratio. In such a way it is possible to reduce the discriminatory nature of the planning activity among landowners, though discrimination still persists relative to those who do not own urban land (Chiodelli, 2016). It is with regard to this second form of discrimination that *perequazione* developed and is currently used. Negotiation and agreements with developers and landowners constitute the rationale for contributions towards community infrastructure, facilities and services (Micelli, 2011). A major work on the subject of perequazione is the work by Silva (1960: 385) who stated:

> *The first, fundamental and essential tool for the achievement of progress in planning is the aware, mature and firm will of the public administration to clearly and systematically pursue, with the greatest transparency and to the extreme limits of its discretionality, the equalisation of development rights*[3].

[3] Author's translation. Original text: Silva (1960: 385) "*Il primo, fondamentale ed imprescindibile strumento per la realizzazione del progresso urbanistico è quindi la cosciente, maturata e ferma volontà dell'amministrazione comunitaria di perseguire dichiaratamente e sistematicamente, con la massima notorietà e*

At the basis of this tool as currently intended and used is the concept of *Transferable Development Rights* (TDRs) which allows for the transfer and concentration of development rights onto a fraction of the development site while the remaining areas are given up for public uses. This, as described, is the simplest and first form of *perequazione* used in practice which did not involve more than one development area (*perequazione di comparto*). Such a practice, even if it can date back to the provision made by the 1942 national planning Act under article 23, has been increasingly used within a reformed planning system, such as the one first introduced by the Tuscany region in 1995 on the basis of the guidelines presented in Bologna at the XXI INU (Istituto Nazionale di Urbanistica) Conference which split the old plan into three different documents (Falco, L. 1995). It is in this new system which is discussed in detail in Part 2, precisely within the second level of the new plan known as *Piano Operativo*, that perequazione is used as a tool to stimulate competitiveness and capture a portion of betterment value produced by urban development (Campos Venuti, 1995; Oliva, 2010a). The *Piano Operativo*, in general, is the document where the public interest is expressed in terms of infrastructures, services and financial contributions, which in fact represent the portion of betterment value returned to the community

---

fino agli estremi limiti delle sue possibilità discrezionali, la perequazione del diritto di edificazione".

(Oliva, 2008)[4]. It is therefore of particular interest to view this as a trend to capture betterment value by way of a tool based on the negotiation "skills" and TDR-related regulations of the local authority. This is an interesting evolution of Italian planning practice into a system that strongly relies on the role of private sector developers for the provision of areas for public uses.

Structure of the work

This work is intended to be of interest to an international audience who is concerned with the continuing issue of betterment value recapture. By exploring the trends and history of betterment recapture in Italy, this work wants to represent a reference in the field of betterment recapture for the Italian context and highlight the challenges faced by different measures over time and their successful implementation. This research mainly intends to shed light on the current TDR-based practices in order to raise awareness and encourage reflection on the current and future issues which are likely to characterise planning-gain practice in Italy.

Chapter 2 presents a review of the evolution of the approaches to betterment value recapture in Italy since

[4] An exception is the planning system set out by the Lombardy regional planning legislation from 2005. In this case the plan is split into three documents (Documento di Piano, Piano delle Regole, Piano dei Servizi). Piano dei Servizi is the main document that identifies and determines the needed services, infrastructure, and facilities at the city level.

1865. It is split into two main parts. The first one deals with taxation measures, while the second one with planning practices. The chapter emphasises the failures over time of different tax-based measures, the changes in betterment value recapture policies and the current practices that are in use and available to local planning authorities.

Chapter 3 focuses on the current planning practices based on the Transfer of Development Right (TDR). It starts with an account of the reform processes that occurred over the last twenty years and that concerned the planning systems of Italy's administrative regions. This is essential to understand the regulatory framework within which the new practices are used. It then goes on to present the international debate on TDR and the state of the art of TDR practices in Italy.

Chapter 4 is dedicated to the analysis of three case studies which highlight advantages and disadvantages inherent to TDR practices and their failures and successes. It will review the case studies of Rome, Monza and Parma in terms of the regulations over *perequazione* and *compensazione* (compensation) with the purpose of highlighting their technical characteristics, their effects on plan implementation, and the issues they have faced. It also sets out recommendation for the design and use of TDR practices within urban plans.

Finally, Chapter 5 sets out the conclusions and highlights the need to integrate TDR practices and other

mechanisms based on fees for successfully recapturing the increase in the value of land.

2. A history of Land Value Recapture in Italy

2.1. Pre-World War II policy and taxation measures

The history of betterment recoupment in Italy starts back in 1865 under the Act n. 2359 on the acquisition of land through compulsory purchase. It may be argued that Town Planning was first introduced in Italy by this Act which made provisions and gave powers to a certain category of municipalities to draw up planning schemes (Sica, 1978). The Act introduced three different plans with diverse objectives; *Piano Regolatore Edilizio* which was meant to regulate the building activity within the existing built-up areas of cities with a population of at least 10.000; *Piano di Ampliamento* whose contents were meant to govern new developments for the physical expansion of towns with a populations of over 2.000; and *Regolamento Edilizio* which was obligatory for all municipalities and related to aesthetic, sanitary, safety and habitability conditions of buildings (Scattoni, 1987). The Act under Article 78 made the first ever provision for the recoupment of betterment resulting from public execution of infrastructures (public works and improvement such as roads, water supply, drainage and so on). The article provided that: "*the contribution from every single owner should be equal to one-half of the increase as resulting from the execution of public infrastructures*".

This provision laid the basis for the taxation of betterment value produced as a result of public action and was subsequently incorporated as such in the urban plan for Rome, approved in 1931.

Contributi di Miglioria

The collection of betterment produced by the granting of planning permission was first introduced under the Decree n. 2358 of 1923 with a rate of 20% (Testa, 1933) although it was not until 1931 that an overt taxation mechanism on betterment determined by *change in the use of land and by expansion of the city* was introduced within the Italian legislation[5]. This measure was set out by the *R.D. 14 Settembre 1931, n. 1175, Testo unico per la finanza locale*[6] during the Fascist Regime and at the time it certainly represented an innovative tool. The fiscal measures introduced under Article 236 were called ***Contributi di Miglioria***. Two kinds of Contributi di Miglioria were introduced: i) *specifica;* ii) *generica.* The ***contributi di miglioria specifica*** was targeted at the increase in the value of urban and rural "assets", with the exception of developable land. Of more interest to this research is the second measure, ***contributi di miglioria generica***, which was aimed at the increase in the value of urban and developable land as resulting from the

[5] For an earlier application of such kind of tax limited to the city of Rome in 1907 see Magnani and Muraro (1978).

[6] Royal Decree on local finance.

expansion of the urban fringe and from the development of public infrastructures and utilities by either the municipality or the province.
The innovative element for that time under a dictatorial regime was the fact that the decree gave discretionary powers to the mayors of all municipalities to decide whether or not to introduce the new tool. As such this gave the mayors considerable power which is not found in the current fiscal legislation.
The amount liable to taxation was to be equal to or lower than 30% of the total increase in the value of land and the rate to apply was set at 15%, that is in total a rate, at the highest, of 4.5% of the total increase of the value.

Despite the low rate, Contributi di Miglioria did not find widespread application. This is likely to be due to the moment at which the tax was to be exacted. In effect, articles 240 and 241 stated that the amount due was to be calculated at the point in time when property was sold. It went on by stating that in the absence of property transfer the amount due was to be calculated when land was used for building purposes. Now, because this land was generally the object of speculation, landowners and developers hung on to the land without developing it in order to avoid taxation and enjoy a higher value in the following years. So it may be argued that the new measure failed to encourage land to be brought forward for development and capture betterment value since landowners and developers were not taxed until land was either sold or actually used for building purposes.

As Micelli points out (2011), in the Italian planning system betterment tends to be crystallised into development areas and it is difficult to claim it back if this is to be done when property is sold or developed after many years. Surely in this context the need to encourage development and the building industry after World War Two in order to deal with war damage and meet housing demand led Contributi di Miglioria to being set aside by local administrations. Moreover, there is one more reason that should not be underestimated; namely the likely political unpopularity of such a measure at the local level since it was to be set by mayors. Contributi di Miglioria remained in force until 1971 when they were abolished and a new taxation mechanism known as "INVIM" was introduced in 1972 (Pittori & Stella Richter, 1996).

Imposta sugli incrementi di valore delle aree fabbricabili and INVIM

Prior to being abolished in 1972, Contributi di Miglioria were amended in 1963 by the introduction of the *Imposta sugli incrementi di valore delle aree fabbricabili*[7], Act n. 246. Even though it remained a local levy, the first important change consisted in making the new levy obligatory for all municipalities with the status of province, with a population of over 30.000 or adjoining to cities with at least 300.000 population. As with the

[7] Tax on the increase in the value of developable land.

previous tax, the new levy was to be generally charged on the day at which land property was either transferred onto another individual or developed for residential use. When these elements did not occur, the levy was to be charged every decade from the date when the tax was last applied or as specified in detail within the Act. It had the characteristics proper of a *progressive* tax with a tax rate that varied between 15% and 50% of the total value increase, so setting a much higher tax rate than was previously done.

However, it needs to be highlighted that, as with Contributi di Miglioria, the new tax did not encourage land to be brought forward for development. This was probably due to the ten-year span between the charging dates during which landowners and developers could enjoy a high increase in the value of their land which outweighed their tax liability. Application and successful collection of this tax was not widespread (Magnani and Muraro, 1978) and this is confirmed by its abolition in 1971 and the introduction of the INVIM (*Imposta sull'Incremento del Valore degli Immobili*) which had the same rationale but however applied to all of the Italian municipalities without exceptions. INVIM merged *Contributi di Miglioria Specifica* and *Imposta sugli incrementi di valore delle aree fabbricabili* in a single tax making no distinction between the reasons for the increase in value and between land or buildings (whether an increase from a specific public improvement or from the granting of planning permission; and whether a

building or land). Moreover, another important aspect which is worth mentioning is the national nature of the INVIM that was introduced and determined by the state, rather than by single municipalities as it had been for Contributi di Miglioria. This was in line with the general reduction of municipalities' fiscal powers and autonomy started in 1972 (Marongiu, 2001). Eventually INVIM was abrogated in 2001 by the Finance Act of that year so that the only form of taxation on values of urban assets (whether land or buildings) was the ICI (*Imposta Comunale sugli Immobili)*[8].

Imposta Comunale sugli Immobili and IMU

ICI was introduced in 1992 to meet the need and requirement for higher local fiscal and financial autonomy in answer to the reduction experienced in the 1970s. ICI was exacted on the cadastral value of property and applied to both urban and rural areas and to buildings regardless of their use (some exceptions have been provided for by law, but they will not be discussed further in the context of this work). Therefore, ICI was an annual tax on real property and did not directly aim at the recoupment of increments generated by the planning system but it allowed to do that indirectly since it was able to capture increases in the value of real estate (buildings and developable land) which would generate higher revenue for the local public authority. As with all

[8] Municipal levy on immovables (land and buildings).

taxation on real property, it played a very important role in financing local government action. ICI was replaced by the IMU at the start of 2012. IMU has reformed and increased property taxation. It brings primary residences back into the tax base and scales up cadastral values for all types of property, adjusting them by multiplicative factors to the tax base which range from 1.2 to 1.6. The application of multiplicative factors to the tax base has increased local government revenue but the taxable value still remains below market value.

2.2. National planning laws and the post-World War II planning-led policy

1942 marked a very important year for town planning in Italy since the so-called "Fundamental Planning Law" was passed by the parliament. The Act n. 1150 reformed the planning system at the local level and made provisions for regional planning. With regard to town planning, among other changes, the new Act merged the two plans, Piano Regolatore Edilizio and Piano di Ampliamento, into one single plan (*Piano Regolatore*) so that the whole of a Municipality's territory was to be included and governed by one plan only. The Act also made a distinction between *Piano Regolatore* as a general scheme and detailed development plans - *Piani*

Particolareggiati - which were to be prepared subsequently (Scattoni & Falco, E. 2011)[9].

While *Contributi di Miglioria* remained in force, the question of betterment value and the public acquisition of land were dealt with through a new planning-led policy. Art. 18, subsequently abrogated in 1971, set out a new mechanism for the recoupment of the increase in the value of land. Such a mechanism was used when land compulsorily purchased in connection with a proposed development under a new *piano particolareggiato* was then sold to the original owners who pledged to personally bring about the new development in accordance with the approved *piano particolareggiato*. Provisions for compulsory purchase at agricultural prices were also included under article 38 which stated that compulsory purchase should not include increases in the value of land generated by the adoption and implementation of the general plan.

Another form of recoupment was foreseen in connection with the so-called *comparto edificatorio* under article 23. This can be described as a clearly municipally-defined development area where owners of single land plots were given the power to implement a soon-to-be-defined development project. In cases when the involved owners did not reach an agreement the municipality could proceed to expropriate and service the

[9] For further details see: Camarda (1999); Piccinato (2010); Salzano (2007).

land and then sell it at a value which reflected compensation for compulsory acquisition plus the increase in the value of land as determined by the approval of the general plan. The law went on stating that for the construction of roads and squares the owners of adjoining areas were obliged, *in lieu* of the payment of *contributi di miglioria*, to give up part of their land equal to half of the width of the road or square. This practice represents a very early attempt at securing in-kind contributions which are currently negotiated through the mechanism of *perequazione*, further discussed below.

Such a practice was consolidated 25 years later in 1967 by another form of land development, *lottizzazione* (land readjustment), introduced by the new national planning act of reform n. 765. This gave private landowners the possibility of implementing the general plan themselves with a scheme in which all the details of the works for infrastructures, housing and public services were to be agreed. It prescribed that landowners had to give up for free areas necessary for urbanisation works[10] or to construct themselves the necessary infrastructure. The law n. 765 also introduced the so-call **standard urbanistici**, later on regulated in detail by the Decree n.

[10] These are classified into two categories: primary and secondary. In the first category are included: roads; parking spaces; sewers; water; lighting and gas supply; open spaces. In the second category are included: nurseries, primary and middle schools, churches, sport facilities, health care facilities; social and cultural facilities, open spaces of neighbourhood interest.

1444 of 1968 which determined specific developers' in-kind contributions for public services and facilities, in terms of square metres of area per inhabitant in new residential developments.

However, it was earlier in the 1960s that the most important attempt at an organic reform for the public acquisition of land in the history of Italian planning was undertaken: this is known as *Riforma Sullo*.

The failed reforms in the 1960s

The decade of the 1960s probably represents the most intense period of reform ever. The 1950s and 1960s marked thriving years for the building industry. The industrialisation process and migrations from rural to urban areas were concentrated in a very restricted time span, if compared to other European contexts. Data on building activity and the numbers of rooms built during the 1950s and 1960s show the extent of the phenomena. For example, in Rome, the city where population concentration was highest, the number of rooms built from 1952 to 1966 doubled in comparison with those built in the 1930s and 1940s. Over the fifteen year period from 1952 to 1966 the number of rooms increased from 1.2 million in 1950 to over 2.2 million in 1966 by nearly 85% (Fried, 1973). At the national level, in 1968 about 8 million rooms were granted planning permissions; this was a rise of 101,8% in comparison to rooms planned in 1967 and five times higher than the increase experienced

in 1961, 1962 and 1963 (Roscani, 1972) (Scattoni & Falco, 2012). Therefore, the need to meet a growing demand for housing, the frenetic building activity and the consequent increasing sizes of the main urban centres generated great increases in the value of urban land so producing, therefore, great wealth accumulation for landowners.

As a consequence of such a trend, several reform proposals were made during the 1960s which aimed to change the system with one common objective: to either eradicate or capture betterment created by the planning system (De Lucia et al., 1973). In total there were six attempts, concentrated in the early and late years of the decade. The most important is certainly the one that took its name from the Minister who proposed it; *Riforma Sullo*. The others are known as: *Codice dell'Urbanistica* proposed by the INU in 1960 (Pompei, 1998); *Progetto Zaccagnini* in 1961; and three other proposals made in 1969 by the PCI, PSI and again INU[11]. The INU proposal was based upon the rationale of guaranteeing equity and distributive justice between owners of land. This was to be achieved through equal treatment of landowners' property rights regardless of the land use designated by the plan to their land parcels. Moreover, the proposal provided for betterment collection by way of a financial

[11] PCI (Partito Comunista Italiano – Italian Communist Party), PSI (Partito Socialista Italiano – Italian Socialist Party). For further discussion on the reform proposals, see: Sullo (1964) and De Lucia et al. (1973).

contribution to the municipality which, together with areas for public infrastructures, was to be equal to one half of the increase in the value of land caused by the plan. This could have marked a very important change in the urban land regime as early as 1960. However, the proposal was never discussed and heard in Parliament, but it made an important contribution to the planning debate of those years and to the *Riforma Sullo.*

In 1962 Fiorentino Sullo, the then Minister for Public Works, prepared a new, more comprehensive Bill for a general planning and urban land reform, with the direct collaboration of INU's most prominent members (Sullo, 1964). This was to require prior public ownership of land before any development could take place. No development was to be allowed on private land. The expropriation costs were to be based on the agricultural value of the land if it related to expansion areas and with some correction for those sites to be included in existing built-up zones (Scattoni, 2004). To solve the issue of betterment value, compensation was therefore based on agricultural values and after the acquisition of land municipalities were to service it and sell it at a value increased by the costs borne to build the necessary infrastructures and utility facilities (Sullo, 1964).

However, this reform of paramount importance was never passed by the Parliament due to the strong hostility of the political oppositions. The Prime minister and leader of the Democrazia Cristiana Party withdraw his support to the reform and the Minister for Public Works,

Fiorentino Sullo, was subject to a campaign of denigration in the national press and portrayed as wanting to "steal homes" from Italians. Thus, in the face of the political opposition, adverse public opinion and after having lost political support, the reform was definitely abandoned. Therefore, politics played a crucial role in determining the failure of this measure.

The only legacy based on its principles that has been introduced is the *Edilizia Economica e Popolare Act* of 1962 (Affordable Housing Act). It set out specific regulations for developing affordable housing schemes. Municipalities were to draw up plans for affordable housing which covered between 40% and 70% of the total housing demand for the decade to come. They were allowed to compulsorily purchase land at agricultural prices and then, after servicing it, they could sell it at a value increased by the servicing costs they had borne. Such a mechanism could be applied to not more than half of the land needed. Nonetheless, the Act remained largely unapplied, lacking the support of a more general land reform which is still to come[12].

[12] A reform of the main 1942 Act was started in 1967 when a new planning Act known as *Legge Ponte* (Bridge Act) was passed. However, despite important changes to the planning system it did not deal with the question of betterment. For further discussion, see Piccinato (2010) and Scattoni and Falco (2011).

Legge Bucalossi

The 1970s began with a devolution process and the new regional governments created in 1972 generally represented a major innovation for regional policies (Putnam et al., 1983) and particularly for planning policies, as highlighted by Scattoni and Williams (1978). The last national attempt at some sort of land reform was undertaken in 1977 with the so-called *Legge Bucalossi* (Act n. 10 of 1977) which drew from an earlier attempt of 1971 made with the Act n. 865/1971 (known as *Legge per la casa*). The *Legge Bucalossi* sought once again to introduce a principle of expropriation based on agricultural values. In order to do so the new provision was based on the separation of the right to build from the property right in land. It sought to introduce some sort of nationalisation of development rights which were therefore attributed to the municipality and were no longer to be considered an integral part of the property right. Indeed, the legislator intended to provide justification for compensation for compulsory acquisition based on agricultural values. However, in 1980 a judgment of the Constitutional Court declared this provision to be unlawful so bringing to an end the era of expropriation-based policies. The Court based its decision on the fact that property rights and development rights were not actually separate in the way the Act required because any application for planning permission was allowed to the respective owner of a single land

parcel. The judgment therefore determined that a formal separation of the two rights, and consequently compensation based on agricultural values, was to be considered unconstitutional.

This represented the last attempt at an explicit planning reform to tackle the issue of betterment value. Since then there has existed no explicit legal mechanism by which the state extracts specifically the increase in the value of land produced by the granting of planning permission. It is necessary to wait until the late 1980s/early 1990s to find a new planning practice; namely *perequazione.*

However, the *Legge Bucalossi* introduced an important innovation within the granting of planning permission: payment by the developer of planning fees based on i) o**neri di urbanizzazione** (urbanisation works); and ii) ***costo di costruzione*** (construction costs).

Oneri di urbanizzazione, costi di costruzione, contributi straordinari

Often overlooked within the literature, a fundamental tool for local authorities to recapture part of the increase in the value of land is the payment of fees by developers for the granting of planning permission. The fees, known as ***Oneri di urbanizzazione*** and ***Costo di costruzione***, were first introduced by the *Legge Bucalossi* and are now regulated by the *Testo Unico dell'Edilizia* (D.P.R. 380/2001). The fees are calculated on the basis of the

cost of urbanizations works (see footnote 10) and construction costs of the development granted planning permission to account for the increased need for facilities and utilities and make developers contribute towards them. Art. 12 of the *Legge Bucalossi* earmarked the collected fees for planning-related purposes such as the construction of primary and secondary urbanization works, public acquisition of land, maintenance of public buildings and other asset, implementation of public development plans and so on. However, *Testo Unico dell'Edilizia* repealed such provision and currently the collected fees are not earmarked for planning purposes but form part of the wider finances and can be used for any expenses. This has major consequences in terms of capability of the public authority to guarantee that planning needs are actually met and the public parts of the city properly funded. In order to overcome this issues, ***contributi straordinari*** were introduced in 2014 (law n. 164) and the revenue that is raised through them is earmarked for planning purposes and specifically for the construction of public works. Contributi straordinari can be discretionarily set by municipalities at a max rate of 50% of the increase in the value of land determined by the development, as a direct measure to guarantee betterment recapture.

Perequazione

After years of attempted but unsuccessful, or only temporarily successful, reforms of the land use regime and of property and development rights, the situation collapsed in 1980 when all the hopes of a planning policy free from the burden of private interests were destroyed. That year probably marked the lowest point in the State's battle with betterment value. Ever since then, no legal reforms have been undertaken to regulate and govern betterment collection. Planners were taken aback by the decision of the Constitutional Court and it took years to react with a new and different planning approach. This new approach is based on the concept of transferable development rights (TDR) to achieve two fundamental and parallel objectives. According to Pompei (1998: XV) – and in order to avoid misinterpretations which are sometimes found within the literature and are given as a justification for the use of such a tool so denying its rationale – the practice of *perequazione* was defined as:

> *the principle whose application tends to achieve two equal and concomitant effects: distributive justice towards owners of land which is put to urban uses, and creation, without expropriation and additional costs, of a public areas estate at the disposal of the community.*

This citation is fundamental in the context of the present work to clarify what the objectives of the new tool are and to underline the nature of betterment collection practice which clearly results from the second of the two effects stated above.

One of the peculiarities of *perequazione* lies within the fact that it was not introduced by law at the national level. Thus, it was policy and legislation that followed practice. The first applications are found locally in the late 1980s within local plans of individual municipalities which makes *perequazione* more of a bottom-up and pragmatic approach.

Early debate about this mechanism started in 1960 when the INU made a proposal for a new national planning law called *Codice dell'Urbanistica* (Pompei, 1998) based on concepts of equity and distributive justice between owners of land. However, the proposal was never discussed and heard in Parliament, but it made an important contribution to the planning debate of those years and to the *Riforma Sullo.*

Later developments of this practice have brought about new approaches to betterment collection. These are essentially based on the Transfer of Development Rights (TDR) with developers contributing in-kind towards a public reserve of areas, infrastructures and facilities on top of the contributions that are due to meet regulations on *standard urbanistici*. Approaches and regulations of this practice vary considerably amongst regional planning legislations and between urban plans within

regions. All may potentially be different from one another, which can be considered the consequence of the lack of national regulation on this matter.

2.3. Concluding remarks

This section has provided a detailed review of the history of betterment value recapture in Italy. The main objective was to emphasise the long-standing importance that the subject has had, and still has, in planning and urban development. The approaches to land value recapture over time have varied from imposition of taxes on the value increase to compulsory purchase at existing use value, nationalization of development rights, negotiations, and transfer of development rights. Two aspects deserve particular attention. The first one is related to the unsuccessful introduction of tax measures directly aimed at capturing the increase in the value of land. The second is the increasing trend to adopt TDR-based practices for returning to the wider community a portion of betterment value created by the planning system. Many attempts have been made over the years and many have failed. However, there are several measures currently in place that in one way or another try to capture betterment and make developers contribute towards community facilities and services. Local planning authorities have therefore several tools at their disposal to guarantee that the public part of the city is funded: *standard urbanistici* based on in-kind contributions in terms of areas for public service; *oneri di*

urbanizzazione, costo di costruzione and contributi straordinari based on monetary contributions towards urbanizations works, facilities and services; IMU as a real property tax based on the cadastral value of property which indirectly taxes the increase in the value of developable land; *perequazione* based on the transfer of development rights and negotiations which tries to obtain in-kind contributions by developers. This last practice is intended as an alternative to compulsory acquisition of land and as a means by which to obtain areas for public facilities and achieve plan objectives, such as environmental protection and social housing provision. It can be said that perequazione is incorporated in the vast majority of the recently approved urban plans and forms a fundamental part of current planning practice. Because of these reasons, a whole section is dedicated to understanding its developments, types, potential and limitations. The next section will deal with the reform process of the planning system at the regional level which has introduced provisions for TDR-based practices.

3. The innovating role of the regions and TDR practices

This part discusses the role of the regions in innovating the planning system and the master plan as a basis to adopt TDR practices. Then it goes on to discuss literature on TDR and the distinguishing features of perequazione and other TDR practices in Italy.

3.1. The reforming role of the regions

The new regional planning system was first introduced in 1995 by the Tuscany region. The reform process was prompted by the need to overcome an old and obsolete national framework which was characterised by strong elements of rigidity (Mazza, 1994; Nigro, 1999). This need was made even more necessary in 2001 after an important constitutional reform was approved. This reform produced a profound institutional change relating to legislative competences over certain matters, including planning. The subdivision of legislative competences is based upon a simple principle which identifies matters of absolute national or regional competence and some matters which are defined as shared, where both the state and regions have powers to legislate. In the latter case, the reformed articles prescribe that the state should set out the basic and guiding principles for the matter while the regions are responsible for the specific regulations relating to their specific areas and contexts. Planning

came into this category, thus making the need for a new national planning Act even more urgent. Currently there are five bills under examination before the competent parliamentary Committee. A brief analysis of these shows that all of them include one article dedicated to the equalisation and compensation principles with objectives of equity and distributive justice, while the technical regulations, as foreseen by the Constitution, are left to regional bills and NTA (Norme Tecniche di Attuazione)[13] of single plans.

Within such a general framework, the regions have sought to overcome new challenges and meet their needs by legislating and making new regional planning laws, generally referred to in the planning debate as "second generation" laws (see Scattoni and Falco, 2011). The regions started to reform their planning systems following the structure proposed by the INU at the XXI National Congress in that year (Stanghellini, 1995 and Campos Venuti, 1995). Campos Venuti (1995) pointed out that already in 1960 the INU had proposed to separate the traditional master plan into two documents, Piano Strutturale and Piano Operativo, even though the terms and expressions used then were different. Along with the INU proposal, Silva (1960) underlined the need to reform the old plan with new contents, even though no explicit reference was made to the introduction of

[13] Norme Tecniche di Attuazione could be defined as the plans's regulations which govern the implementation phase.

different plans. As already said, the INU proposal was not implemented but it was never abandoned and it was revived in 1995.

According to Pompei (1998) there were two reasons at the basis of the recent reform. The first one had to do with the necessity to set up a flexible planning system which would not require plan variations[14] for any change in the future development of the city. This objective was fundamental in consideration of the costly and lengthy process which could take years to produce a new document, even if only one development area was concerned.

The second reason had to do with planning constraints and with the need that these should have effect only when planning provisions are to be implemented. In the old planning system, planning constraints came into effect as soon as the plan was approved and could remain in force for a five-year period after which they ceased to have effect and, where extended, landowners were eligible to compensation. This was in contrast with allocation of development rights to private land which instead took place once and for all. The reform was thus prompted by the need to overcome the rigidity of the old national system and solve the problems related to the

[14] Variations to plans are required when the land use designated by the plan for a specific land parcel does not match with a new development proposal. Before the new development can be carried out the plan needs to me changed according to the development and its uses.

time-limited legal validity of planning constraints on the one hand and unlimited validity of development rights allocation. A thorough review of the reasons, concepts and debate as it developed during the second half of the 1990s and throughout the first decade of the new century is provided in Marchegiani (2010: 12-21)[15].

In order to face these challenges the newly proposed master plan was to be split into three different documents. Apart from small regional differences in names, these are known within the literature debate as **Piano Strutturale** - PS (Structure Plan), **Piano Operativo** - PO (Development Plan), and **Regolamento Urbanistico ed Edilizio** - RUE (Planning and Building Regulations)[16]. These documents differ on the basis of contents and objectives and cover different areas of the city: the whole city in the case of the PS and RUE, while PO is limited to specific parts of the city. In 2017, 9 out of the 20 Italian regions have reformed their planning system following this structure, while legislation on perequazione has been introduced by 14 out of 20 regions.

[15] Other important references are: Mazza, 1994; Pompei, 1998; Nigro, 1999; Salzano, 2008.

[16] The contents and objectives of the plans in the various regions are comparable. Nevertheless, small differences exist but they will not be discussed further here. For a brief explanation, see Campos Venuti (2008).

Main characteristics of the new planning documents

To face the first two problems, excessive rigidity and limited validity of planning constraints, the planning debate proposed that the new-style plan. Specifically, Piano Strutturale would be characterised by wider objectives and less detailed provisions, instead of comprehensive prescriptions. The Piano Strutturale was in the first place conceived as a ten year plan (Stanghellini, 1995) which was to identify environmental and cultural features worthy of protection, regeneration as well as new development areas and to set out, in a general way, land uses and functions along with major infrastructure corridors. Over time, the concept of Piano Strutturale and its contents have changed. Firstly, it is now viewed as a twenty-year plan which is to set out the general vision and long-term strategy for the whole city. It does not prescribe development which is to take place over a given area. It is far more "sketchy", and therefore very different from the old *Piano Regolatore Generale* (PRG) which made use of cadastre maps and property structure maps, where the only legally binding provisions are defined in relation to environmental and landscape protection areas on which development is not allowed (Curti, 2008).

A fundamental aspect of such a plan is the nature of its provisions which should not create development expectations in landowners and developers so as to avoid creating betterment value and imposing planning

constraints within this first stage of the new urban plan (Oliva, 2008). However, the debate on the prescriptive nature of the PS is very vivid. According to and agreeing with Urbani (2008a) and Karrer (2008) the PS cannot be said to be "*non-prescriptive*", meaning by this that it does create development expectations and grant development rights. In effect, its provisions, even if they do not locate development projects, still determine what uses land can be put to and in some cases the amount of square metres which can be built in a given, although large, area. These kinds of provisions are sufficient to create expectations in landowners and determine what is defined as *potenzialità edificatoria*[17] of land. According to Oliva (2008:4), very frequently this element is not guaranteed because of the nature of plans' maps, regulations and building ratios which too often resemble old-style plans. An extreme solution to this problem would be that of not including any maps as part of the structure plan, but that would mean to innovate or perhaps revolutionise planning education and planners' background in Italy.

The other issue was linked to development rights being allocated once and for all in contrast with the limited validity of planning constraints over areas needed for public purposes. The new planning system aims at solving this issue proper of the old Italian planning

[17] Potenzialità edificatoria can be described as the suitability of land to be used for building purposes.

machinery. To eradicate this problem the planning discipline proposed a five-year plan, Piano Operativo, which was to identify areas for new development that had to take place within the next five years from the time of approval. Implementation of the plan is a duty mainly placed on the private building sector and if its prescriptions are not implemented within the five-year period, development rights expire along with planning constraints (Oliva, 2010a). Such a plan has the nature of a prescriptive planning document which is to govern urban development both on green-field and brown-field sites, but does not cover the whole of a city's territory.

Further, and perhaps the most important aspect in the context of this research, the PO is the place where the public interest should emerge in term of infrastructures, services, financial and in-kind contributions, which in fact represent the portion of betterment value returned to the community (Oliva, 2008). PO is therefore intended as the means that allows the return of part of betterment value to the wider community and this is to be generally achieved through the use of *perequazione* and *compensazione* mechanisms. According to Campos Venuti (in Oliva, 2010a:103) there would be no need to negotiate with the private property owners to determine what areas should be included in the PO and therefore developed within the five years to come. Indeed, only areas whose owners do agree and are willing to carry out PS provisions will be developed. Even if this does not imply negotiation and bargaining with landowners and

developers, surely it includes agreements and consultation to be undertaken prior to approval of the PO. In such a context negotiation and bargaining is not ruled out, especially for those areas which are considered to be of particular interest to the local authority for achieving the wider strategy.

Nevertheless, it can be argued that the subject of negotiation does not seem to be clear even among those who advocate for the new system. As a matter of fact, on the one hand Campos Venuti states that there is no need to negotiate with private landowners; on the other hand, according to Oliva (2008) and Micelli (2011) and with regard to the nature of the PO, they state that this should allow a negotiation-based process, indispensable in any urban development, where the local public administration is in the best bargaining conditions with a strong negotiating power to secure community facilities.

Lastly, the third document which constitutes the new-style plan is known as Regolamento Urbanistico ed Edilizio (Planning and Building Regulations). This is certainly the document that has undergone the smallest changes. It is intended to regulate small developments in built-up areas which can be implemented through a direct planning application without the need for a planning brief/development plan. RUE is a prescriptive document with unlimited validity.

It is in this new system that ***perequazione*** and other TDR practices such as ***compensazione*** and ***premialità*** are used, mostly within the PO phase, as a tool to capture

betterment value produced by urban development (Campos Venuti, 1995). Therefore, this trend of capturing betterment value by way of a tool based on the negotiation "skills" (Oliva, 2008; Micelli, 2011) of the local authority is of particular interest.

As intended, the new-style plan should guarantee higher effectiveness and flexibility than the previous system (Oliva, 2008). Nonetheless, as Urbani (2008b:17) points out "*the new plan does not seem to have reduced preparation and implementation times*". This is confirmed by findings of research that was conducted with regard to planning making processes in Tuscany which on average still take between 6 and 7 years (Scattoni & Falco, 2012).

3.2. Transfer of Development Rights

Over the last fifteen year, and partly within a reformed regional planning system, relatively new TDR practices have been introduced in Italy: ***perequazione***, ***compensazione*** and ***premialità***. These tools, intended to work towards the achievement of wider planning objectives, base their rationales upon the concept of transfer of development rights (TDR) and developers' contributions for the provision of community facilities and services. Recent years tend to confirm an increase in the use of such tools within planning practice and for making developers contribute towards facilities and services. In fact, it could be argued that nearly all recent master plans contain regulations concerning the use of

such tools even though they are not incorporated and regulated under regional legislations. The most prominent example is certainly the Plan for Rome which will be discussed in detail later. Literature on TDR is used to lay the foundations for a discussion of the three practices in section 3.3.

TDR allows wider planning objectives to be achieved by enabling development rights granted to landowners and developers to be transferred onto another development site identified either *a-priori* within the structure plan or *a-posteriori* within the PO with regard to development areas. An important innovation has been introduced very recently within the Italian legal framework through a change made to the Civil Code. According to Inzaghi (2011), all development rights transfers must now be recorded in a specific register[18] for real property transfers so matching development rights up to real rights.

Johnston and Madison (1997:365) defined TDR as *"the sale of one parcel's development rights to the owner of another parcel, which allows more development on the second parcel while reducing or preventing development on the originating parcel"*. Within the international literature, the originating area is known as the *sending area*, whilst areas identified by the plan as suitable for development are called the *receiving areas*. Sending areas generally include resources that a community wants

[18] The register is known as: Conservatoria dei registri immobiliari.

to preserve such as environment and landscape protection areas, agricultural land, historic landmarks, open space, coastal areas, water quality, wetlands and so on (Pruetz and Pruetz, 2007). However, the sale of development rights is not implicit in TDR programs. Indeed, transfer and use of rights may be allowed onto another parcel without the need to sell the rights to the owner of the receiving area. This implies that agreements need to be reached between the owners of the land plots involved. According to Pruetz and Standridge (2009) such a practice is:

> "*intended to reduce or eliminate development potential in places that should be preserved by increasing development potential in places where growth is wanted*."

If the concept is expressed in these terms, within the Italian context it is possible to refer to TDR in the cases of perequazione and compensazione. The other practice, premialità, does make use of Transferable Development Rights (TDRs) for other purposes that will be seen later on. As Codecasa and Garda (2011) point out, development rights can be used for different purposes and can have different meanings: as an incentive for developers to undertake development, as a built-in and inseparable part of the property right, as a tool to increase density and floor area of a development proposal, as a form of compensation, as a tool for preserving

environmentally sensitive areas, and as a means to increase the bargaining power of local governments.

The first applications of TDR practices can be said to date back to the 1910s and later on in a more widespread way to the early 1970s in the USA with objectives linked to environmental protection (Chiodelli and Moroni, 2016). Ever since the 1970s their use has spread widely, firstly to Europe in the mid and late 1970s and later in other parts of the world, such as China (Renard, 1999 and 2007; Zhu, 2004). However, as Pizor (1986) reports, first US experiences of TDR programs did not prove to be successful. One sentence is particularly significant and denotes a marked difficulty in implementing earlier programs: “Indeed, until 1983, the number of articles written about TDR exceeded the number of development rights transfers” (Pizor, 1986:204). Further, Pruetz and Standridge (2009) stated that “TDR has not yet lived up to the expectations of many in the planning profession”. This is particularly relevant to the Italian case where important and demanding objectives are attached to perequazione and compensazione so contributing to raise doubts about the potential of such practice for achieving the overarching objective of betterment collection.

Research has helped identify some factors which may be able to increase the effectiveness of TDR programmes which mainly relate to sending areas, receiving areas, incentives and regulations. Ten factors were identified by Pruetz and Standridge (2009), some of which may be found as well in Pruetz and Pruetz (2007) and in Costonis

(1974). They make a distinction between factors essential to success and factors which may be helpful but are not essential. Here only the essential factors will be briefly discussed individually even though it should be clear that they are likely to produce greater benefits when employed together.

The first two factors refer to the attitude of developers and landowners of receiving areas and to specific characteristics which a receiving site should have. For a TDR scheme to work it is important that developers are willing to buy extra TDRs and that they are not satisfied with the initial density they get for free, without buying extra TDRs, as a consequence of the general plan designation. This reflects developers' demand for bonus density. It is essential that the receiving areas have specific characteristics which determine their suitability to accommodate additional development and more growth. Such characteristics involve: adequate infrastructure, compatibility with existing development; consistency with the general plan and clear designation; political acceptability, and perception of a market for higher density.

The third factor refers to restrictions on sending areas both planning-related and natural. Landowners of sending areas are more likely to join in the programme if development limitations are imposed on their properties. Natural constraints refer to factors such as remote location, steep terrain, and poor soils, whilst development constraints refer to limitations imposed by the general

plan in terms of densities permitted. Very low densities on sending sites constitute an incentive for landowners to choose the TDR option and transfer their TDRs.

The fourth factor has to do with the availability of few or no alternatives to TDR for achieving bonus density. In effect, when developers are given the opportunity to choose between TDR and other options for achieving additional development, such as higher standards for open space, landscaping and other features, they are more likely to choose the option that would increase the value of their development. This obviously would happen if the cost of such an option is lower than the TDRs cost for the same bonus density.

The last factor classified as important refers to market incentives which need to be beneficial for both sending area landowners and receiving area developers. Very common incentives are transfer ratios and conversion factors. Enhanced transfer ratios are used to allow more than one dwelling in the receiving area for each dwelling unit precluded in the sending site. Yet, it is important that TDR creates increased profits for developers and compensation for landowners which equal or exceed respectively the cost of TDR in the first case and the property value reduction created with the TDR provisions in the second.

The other five factors identified have to do with strong public support for preservation, simplicity, TDR promotion and facilitation, setting up a TDR bank and ensuring developers are able to use TDR. According to

Chiodelli (2011), there are several advantages linked to the use of TDR programs. Two of these are connected to ethical as well as pragmatic issues. TDR is considered as an instrument for achieving objectives of equity among landowners of urban land. As emphasised earlier, in the case of perequazione TDRs are granted to landowners in the same amount regardless of land use designation within the plan. However, Chiodelli (2011) underlines that this is not to be confused with the objective of equality and absolute distributive justice since the discriminatory nature of the planning exercise still persists both with regard to citizens who do not own land and owners of land which is not put to urban uses. This second issue is therefore linked to betterment collection aimed at through perequazione (Stanghellini, 2010).

Indeed, just as there are success factors for a TDR programme, there also exist failure factors which may reduce the effectiveness of TDR schemes. Pruetz and Standridge (2009) in their research highlight some failure factors which, it can be argued, may be considered as endogenous, meaning that they are internal to the TDR programme or are a consequence of the planning system and regulations in force. The main factors cited appear to be the reverse of the success factors:

> *Developers do not want more density. We do not have good receiving areas. We give developers easier ways of getting bonus density. Our sending-area zoning is too*

> *generous. We do not offer landowners enough TDRs to motivate them"* (Pruetz and Standridge, 2009:86).

On the other hand, there are what can be defined as exogenous factors that do not depend on the way the TDR programme is designed nor on the planning system and regulations. These factors appear to relate to external circumstances and to wider issues such as: taxation on property and development rights transfers; relationships between sending-area landowners and receiving-area developers; speed and transparency of agreements between the local administration and the several landowners involved in the programme; and, particularly significant for the Italian context, the moment within the planning process at which development rights are allocated to landowners. This is the question as to whether development rights are allocated within the structure plan, so creating development expectations, or within the development plan for a five-year period only: either procedure may have implications for the success of a TDR programme.

To understand the practices used in the Italian context and described in section 3.3 it is useful to know that development rights can be generated in different ways. There are three ways recognised as generating development rights and to each one corresponds a legally different kind of rights. The first one is related to the property right in land and it is an integral part of it.

Within the debate it is referred to as a *chance* since it is part of the property right but cannot be used until planning permission is granted (Bartolini, 2009). It emerges from the planning exercise and it is a consequence of the planning activity carried out by the local administration as a comprehensive activity.

The second kind of development rights is a form of compensation to which landowners are eligible after that a planning decision has restricted development on their properties to preserve a portion of land or for any other public purposes or after compulsory acquisition. Such *compensation rights* are then transferred and used on another development site.

The third way of generating development rights is through the practice of premialità where developers achieve bonus density and additional floor area in return for qualitative attributes of their developments which reflect, for examples, higher standards for open space, additional affordable housing, protection of the historic fabric of an existing development, design features and so on. These rights can be specifically called *bonus rights* since they are granted as a bonus if the development reflects certain characteristics defined in the plan regulations or agreed with the local administration. However, this latter practice is usually coupled with the other two for achieving wider planning objectives.

After having discussed the international literature on TDR, described the main uses and identified success as well as failure factors which a TDR programme should

have and avoid respectively, it is appropriate to explore how the Italian tools of perequazione, compensazione and premialità are designed within urban plans and why they are used. Their characteristics, functioning, evolution and different forms are discussed in the following section.

3.3. TDR Practices in the Italian context

As outlined in the previous sub-section, perequazione, compensazione and premialità use the transfer of development rights for the achievement of plans' goals. However, it can be argued that perequazione and compensazione are used for betterment recoupment purposes. Premialità is based on a different rationale and, while being functional to wider planning objectives such as energy efficiency of buildings and regeneration of former industrial areas, it does not allow for the recapture of the value increase. Compensazione is known within the international literature as Compensation. Development rights granted for the purposes of compensation go under the name of compensation rights. Premialità is discussed within the literature in terms of a bonus density that allows higher densities on development areas and on receiving sites within TDR programs. Bonus densities are normally used within perequazione and compensazione programs but when used independently to incentivise certain characteristics of a development the practice is called *Premialità*. In the

context of this work development rights used for this purpose will be referred to as bonus rights.

These tools differ from each other on the basis of the nature of development rights granted to developers. This aspect is explained in later sections, but it is necessary to bear in mind that in Italy juridically speaking they are different and thus should be treated in a different way.

This section is therefore subdivided into three subsections, each one dedicated to one of the practices. The different practices that have been developed and applied over time up to today allow the identification of a "state of the art" whose evolution appears to be quite mature and makes it possible to explore a set of definitions recognised within literature.

3.3.1. Perequazione urbanistica

Perequazione is known within the international literature by the name of *Equalisation* (Micelli, 2002; Falco, 2011). The main objective would be to equalise conditions between different and several landowners who are either positively or negatively affected by the plan. The objective would be achieved by granting the same amount of development rights to owners of urban land regardless of the use subsequently developed on the land plot they own. This could therefore be defined as a process of distributive justice. But it needs to be clarified as to which landowners are involved in this distributive process. In effect, the equalisation of different landowners' conditions applies only to owners of land

classified as urban and subject to physical development, whilst owners of land which is left to agricultural uses are not concerned with this *distributive* process. So, with reference to owners of areas subject to physical transformation, the so-called principle of *indifference to landownership in the planning decisions*[19] is applied. This principle however is not new in the planning literature since the former Minister for Public Works Fiorentino Sullo discussed it in his work in 1964 (p. 13).

An important implicit process emerges from this description – that is the need to classify the city's territory prior to proceeding to allocate uses and development rights and to equalise landowners' situations and development rights. This in fact represents the first and fundamental phase of the equalisation process, particularly when adopting the specific *a-priori* approach (discussed in further detail subsequently). Such a practice conceals two major objectives: i) avoiding compulsory purchase, while at the same time ii) returning some development value to the community. As described above, the process of equal allocation of development rights could certainly bring about the advantage of avoiding landowners fighting over the uses to be allocated to their properties and so facilitating plan implementation. Nevertheless, like this perequazione

[19] Meaning that regardless of the actual land use, the property is granted the same amount of development rights. In Italy the principle is known as *indifferenza della proprietà rispetto alle scelte di piano.*

would not face up to another fundamental problem: the *redistributive problem* towards those who do not own urban land. And it could be argued that the *discriminatory nature* of plan zoning would not be totally removed from the planning process. Nevertheless, it is with regard to this second issue, the redistributive process towards owners of agricultural land and more generally towards those who do not own land at all, the wider community, that perequazione plays its second major role. In order to achieve this underpinning objective, the mechanism seeks to secure additional areas for public services, facilities and infrastructure. It does so by requiring developers and landowners to make in-kind contributions in terms of those areas which have been granted development rights but are designated by the plan for public uses. The local authority aims at obtaining these areas without having to bear an extra cost for compulsory purchase. In such a way, the two objectives of betterment collection and avoiding compulsory purchase would be attained.

Therefore, the equalisation mechanism works towards an equal allocation and distribution of advantages and burdens among those landowners whose property is classified as urban land and regardless of the land use designated by the plan.

Advantages for landowners relate to the granting of development rights and therefore to the increase in land value which is accrued by landowners. On the other hand, disadvantages refer to real property tax and

contributions to the community which are required from developers in terms of additional areas for services and facilities.

It should be noted that taxation on urban land applies after the adoption of the Piano Strutturale. Indeed, classification of land as urban implies a tax on landowners[20] to be charged yearly from the moment of adoption albeit the allocation of uses and development rights may be changed when the plan is approved or in the following Piano Operativo. This element prompts a debate on the prescriptive nature of the PS and of its provisions. According to Karrer (2009) the fact that taxation is imposed on urban land when the plan is adopted generates expectations in landowners who then expect to develop their land, so reducing the flexibility of the plan itself.

It may be argued that perequazione would help town planning carry out two important functions: distributive and redistributive ones. Further, as a direct result of the two functions it would help achieve important objectives such as avoiding landowners disputes, compulsory purchase, and the collection of betterment value. After years of unsuccessful legal reforms throughout the 1960s and 1970s, this represents a pragmatic and "covert" mechanism for returning development value to the community. However, it is not clear whether such a mechanism, usually presented as a panacea, is able in

[20] Land Property Tax. Measure introduced by Law 248/2006.

practice to ensure betterment collection and plan implementation or whether it suffers from the problems of TDR schemes which in turn affect the whole planning process.

As discusses earlier in this Chapter, this practice has not yet been introduced within the national planning legislation but only in regional planning bills[21], and many academics advocate for a new national planning act which is to regulate its use (Oliva, 2010b; Stella Richter, 2010; Urbani, 2010). Indeed, as it will be seen later in relation to the Rome case study, the lack of national regulation can cause the practice, as designed in some urban plans, to be appealed against and so to affect plan implementation.

It is important to underline that there is no single, agreed way of designing such a tool within urban plans. However, within the literature debate there are some recognised approaches to which specific plans' tools and policies can be referred. Such approaches reflect different land use policies and in a couple of cases are mutually exclusive. Various definitions can be found although in some cases the differences are not marked or an "approach" is simply part of a more comprehensive land use policy. The proliferation of names and expressions is possibly the result both of the lack of national legislation

[21] For an example of those regions which have first introduced the *Equalisation* practice, see regional Act n. 20/2000 of Emilia-Romagna, regional Act n. 20/2001 of Apulia, and regional Act n. 1/2004 Veneto Region.

on perequazione and of the egocentric nature of planners (academics) and regional legislators who seem to compete to coin different terms. The main terms which can be found in the literature are (Pompei, 1998; Nigro, 2009; Morano, 2008; Stanghellini, 2008):

- perequazione dei volumi and perequazione dei valori;
- perequazione a-priori and perequazione a-posteriori;
- perequazione generalizzata and perequazione parziale;
- perequazione verticale and perequazione orizzontale;
- perequazione verso l'alto and perequazione verso il basso[22].

Each of these "approaches" will be described to highlight the main advantages and disadvantages they are able to produce.

When a local authority decides to use and implement one the above approaches, the nature of the plan itself changes and the local authority is required to play a major role as "director" of developments. The public planning activity can be said to be more complex than in a traditional plan within which the tool of perequazione is not used. Cooperation and agreements are a fundamental factor for the implementation of a plan. They are necessary for making sure that development takes place

[22] These can be translated as: *Perequazione of Volumes* (development rights) and *Perequazione of Values* (betterment created); *A-priori Perequazione* and *A-posteriori Perequazione; General Perequazione and Partial Perequazione; Vertical Perequazione and Horizontal Perequazione; Upward Perequazione and Downward Perequazione*

and that betterment value is returned to the community through contributions and realisation of urbanisation works.

Perequazione dei volumi and Perequazione dei valori

This was the first distinction to be identified in the literature when talking about perequazione and remains basically the same as the one identified in the INU proposal of 1960 (Pompei, 1998). The difference between these two kinds of perequazione is quite marked and they reflect two completely different rationales of betterment collection.

The first one, *perequazione dei volumi*, is a planning-based tool which aims at the basic goal of equalising volumes and floor areas amongst landowners by allocating the same amount of development rights to each land parcel. Thus, development rights granted can be sold, purchased and transferred onto other development sites. No other measures are involved through which to achieve the fundamental target of the distributive justice. In such a way it prevents the plan from creating disparities between owners of land put to diverse urban uses. Betterment collection is then secured through development contributions in terms of areas. This is the first form of perequazione that is known in the literature simply as *perequazione urbanistica*. When transfer between different sites is not allowed and developers can use development rights only within the boundaries of the

development site itself, the practice is basically identical firstly to the tool of *comparto* provided for within the 1942 Act and secondly to the INU proposal of 1960.

The second form, *perequazione dei valori* is achieved through assigning a market value to the development rights granted to landowners. Such market value is then transferred onto the receiving area rather than the quantitative amount of development rights. Thus, the gross floor area realised would need to equal the market value rather than the quantitative amount. Such a method uses parameters and coefficients to adjust the value of development rights as transferred onto the receiving site to the value of development rights of the sending site.

Perequazione a-priori and perequazione a-posteriori

The distinction between these two forms of perequazione can be said to be the basic distinction from which all other approaches or definitions seem to derive. Indeed, perequazione a-priori and perequazione a-posteriori when used are the two methods which determine land use policy and the land use regime. This distinction is characterised by mutual exclusiveness, meaning by this that the two approaches cannot be used simultaneously. Choosing one necessarily means excluding the other.

The *a-priori* approach is based on the allocation of development rights to all urban and peri-urban areas independent of the specific land use designated by the plan (Pompei, 1998). Attribution of development rights is

carried out on the basis of what within the literature is defined as *stato di fatto* and *stato di diritto* of an area[23]. Morano (2007) describes such definition as the conditions which derive from physical, planning, locational, social, economic, regulative, qualitative and quantitative elements which are proper to an area. This implies that, prior to proceeding to an allocation of development rights, all land needs to be classified on the basis of the above properties and attributes. Therefore, the classification of land is carried out *a-priori*, preceding or in an early phase of the plan making process where the strategy is defined. The various classes or categories of land differ from one another on the basis of their *stato di fatto* and *stato di diritto*. Therefore, such a classification has nothing to do with zoning.

Where it is attempted, the classification of land is essentially based on three macro-categories: urban built-up areas; peri-urban areas; rural and agricultural areas, which in turn may be split into sub-categories. For example, within the literature, a classification has been attempted by Pompei (1998), one of the first academics to re-propose the practice of perequazione in the 1980s. He identified five categories of land which specify in further detail the three classes identified by the

[23] *Stato di fatto* refers to the characteristics of an area on the basis of its natural conditions and characteristics, whilst *stato di diritto* refers to the "legal" situation of an area as the consequence of the planning activity and other activities carried out with respect to the land (land uses, development constraints, and so on).

Constitutional Court in 1980 in judgment n. 5. These are: built-up urban areas; urban areas on the edge; peri-urban areas, nearly-urban areas, and rural and agricultural areas. All land plots lying within a specific land category are regarded as having the same characteristics and are attributed the same amount of development rights by way of a floor area ratio. No negotiation or bargaining with landowners and developers is involved within this approach which shows the features of a regulatory approach.

According to Canato (2007) floor area ratios applied to single categories of land can be distinguished between actual and potential ratios. Potential ratios represent the potential amount of floor area which can be built on a development site and are the result of land classification. Actual ratios are determined by the urban plan and on the basis of the plan's general strategy. If the two ratios differ, where the potential ratio is higher than the actual ratio, the difference must be transferred onto another development site which is capable of receiving the extra amount of development rights. On the contrary, where the potential ratio is lower than the actual ratio, landowners of such areas will achieve the actual ratio by purchasing and receiving extra development rights on their property. However, it should be noted that the dissimilarity between the two ratios is not a necessary condition. It derives from the need to achieve the objective of distributive justice between owners of land with the same characteristics and from the plan's vision.

As seen, classification of land assumes a fundamental role within such approach. According to Stanghellini (2008) the whole process of land classification and the allocation of development rights and floor area ratios could be summarised as follows: identifying the area (or areas) subject to perequazione; analysing and evaluating planning and legal characteristics of the areas and determining their *stato di fatto* and *stato di diritto*; attributing the same floor area ratio to each of the classes of land identified in the previous step; defining receiving development sites which should accommodate additional development rights; and identifying those areas to be allocated to public services and facilities. An important element which emerges from such a sequence of phases is the possibility that the territory concerned by the implementation of perequazione is not the whole of a city's territory but only some areas of the city.

This possibility introduces the other approach, *perequazione a-posteriori*. The difference between the two approaches is quite marked and concerns the size of the territory subject to regulations, as well as the moment at which development rights are granted and the need to classify land into different categories.

The first difference concerns the fact that generally it is not the whole of a city's territory which is involved and interested in the application of this latter tool, but specific and limited areas that form part of an area action plan which is to implement the general comprehensive plan.

However, there is nothing to prevent the local authority from considering all urban and non-urban areas in designing the tool within the general plan as a means for a more comprehensive planning policy aimed at environmental preservation, regeneration and so on. Development rights are therefore granted, regardless of zoning and land use designation, but limited only to those owners whose property falls within the area action plan so trying to achieve distributive justice, with no regard to all the owners of urban land. Further, these development rights are not allocated on the basis of land classification. In this process, the allocation of development rights and the setting of floor area ratios are the result of negotiation between the local authority and those landowners involved in the area action plan (Pompei, 1998). In this case there is no need to undertake a time consuming, although just and effective, classification of land. Negotiation and bargaining, or rather the local authority's negotiation skills, play a fundamental role in determining the quality of a development and securing community facilities and services.

Therefore, perequazione a-posteriori manifests itself as a case-by-case approach which concerns specific and individual development sites. A further distinction is made if one or several development sites are involved. In the case of a single development area, all landowners are granted development rights and private development is concentrated on a limited portion of the whole area by transferring and selling TDRs generated from the plots

put to public uses. Then, such areas are acquired by the local authority generally for free. This is the simplest form of perequazione a-posteriori since it is carried out on a single development site and it is also known as *perequazione di comparto*, referring to the "development plan" of the 1942 Act. In other cases, when several development sites are involved, albeit not adjoining, development rights can be transferred from one site onto another according to the objectives and policies of the general plan. Benefits and downsides are equally shared between sending and receiving areas landowners (Urbani, 2008c). This second option is certainly more complex involving a greater number of landowners and areas. However, perequazione a-posteriori is characterised by a higher degree of flexibility, being tailored to the objectives of the plan and to the specific circumstances under which the transfer of development rights takes place. On the other hand, during the negotiation process the public administration can be subject to pressures from developers and landowners to increase development rights and building densities. Also, the fact that it is limited and may be implemented on single development sites that do not concern the whole city is something which can create disparities between landowners of different areas so denying the fundamental objective of distributive justice.

It could be argued though that social as well as economic and development circumstances and requirements vary between different sites and over time.

Thus, equalising planning conditions among all landowners at a given time, as it is for the *a-priori* approach, can be to a certain extent useless or even cause disparities between those landowners whose land is immediately developed and those whose land will be developed in the future. It could be added that betterment collection is potentially easier in the *a-posteriori* than in the *a-priori* approach. In the latter in effect betterment collection and developers' contributions cannot be negotiated with landowners and developers after classification of land and allocation of development rights. Contributions must be set out within the general plan with a regulatory nature so determining an element of rigidity in the system and the risk that, as it is set out before plan approval, the system may not work for future developments. The process of land classification surely helps achieve a higher distributive justice and reduce the bargaining power of developers, but as regards very large areas and territories there may be the need to create several and perhaps too many classes of land which can contribute to make the system even more complex. Over time, conditions of the real estate market are likely to change so requiring the administration to review the process of land classification and the whole plan.

Perequazione generalizzata and perequazione parziale

The difference between perequazione generalizzata and perequazione parziale can be said to be a sub-difference

of the two approaches previously analysed. In fact, perequazione generalizzata requires that all urban land, both green field and brown field, be considered when the plan is prepared. Nevertheless, in this case there is no essential need to classify land before plan approval. According to Pompei (1998) there may be two levels of generalisation. The first one would concern all green field sites subject to physical development and designated for a specific land use (either for building purposes or green areas and public services). The second level, which is called the level of complete generalisation, concerns green field and brown field sites and built-up areas. In the last two cases however it would allow distributive justice to be achieved but would create only limited public areas estate or none at all.

Perequazione parziale is a form of perequazione *a-posteriori* which applies to a limited number of areas and therefore to a limited portion of the city's territory. It is a sub-category of the *a-posteriori* approach since it is normally used to implement specific planning policies and to attain specific plan objectives. Critics of such an approach (Stanghellini, 2009a; Nigro, 2009) would argue that just like the wider approach it does create disparities between landowners involved in the development project and those who are not involved but own land with the same characteristics.

Perequazione verticale and perequazione orizzontale

The definition of this approach (Nigro, 2009) moves from the consideration of the double public action (distributive and redistributive) towards owners of land and the wider community. Nigro (2009) explains that moving from the two wider objectives as described by Pompei (1998) perequazione can be defined as: *orizzontale* when it aims at achieving distributive justice among owners of land put to urban uses; and *verticale* when the public action is directed towards the wider community to share in the benefits of physical development. As can be seen, this second form of perequazione reflects local authorities' betterment collection action and it is important in the logic of this work and in determining the success of a planning policy and tool.

Such definitions on the one hand confirm what has been said above with regard to the egocentric nature of academics and planners but, on the other hand, add to the literature as it may help to quickly define what kind of public action it is being referred to and its implicit objectives.

Perequazione verso l'alto and perequazione verso il basso

These two forms of perequazione are called *verso l'alto* and *verso il basso* in relation to the densities and floor

area ratios identified within the plan. It is called *verso l'alto* when building ratios determined in the plan making process are quite high and consequently allow high densities (upzoning). On the contrary, it is called perequazione *verso il basso* when building ratios are low, with low densities (downzoning).

On the one hand, low densities would produce low betterment value but could cause developers and landowners to be reluctant to undertake a new development project or even to produce a planning brief. Landowners could prefer compulsory purchase over the possibility of undertaking a development project. On the other hand, high building ratios could certainly be an incentive to develop and allow land to be brought forward for development (Marchese, 2009). Nevertheless, high densities raise other issues as regards the provision of public services and facilities to meet greater demand and in relation to increased negotiation with developers to return a portion of the betterment value created. Therefore, building ratios should be set very carefully considering the issues that may arise in managing a development project. Planning and population needs as well as economic and market conditions should be taken into account.

3.3.2. Compensazione urbanistica

This practice, together with perequazione when designed in the context of organic and wider planning policies, is the one that is most similar to TDR programmes and their

purposes. Compensazione (compensation) is very often used along with perequazione within urban plans and enables landowners who have been imposed a development restriction to “keep” the economic value of their property and transfer their rights onto another development area.
However, a form of compensation, different to the one discussed here, was already introduced in 1985 by the Act n. 47. This stated that those owners whose property was subject to development restrictions or demolition had the possibility of choosing to be attributed a land plot within social housing plans as a form of compensation (Marchese, 2009).

Recent developments of practice encourage the transfer of development rights from sending areas, which the community wants to preserve for a particular purpose, onto receiving areas either identified by the general plan or to be identified by the subsequent action plans. The latter is the case of the city of Bergamo where sending areas, on which development restrictions are imposed, are identified for environmental goals, whilst identification of receiving areas is left to a following stage during the implementation phase (Gabrielli, 2011). Plans and policies so designed may encounter serious problems during the implementation in consideration of the highlighted characteristics that a TDR programme should have and of the issues that may arise when transferable development rights are involved. Agreements between the local authority and landowners

and between individual owners themselves can be tricky and time consuming to reach. Also it is not a straightforward task to identify receiving areas which meet the requirements necessary to accommodate extra development rights and densities.

In addition, in the same way as for perequazione, the compensation measures intended in the form of the grating of development rights have not been introduced by a national planning Act. Its introduction within the planning field is due to regional planning acts, some of which include such practice in a more detailed statement than others (e.g. Lombardy, Veneto and Umbria), and local planning practice. Regional acts make provisions for the use of compensation measures and for freely trading in compensation rights (Stanghellini, 2009a). A common aspect to the two practices, equalisation and compensation, is that their use is to be accepted by landowners on a consensual and voluntary basis, an element which is fundamental to the success of a scheme (Bellomia, 2008). Further, both are tools which allow areas to be acquired for public purposes without the need to engage in expropriation processes. It is important to bear in mind that local authorities cannot oblige landowners to transfer their development rights onto another area; neither can they force owners to accept and accommodate additional densities deriving from other areas. Refusal generally leads to planning restrictions on the piece of land designated for public use and afterward to expropriation.

The practice as intended at present works through granting development rights to those landowners who own land which is of interest to the public administration's goals. Generally, compensation schemes aim at achieving public objectives, such as environmental preservation and infrastructure provision, by obtaining the land needed (whole property or part of it) through the granting of development rights the monetary value of which corresponds to the market value of the property taken. This works as an incentive for landowners who must then give up their property, or part of it, and transfer their development rights on receiving areas identified by the plan or use them on the remaining part of their own property.

As can be seen, an important difference exists between development rights deriving from equalisation and those deriving from compensation. In fact, rights from compensation are classifiable as an indemnity for a loss determined by a public planning action which will be definitely granted to the affected landowner when the obligation is completed. Their use derives from a financial need of the municipality which lacks resources for compulsorily purchasing land or from the wish to preserve a piece of land for its qualitative features that is subject to development restriction (Stanghellini, 2009b). Therefore, the affected landowner is not attributed a right as part of his landed property but is compensated for a loss. According to Boscolo (2008), a significant aspect which clarifies the difference existing between the two

types of rights is that rights deriving from equalisation can be withdrawn by the local authority as a legitimate exercise of its planning powers, whilst the same cannot be done for compensation rights once an obligation is already complied with.

Other concerns that may arise using the compensation tool may be compared to the ones related to the equalisation. Negotiation between landowners and local authorities may be very long and time consuming. Acceptance of transferring development rights onto another area seems to be taken for granted when instead it is a long lasting process that implies re-adjustments and agreements between landowners. As already highlighted, through the compensation practice local planning authorities try to avoid the use of planning restrictions and expropriation so reducing public spending in an austere economic cycle. Nevertheless, it can be argued that this makes the local authority totally dependent on the building industry for obtaining public areas and carrying out public works and infrastructures (Karrer, 2007). In fact, if the building sector undergoes a crisis, like the one experienced in recent years, such a public policy may become totally problematic because of the amount of development rights needed to encourage the building industry. The compensation tool generally works along with perequazione and also with *premialità urbanistica*. This last tool is used to provide landowners and developers with a greater economic advantage and to encourage the transfer of development rights.

3.3.3. Premialità urbanistica

This planning practice is the only one which has been introduced into the planning system by law albeit the act which introduced it was the Annual Finance Act n. 244/2007. It states the following (article 1, subsection 259):

> *So as to encourage the implementation of interventions aiming at realisation of social housing, urban and housing regeneration schemes, improvement of settlements' environmental quality, the local authority, within its planning tools, can grant a bonus-increase in the form of buildable volumes (...).*

Furthermore, in 2008, the Act n. 133 confirmed this possible use of development rights and provided for:

> *the granting of development rights to developers for undertaking developments that tend to increase the building stock"* and *"increases in the form of bonus rights aimed at securing services, public areas and improvements of urban quality in accordance with* (...) *the Decree n. 1444 of 1968.*

As can be seen, *premialità urbanistica* and the bonus-rights granted through it have to do with encouraging specific qualitative characteristics of a development which should bring about advantages for the wider community (including social housing, environmentally sustainable developments, town centre regeneration schemes, environmental improvements and protection, and so on). However, the result is that a development with such properties is more expensive for the developer to carry out. Thus, it is with the purpose of financially supporting the development activity that the tool is used. In effect, as Stanghellini argues (2009a), if bonus rights granted are worth less than the additional cost of the development, developers might well not be willing to undertake a new development project.

The section quoted above, as well as the nature of the acts themselves which introduced the practice of *premialità urbanistica* and the concept of bonus rights, make it clear that such a tool has to do with financial aspects of the planning and building activities. Therefore, this implementation procedure, considered in this way because it is intended to facilitate the achievement of planning objectives, can be defined as a bonus in terms of development rights granted to developers whose actions contribute to the achievement of objectives of public interest. Nevertheless, it may be argued that this third practice cannot be considered as a tool for obtaining developers contributions and functional to the "construction" of the public city. Premialità urbanistica is

not used for the collection of betterment value per se although it is not clear whether the objective of securing public areas and services contained within the Act 133 of 2008 is intended to increase the minimum standards as set out in 1968. If so, premialità urbanistica could be considered as a partial way of collecting betterment even if through the increase of development densities and therefore creation of more betterment value.

However, according to Bartolini (2008), the planning authority granting development rights as an economic incentive for particular qualitative features of a development does not receive any contribution in terms of public services and infrastructures so that no planning gain is collected by the planning authority itself.

Thus, the first two instruments (perequazione and compensazione, the latter in the sense that it allows public areas to be obtained), are ways through which planning authorities may recoup and return some development value to the community. Premialità is not suitable for such a purpose and can be classified as a state aid to developers, granted for the operation of services of general economic and social value, such as social housing (Bartolini, 2008). This agrees with the *European Commission communication on State aid elements in sales of land and buildings by public authorities*[24] which considered these sales as State aid when conducted in the

[24] Commission communication on State aid elements in sales of land and buildings by public authorities. Official Journal C 209 , 10/07/1997 P. 0003 – 0005. (EU, 1997).

absence of an open and unconditional bidding procedure. Therefore, development rights over a certain economic threshold which are granted for the operation of general economic services are considered as state aids and subject to the European Community regulation on state aid[25].

Consequently, considering the peculiarity of development rights deriving from premialità urbanistica, it can be said that its use within development plans should be moderate so as to avoid landowners and developers appealing against it to the European court and creating excessive additional densities. Its use should generally be connected with other tools of a fiscal nature and broader public policies.

3.4. Concluding remarks

As seen, new tools based on the transfer or development rights have been introduced over the last twenty years in Italian planning practice and legislation. Their use is increasing over time as a growing number of regions and local authorities are introducing them in their legislations and regulations as tools to implement urban plans. However, according to Boscolo (2008) the actual number

[25] Commission Decision of 28 November 2005 (2005/842/EC) on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. Official Journal Of the European Union (EU, 2005).

of those authorities structuring the rationale of their whole plan through the use of the *a-priori* approach remains low.

The three practices, *perequazione*, *compensazione* and *premialità*, aim at achieving different public objectives. They are usually presented within legislation and local plans as means through which it is possible to achieve objectives of greater equity and distributive justice among landowners, environmental protection, regeneration schemes and social housing provision. However, local authorities use the first two as instruments for dealing with the question of betterment value and securing major services and facilities, creating public areas estates and avoiding the use of expropriation and planning restrictions.

While *perequazione* and *compensazione* can generally be used as tools at the basis of a wider policy and strategic vision of the future development of the city, *premialità* can be viewed as pragmatic approaches to specific problems and objectives.

Legal differences exist between development rights deriving from perequazione, compensazione and premialità. In the first case development rights are constitutional rights granted to landowners by the local administration as part of its planning powers. In the second case, compensation rights are classifiable as an indemnity for a loss caused by a public planning action which will be definitely granted to the affected landowner when the obligation is completed. In the third

case, development rights can be seen as a bonus (economic incentive) to the achievement of objectives of public interest. As well as their increased use, their scope is widening since their introduction and this trend is still ongoing and is confirmed by the introduction of social housing within planning obligations (minimum standards) which can be secured through them. It can be claimed that areas, services and community facilities which are required from developers as part of development proposals are increasing over time in order to both overcome the financial crisis local authorities are going through and to return part of the development value to the community.

The functioning of the whole system raises concerns which cannot be denied. Firstly, there is the nature of the negotiation process between the local authority and the developer for determining the amount of contributions, in terms of percentage of the whole area to be ceded (extra contributions) and services to be provided, which is not regulated at national level and varies between plans or even within the same plan between different situations.

Secondly, according to Karrer (2009) in-kind and infrastructure contributions which exceed those set up by law can constitute additional taxation on development and go beyond what can legitimately be required by the planning authority. Therefore, the use of such tools has strong implications for the planning process which relate to different aspects such as discretional negotiation between developers and local administration,

determination of developers in-kind contributions in terms of community services and infrastructures, agreements between sending areas and receiving areas landowners, extra taxation on development. In addition, other problems which may arise from the use of such practices relate to the fact that they do not have the backing of national legislation. Clearly the fact that an instrument has not been introduced by law can generate problems in its use, for example caused by the landowners' right to appeal against a planning decision: see for instance the case of plan for Rome in Chapter 4. It becomes clear then that apart from the objectives of equity and distributive justice, the implicit purposes aimed at by urban plans are those of dealing with the issue of betterment value by obtaining areas for the public estate but avoiding the use of regulative planning tools of expropriation and restrictions on development.

Chapter 4 will review the case studies of Rome, Monza and Parma in terms of the regulations over perequazione and compensazione to highlight the major objectives and purposes they are used for and the issues they have faced.

4. Case studies: tools in practice and emerging issues

The purpose of this chapter is that of highlighting the characteristics and design of the tools, the objectives they are used for, and the effects they may have on plan implementation. The three cases have been selected on the basis of the characteristics of the three different regional contexts. Apart from the case of Rome which has been chosen as being particularly representative, the cases of Monza and Parma were selected a-priori with no reference to the difficulties which may, or may not, be encountered. Before moving to the analysis of the case studies, section 4.1 will briefly discuss the research methods that have been employed for the case study analysis.

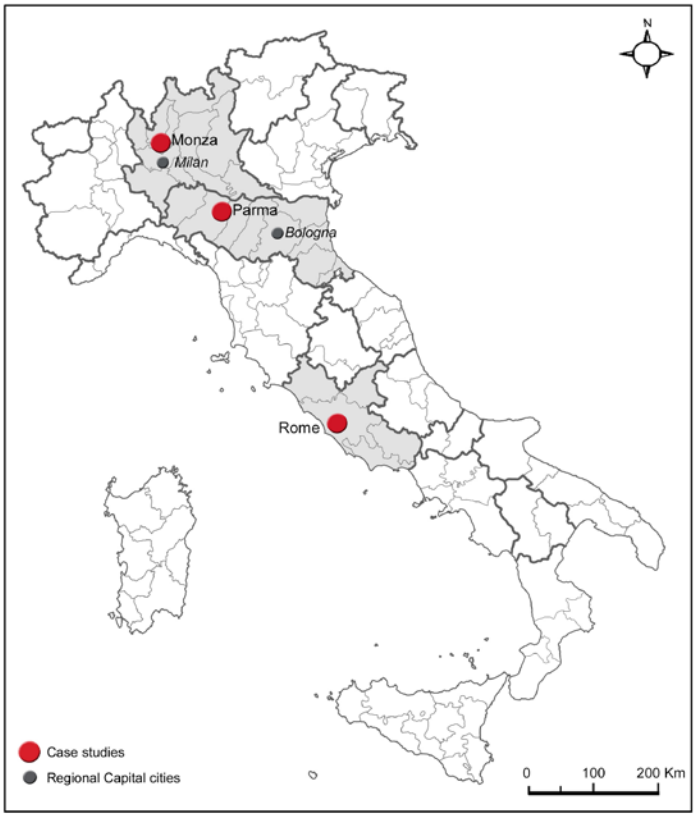
4.1. Case study method

The empirical and contemporary aspects which characterise this work have led to the selection of the case study methodology as the main research strategy for collecting empirical evidence. As Yin (1994:13) underlines:

> *In general, case studies are the preferred strategy when "how" or "why" questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon".*

Three case studies of Rome, Monza and Parma (Figure 1) will be analysed to understand the reasons why the practices of perequazione and compensazione may give rise to practical issues within the stage of plan implementation and the way they should be designed within plans' regulations to avoid elements of unlawfulness or elements that simply make their use impractical.

Figure 1 – Location of case studies



The debate on the implications of such practices came to the forefront in February 2010 after that some articles of the Norme Tecniche di Attuazione (NTA – regulations) of the Piano Regolatore Generale (PRG – master plan) for Rome were nullified by the regional administrative court. Doubts were raised with regard to the NTA of many other plans and Oliva (2010b) went on to argue that "a very large number of master plans throughout Italy could now face (the same) problems and run the risk of being appealed against and nullified".

Within the case study methodology, in the cases of Monza and Parma face-to-face interviews with key actors along with desk research and document analysis were employed to understand the main features of master plans and TDR practices.

The choice of the case study method is justified by the nature of the research questions that prompted this work which undoubtedly are "why" and "how" questions. The research questions are as follows: **What has led municipalities to adopt TDR-based practices for land value recapture? Why (objectives) and how (design) are TDR-based practices being employed by municipalities in Italy?**

This research as well as the topic itself can be easily said to meet all of the points listed by Yin. In fact, "how" and "why" questions are being posed, there is no direct control over master plans and over the design of betterment collection practices within master plans, and the focus is absolutely contemporary involving current

planning practice. The case study methodology with its principles and logics has been applied in order to seek to generalise the findings to a wider and external context and in a theoretical way (Yin, 1994).

The case of Rome has been chosen as pilot case study since it is particularly representative of the issues that may arise in connection with the inclusion and use of such practices within urban plans. It is therefore in line with the recommendation that a proper selection of case study offers the opportunity to maximise what can be learned (Tellis, 1997). Also, the plan for Rome appears to be significant because of the lack of regional legislation which is to govern the use of perequazione, compensazione and premialità and for the nature of the plan itself, which is based on the traditional planning system of the 1942 Act and not on the new one previously discussed.

The plans for Monza and Parma were selected as case studies because of the specific characteristics of the respective regional legislations. In effect, as regards Monza, the Lombardy region has a planning system which is unique in Italy. It shows the same structure of a plan divided into three planning documents as proposed by the INU back in 1995 but they are different in terms of contents and provisions from those proposed by the INU. On the other hand Parma, in the Emilia Romagna Region, has a planning system which is the closest to the one proposed by the reform. The methodology is therefore a multiple case study design which is based on

a replication logic able to strengthen the results of the investigation (Yin, 1994).

Therefore, the same elements are analysed for all three case studies: regional legislation, plans regulations and implementation procedures. Moreover, as a fundamental part of the case study methodology, interviews with local planners have been conducted in the cases of Monza and Parma because of the lack of literature. Interviews are meant to allow for a deeper understanding of the case study and the main elements and causes which affect plan implementation. This section is of great importance in the logic of the whole research since it is meant to investigate and shed light on the issues which characterise the use of TDR practices in Italy as a means to collect a portion of betterment value.

More in-depth and detailed discussion of methodological issues, data collection, analysis and evaluation is provided where necessary within the main text for each of the case studies.

4.2. Case studies

The three case studies offer a brief analysis and discussion of the wider plans' strategy, preparation processes, and objectives the municipalities seek to achieve through the plans. However, the next sub-sections are focussed more on the plans' regulations which govern the use of perequazione and compensazione as fundamental tools through which to

guarantee implementation of the whole plan or of single parts of it.

4.2.1. Rome case study

A brief discussion of the planning history of Rome since the 1960s will give an idea of the complexity of planning for this major city (Fried, 1973). Such a complexity is perhaps increased by the size of the city's administrative boundaries which makes it the largest European city of approximately 1,290 square kilometres, comparable to the areas of the Greater London Authority (Cecchini, 2001). When Rome became the capital of Italy in 1870 around 40% of the city's terrain was owned by eleven noble families and, later on, a similar proportion of land was purchased by some of the most important development companies in the building sector. The influence on planning decisions is soon understood (Insolera, 1971). The history of Roman planning is quite controversial but reflects this pattern of ownership. As highlighted by Insolera (1971), one of the leading scholars with the greatest expertise on Roman planning:

> *For a hundred years (after Rome was made Capital of Italy) (...) from the outskirts to the city centre, the actual "planning law" in Rome was the profits accrued to the "owners" of the city, through every possible form of parasitic revenue.*

The history of the comprehensive urban plans for Rome shows that up to today only seven plans have been prepared for the whole city, excluding plans variations, since the unification of Italy in 1861: in 1873, 1883, 1891, 1909 1931, 1965 and the current plan of 2008. The 1965 plan shares a common feature with the current one in force. The plan making process took about 12 years to come to approval, some two years less than the time span needed for the 2008 plan whose process was started in 1994. The 1965 plan was adopted in 1962 and approved in December 1965 after many years of discussions and problems which were also characterising the planning debate at the national level at that time. Indeed, those years were the years of the Sullo reform and many reforms discussed in Chapter 2. The plan as prepared during the 1950s had however a completely different strategy from the one which came to approval. Insolera (1993: 266-267) points out some distinctive elements which characterised the new and different strategy: the new direction for residential and industrial development towards the coast and Fiumicino Airport rather than on the eastern part of the city; modification and overdevelopment within existing built-up areas; development of about 13,000 hectares of agricultural land mainly in the north and west parts of the city; a new urban policy for the historic city centre where individual developments were allowed without a general policy.

Along with these changes and in line with the culture of those years the most striking aspect was the

overdevelopment foreseen and the total population to be accommodated in future years in the whole city: about five million people and rooms[26], two million more than the current registered population (Oliva, 2010a). However, over the time needed to produce and approve the plan, Rome had grown consistently. From 150 square kilometres in 1940, the built-up area of the city had spread out to cover more than twice that space by 1966 and the number of occupied rooms by 1959 had increased from 1.1 million to 2.3 million (Fried, 1973). Just as it had been a long and very complicated process to prepare and approve the plan, it was difficult to implement the provisions made. One of the major projects, if not the largest, of the plan was the *Asse attrezzato*, an impressive communication belt running north-south in the eastern part of the city which initially was to accommodate new administrative functions and serve the largest area of the new development, which was never implemented (Fried, 1973). An agreement between Sapienza University and the City Council has recently been found for that area; this was to undertake a project for a future university campus and accommodation on some areas which were involved in the initial project (*Il Tempo,* 28/07/2011). Instead, the city council in the late 1960s preferred, and it is very likely to be for real estate interests, to carry on with the *Piani particolareggiati* (detailed development plans) of the 1932 master plan to allow private

[26] At that time the ratio was of one room per person.

development on different areas and parts of the city (Insolera, 1993)[27].

Implementation of the plan therefore was as difficult as its preparation, at least with regard to the public city provisions: some 7,000 square metres of floor area of services and facilities were lacking from the previous plan (Campos Venuti, 2001). Private property landowners were granted development rights for about three million additional rooms of which around one third remain unused at the present time. However, it is this overdevelopment that represented one of the major challenges for the new plan whose primary aims are to preserve agricultural land and open spaces and reduce development activity.

Lazio Regional Planning Legislation

The regional planning legislation which is to govern the use of practices such as perequazione and compensazione practically lacks any form of regulation over them. Even though it came later, the Lazio regional planning law n. 38 of 1999 did not review the planning system towards a structure as defined by the 1995 reform. It basically confirmed the old structure of the 1942 national planning

[27] For a detailed and exhaustive history of planning in Rome over the 100 years since 1870, see: Insolera (1962, 1971 and 1993) and Benevolo (1992). A major volume in English language is: Fried, R. (1973) Planning the eternal city.

Act based on *comparto edificatorio* as the main implementation tool (Casini, 2011).

A very short statement about perequazione can be found in Article 30 (sub-para 1, letter h) where it is stated that "*master plans shall indicate which physical developments should be implemented by compulsory purchase of identified landed properties or by forms of equalisation defined within PUOC"*[28]. PUOC are urban development plans to be approved subsequent to the general comprehensive plan and they should spell out in detail the provisions and developments foreseen by the general plan. Since 1999 there have been a few attempts of reform to introduce changes and innovate the system with new regulations about TDR practices, but none of them has been successful and come into force (Casini, 2011).

So the regional law does not set out any guiding principles and leaves every decision about the functioning of the practices, objectives to be achieved, areas which can be concerned and actors involved to detailed and territorially limited urban development plans. This lack of guidance proved to be fundamental in the first place as the basis for a negative judgment by the regional administrative court on the NTA of the Rome master plan. The mechanisms of perequazione and compensazione, adopted and used by master plans within the Lazio region against this legal background can be

[28] Piani Urbanistici Operativi Comunali.

described with reference to the experience of the new Piano Regolatore Generale for Rome which came into force in 2008. A study of this experience allows important conclusions to be drawn and an understanding to be developed concerning the way such mechanisms should be regulated and designed and the implications this may have for the future of a plan. The experience of the master plan for Rome is very significant because of the unexpected interpretation of the plans' regulations given by the court which saved a 15-year long work. In this context, this case provides one of the most important experiences of equalisation and compensation in Italy.

The new Piano Regolatore Generale for Rome

The major objective of the new plan is to preserve agricultural land with natural, historic and archaeological value. These preservation and environmental goals are to be achieved by reducing development expectations and cutting off part of the development rights granted by the 1965 plan. This is to be secured in part through the use of perequazione and compensazione mechanisms.

The total floor area which has been cut off from the provisions of the 1965 plan equals to about 13 million square metres (Cecchini, 1996). Such a decision is not without consequences and raises issues relating to private property rights in land. Within the city's boundaries some 89,000 hectares of land, about 70% of the whole territory, either were given development restrictions upon

or were left to agricultural uses in order to achieve preservation and environmental goals (Marcelloni and Modigliani, 1996). However, it should be noted that more than half this territory (54,000 hectares) has had regional development restrictions imposed which do not give rise to compensation issues. Indeed, developers and landowners are not eligible for compensation following the imposition of such development restrictions (called *vincoli sopraordinati*). The other 35,000 hectares of agricultural land, 5,000 of which have had planning restrictions imposed by the plan, are to be obtained and implemented through compensation measures (Campos Venuti, 2001). It is with regard to these provisions that perequazione and compensazione tools are to be adopted to allow development schemes and development rights to be transferred onto other parts of the city so as to create open spaces and parks. As Marcelloni and Modigliani (1996) pointed out, private developers when using their development rights (generally reduced by 50% compared to the old provisions) implement the plan provision and give up to the public authority, in the form of *extra-standard contributions*, those areas which are to form parks and open spaces. The expression *extra-standard contributions* assumes great importance in the judgment of lawfulness of such a practice as well as within the plan rationale for recouping betterment value. Along with the major environmental objectives, another part of the planning strategy that concerns transfer of development rights is to create a polycentric city which should allow

activities and functions to be decentralised from the overcrowded city centre to the new centres. The new centres are usually expected to accommodate extra development rights and represent the already discussed *receiving areas* within TDR schemes.

Within the plan's NTA explicit reference is made to equalisation, compensation and bonus rights practices as tools to give effect to the provisions of the plan. The NTA identify different areas within which tools of perequazione, compensazione and premialitá can be used with either the explicit or implicit objective, at least in two cases, of recovering part of the betterment value created by physical development (practices are described and regulated in articles 17 to 22 of the NTA). The adoption of equalisation and compensation mechanisms within the urban plan for Rome proved to be quite controversial. The regional law as seen provides no provisions for governing such planning tools, and the regulations set out by the plan introduce a complex system. In the next sections the regulations set out within the NTA will be discussed in detail along with the court judgments which have first nullified and then brought back into force the new master plan for Rome.

Discussion of practices

The new Piano Regolatore Generale for Rome is certainly characterised by peculiarities which make the case study particularly interesting. The plan was

approved in 2008 after a long and complicated preparation process started in 1994. During the whole process a stage that represented a fundamental moment was the adoption in 1997 of the *Piano delle certezze* which had the overarching objectives of providing the whole city with a new and enhanced system of green areas, an *ecological network* and of preserving agricultural land (Casini, 2009). The objectives were to be achieved through a system of compensations for those areas covered by the *Piano delle Certezze* which were to be relinquished to the local planning authority (Comune) in order to realise the plan's policy.

This form of compensation, called *compensazioni urbanistiche* and regulated under article 19 of the NTA of the new master plan, aims at compensating those landowners which have been affected by the prescriptions of the *Piano delle Certezze* that cut development provisions and changed land uses which were not in accordance with the new system of parks of regional interest and agricultural areas (Oliva et al., 2001). Along with this form of compensation, the plan introduced new equalisation and compensation measures designed to implement development proposals on land parcels designated for new developments. By means of such practices, the planning authority aimed at receiving either a share of the granted development rights or the whole or part of the private property in order to provide the community with public services and facilities and carry out compensation measures. It is with regard to the

functioning of these two practices and fiscal taxation on land for development that the system designed to determine developers contributions was initially nullified by the Tribunale Amministrativo Regionale Lazio (Lazio regional administrative court) and subsequently brought back into force by the Consiglio di Stato (Council of State)[29] which found a loophole in the regulations of the plan (judgment n. 4545/2010). The main features which determined the Tar Lazio decision to declare that the tools, as conceived within the master plan, were unlawful can be explained by directly discussing the distinctive and technical characteristics of the mechanisms.

As regards the equalisation tool, the plan introduced a granting mechanism which was designed for achieving objectives of social justice as well as compensation purposes. This tool, set out within article 18, concerns a whole category of areas defined as *Ambiti di Compensazione* (*Compensation Areas).* Land parcels falling within this category may be attributed the same amount of extra development rights and a share of 60% to 80% of these is to be retained by the local authority (betterment collection action) and used, within or outside such areas, for purposes such as regeneration, social housing, compensation for the purposes of the Piano delle Certezze, planning incentives (bonus-rights), encouraging extra developers contributions and so on

[29] A body which combines some of the administrative functions of a department of state and judicial court of appeal in England for example.

(art. 18 NTA, 2008). However, it is the legitimacy of the share retained by the municipality that was questioned. It is appropriate to ask whether a predetermined share of development rights attributed to private properties, which is not the result of a negotiation process, could be retained by the municipality. The national constitutional and legal reserve on private property itself highlights the need for a national Act to regulate takings on real property (Art. 42 of the Constitution). Such takings exceed those set up by law and according to Karrer (2009) they may constitute additional taxation on development and go beyond what can legitimately be required from developers by planning authorities. In fact, confirming such an interpretation, the Tar Lazio judgment n. 1524/2010 defined the tool as unlawful because a "hypothesis of a share of development rights retained by the local authority is external to the Italian planning legislation" (Tar Lazio, 2010a).

The Tar Lazio, through the judgment n. 2383/2010 (Tar Lazio, 2010b) also judged as unlawful the second form of compensation defined within the NTA as *Cessione Compensativa* (compensation for giving up part of the land owned). In this case, article 22 of the NTA sets out a practice where, in order to avoid expropriation of part or of the whole property, landowners might accept development rights as compensation, quantified in the amount of 0.06 square metres of gross floor area per square metre of land owned, and transfer them onto another land parcel or use them on the remaining share of

their own property. In this case, as well as in the previously discussed form of compensation, the regional court underlined that the building index was discretionally set at a quite low level so constituting an improper means for reducing and capturing increases in the value of land. Besides, the pre-determined in-kind contribution (the whole property or 90% of it) is needed to form a public reserve of areas through which to provide for public services and facilities. Nevertheless, as set out by article 83 of the NTA, such public services and facilities may be either of *local* or *urban level.* If services of the local level are consistent with the national standards and relate to a development proposal (Decree n. 1444/1968), the same cannot be said for some services which fall within the category *servizi di livello urbano* (services of urban level such as universities). This second category of services may not be considered as functional to a development proposal in consideration of the fact that development rights can be transferred onto a receiving area functionally independent from the sending area. Therefore, the Tar Lazio concluded that such a form of compensation constitutes an extra and improper form of contribution. Moreover, such services as may result may not be appropriate to a coherent development of the *public city.*

Linked to the question of extra contributions, a third measure was nullified by the regional court. Article 20 specified that a share of the extra development rights granted, varying from 20% to 50%, is subject to a

Contributo Straordinario (extra taxation levied on the market value produced by the share of development rights) in the amount of 60% to 66.6%. Such a contribution was to be used for achieving public objectives such as regeneration, revitalisation and social housing provision and the purpose of betterment collection is evident. The court recognised the public nature of such a contribution but, in the same way as for the *cessione compensativa*, the *ex-ante* determination of the amount of development rights and levy percentage to be charged was declared unlawful. This decision was taking account of the constitutional safeguards on the taxation of private property and of the principle of legality, since there is no provision within the Italian jurisprudence for such a restriction on real property. Tar Lazio concluded that in-kind contributions and tax measures on landed property could not be defined *a-priori* but should be the result of a negotiation process between local planning authorities and developers (Tar, 2010a).

However, as mentioned earlier, the Consiglio di Stato, with an unexpected reversal (Micelli, 2010a and 2010b; Stella Richter, 2010; Oliva, 2010a) declared such practices to be lawful, finding a loophole within the plans' regulations. It stated that the share of development rights to be retained by the municipality within the *Ambiti di Compensazione* and the extra monetary contributions which were levied on extra development rights could be freely agreed with landowners but not on

the amount of development rights either assigned by the previous plan (the 1965 plan) or by the new plan on the basis of land use and land classification. The share is to be retained on the amount of extra development rights granted to landowners as the result of a possible future negotiation process within which landowners can freely choose whether to be involved or not. However, within the plans' NTA no explicit evidence can be found for such a mechanism. Interestingly, as Mengoli (2011) underlines, the justification provided by the Consiglio di Stato would mean that takings would constitute future takings on the objects of forward planning, future planning schemes, which have not yet been defined and that are however fundamental parts of the planning strategy. Nevertheless, the Consiglio di Stato confirmed that, even if there is no legal coverage provided by a specific planning act or regulation, this is to be found within the planning legislation in general and in the power to determine land uses, appropriate to the planning discipline[30].

[30] However, it should be noted that the previous case-law of the city of Bassano del Grappa confirms the uncertainty over the use of these tools. Here the Consiglio di Stato in 2006, with a contradictory decision, declared as unlawful a mechanism very much similar to the one foreseen for the *Ambiti di Compensazione* in the Rome master plan. In fact, the Consiglio di Stato within the 2010 judgment reaffirms that the Bassano del Grappa mechanism was unlawful on the grounds that it assigned to the local authority a share of the total and "already acquired" private development rights, differing from the case of Rome where takings are foreseen on extra and future development

After the experience of the Rome master plan, both Stella Richter (2010) and Urbani (2010), two of the major planning law scholars, expressly state the need for a national act which should regulate the use of such tools and specifically deal with the issues of developers' contributions and extra-taxation. The system of extra contributions and takings on future development rights as designed within the Rome master plan seems to lead towards a planning system which, making a great use of such tools, is likely to be characterized by a higher degree of *ex-post* case-by-case negotiation and agreements between local administrations and developers. Even though takings are predetermined within the plans' regulations and potentially no negotiation would be needed over them, it is likely that agreements and adjustments will be needed with landowners to convince them to enter into the new obligation. This would be somehow in line with a planning system aligned to what Karrer (2007) defines as *planning through programs or planning through projects* where a greater role is played by consensual agreements and negotiation in allowing development projects to go ahead.

---

rights which can be freely agreed by landowners so saving those granted both by the 1965 plan and on the basis of land uses determined by the new plan. Significantly, the Consiglio di Stato itself concludes by claiming that a new national planning act is absolutely necessary to regulate the use of practices granting or transferring development rights.

This case shows that takings and betterment collection through perequazione and compensazione can raise issues of lawfulness with regard to the private property rights regime. It can be argued that there are some aspects that should be avoided when making plan regulations. Firstly, the setting of predetermined taxation ratios to be levied upon the market value created by the development. Taxation on private property would be unlawful when set out within plan regulations if we consider the constitutional and legal reserve on private property rights, but in this case the public nature of the *contributo straordinario* and the fact that it is charged upon future agreed schemes allows it to be deemed as lawful. However, within plans it is convenient to avoid such elements if not properly structured around the "recommendations" of the Consiglio di Stato. Secondly, the other mechanism for recouping betterment, the retaining of a share of development rights granted to landowners, should be avoided. Such a practice as confirmed by the Bassano del Grappa judgment can be easily and with success appealed against and it is found also in the case of Monza. The case of Rome represents the exception for the way it was designed. The plan for Rome has been "saved" by the Consiglio di Stato which avoided the risk of remaining without planning regulations just a couple of years after the plan was approved. The consequences would have been enormous, as the debate shows, and the whole strategy could have

been undermined, leaving the city without any planning vision.

4.2.2. Monza case study

Monza is a medium-sized city of the Lombardy region with a 2017 population of 122,955 (Istat, 2017a). It lies some 15 kilometres north east of Milan, within its metropolitan area, and since 2004 plays a major role within the region having been made provincial capital of the newly established Monza e della Brianza Province. It is an important city in the richest Italian region which has a per-capita GDP of 35.900 Euros (Istat, 2017b). Monza's economy is strongly based on the third sector - 49% of all enterprises within the municipal territory operate within the service sector (Comune di Monza, 2010) - due to the proximity to Milan.

The history of the previous master plans for Monza (Piani Regolatori Generali) shows that the main element of interest and conflict, which has also come to attention at the national level in recent years, is an agricultural area which lies in the southern part of the city and over which development interests and political conflicts still take place. Consistent with the times and the overdevelopment tendencies of the 1960s and 1970s, the 1968 plan made provisions for excessive development (Comune di Monza, 2007a). Amended in 1971, the plan was meant to accommodate a population of 310.000, some 200.000 people more than the then resident population, even though it dramatically reduced development provisions in

the south part of the city. Naturally, the current figures confirm the overdevelopment foreseen by that plan and subsequent planning documents and variations have successfully sought to reduce those provisions. The 1971 plan was approved just one year before legislative and administrative planning powers were attributed to the regions in the context of the devolution process from the central to regional governments, and because of this the plan was soon considered as obsolete and "centralist" (Bottini, 2006). In 1981 a new study was commissioned to draw up a new plan which however did not produce any result and never reached adoption. The following sequence clearly illustrates the influence of politics, parties and individual politicians over plan preparation. In 1993 a new plan was commissioned to Leonardo Benevolo by the elected left-wing coalition. This plan was adopted in 1997 but the new right-wing coalition, elected in 1997, abandoned Benevolo's plan and by the end of their legislative mandate they adopted a new plan in 2002 which was drawn by the municipal planners. Then, in 2004, the newly elected left-wing city council used the same approach and adopted a further plan which, like the previous two, was not approved. However, in this case the reason was different and was to be found in the new regional legislation, passed in 2005, which introduced a different planning system.

A common element emerges from these political changes concerning the conflicts between the political parties over the provisions for the agricultural area

referred to above[31]. Right-wing local governments planned for development to take place over the area, whilst left-wing coalitions scrapped those provisions by imposing planning constraints (Comune di Monza, 2007a; Democratici di Sinistra, 2006). The new regional legislation introduced a totally different and unique planning system and a new master plan, called the Piano del Governo del Territorio – PGT. Thus, the 2004 plan based on the old legislation of 1975 was put aside and the left-wing coalition started the updating process on the basis of the provision made by the new regional Act. The plan was approved in 2007 by the new right-wing coalition. Unsurprisingly, the new right-wing coalition two days after approval announced a planning variation procedure which involved all three of the planning documents which make up the PGT. Again, controversy and polemics were aired in the national and local press with reference to the already controversial development site and overall to the total development provisions made by the new plan proposal (Rosa, 2010; Majoli, 2010; Ascrizzi, 2010; Zonca, 2010). In June 2010 the results of the new study were presented for discussion and

[31] The site is known as Cascinazza and lies in the south part of the city with a territorial extension of about 72 hectares. It has always been used for agricultural purposes but since the early 1980s conflicts and changes of use have been a constant element. A historical account of the facts, individuals and companies involved in this anecdote is given in a document produced in 2006 by the representatives of Democratici di Sinistra at the regional council: Democratici di Sinistra (2006).

consultation at the planning commission meetings and the new variations were approved in 2012. The 2012 plan has been recently modified at the beginning of 2017. The regulations and TDR mechanisms of the 2007 variations are the objects of analysis and interest in this research since they can be considered one of the causes that led to necessary changes in the regulations of TDR mechanisms. The main reason for the 2012 variation emerged in an interview conducted with a planner of the city council who made clear that TDR mechanisms as conceived in the 2007 plan would not work.

In the next section, after the discussion of the new regional planning system, the focus will be on the 2007-2012 plan and its regulations in order to analyse TDR mechanisms and confirm the findings from the interview.

Lombardy Regional Planning Legislation

The Lombardy regional planning Act presents unique features within the Italian planning legislation because of the planning system which it sets out. Even though the plan at the municipal level is made up of three documents as it is for the plan model proposed by the INU, these present peculiarities which are not found elsewhere. The new-style plan, Piano del Governo del Territorio, was introduced in 2005 under the Act n. 12 which has been amended several times; the most important change was in 2008 by the regional Act n.4. The Piano del Governo del Territorio is made up of three documents: Piano dei

Serivizi, Documento di Piano, and Piano delle Regole. The three documents present peculiarities and properties which are not found elsewhere in Italy.

The Documento di Piano (Article 8) could be compared to a Piano Operativo (PO) because of its five-year validity but its provisions, as specified within the regional Act, do not determine land uses and functions so being more similar to a Piano Strutturale (PS)[32]. It also should set out the strategy and vision for the city, even though the idea of a short terms strategy, considering the length of time necessary to complete the plan making process, could easily be questioned. Therefore, it can be argued that a Documento di Piano is something in between a PS and a PO. Its validity is limited to five years and it determines the amount of future development in terms of gross floor area which can be built within the city. The Piano dei Servizi is the element that mainly characterises the PGT and it is not found in any other regional legislation. It was firstly introduced by the regional act n. 1 of 2001 and it is further specified within the 2005 planning legislation. The main objective of the plan is to ensure that the global amount of public services available within the municipal territory is sufficient to meet the needs of the current and future foreseen resident population. The distinctive element is the fact that a

[32] The same doubts raised with regard to the PS can be applied to this provision. See section about the new regional planning system where debate about this kind of provisions is presented and discussed.

Piano dei Servizi should evaluate the services system in a qualitative way rather than solely in a quantitative way (square metres) by including elements of accessibility, quality (level of satisfaction) and usability. As for the Piano delle Regole, this is basically a zoning map of the built-up, agricultural, environmental and non-developable areas of the city with an unlimited validity and which can be updated at any time.

After the Veneto Region in 2004, the Lombardy region was the second Italian region to introduce provisions for tradable development rights granted in the context of perequazione and compensazione schemes, while no reference is made to trading development rights granted as bonus. However, legislative provisions about mechanisms of perequazione, compensazione and premialità are very general and provide municipalities with the powers to adopt such mechanisms within planning briefs and development plans on the basis of the regulations specified within the Documento di Piano. Different building ratios can be assigned to land classified as developable in different areas of the city's territory and a single land plot can be assigned two ratios; potential and actual (see the earlier section *Perequazione a-priori and pereqazione a posteriori*). Compensation rights can be used outside planning schemes and development briefs to compensate landowners for giving up their property which is needed for public purposes (infrastructures, facilities, open areas, preservation and so on). Lastly, bonus rights can be used to encourage

regeneration and affordable housing schemes in the amount of an increase by 15% of the allowed volumes.

Piano del Governo del Territorio for Monza

Particular importance within the Documento di Piano was given to TDR mechanisms in order to achieve the strategic objectives which were set out for the city. It was explicitly stated that with the 2007 plan Monza had to become a "service city" with a major role played by the third sector of the economy (Comune di Monza, 2007b). The plan had to be able to answer those questions relating to the property rights regime and to the development provisions of the previous plan which were obsolete if compared with the actual situation of urban growth. It is also pointed out that the old zoning did not match with current development needs and that this was a constraint on new development initiatives. Fundamental elements for the implementation of the plan were negotiation and bargaining with private developers and competitive procedures between developers in order to determine development priorities and allow for an increase in the quality of new development proposals. As will be seen later on, this last element contributed to making the implementation of the plan a very complex objective to achieve.

The interview conducted with a planner of the municipality has evidenced that perequazione mechanisms were to be applied to all areas identified for

development as well as to those areas designated for public services. Thus it was necessary to always adopt perequazione mechanisms for implementing physical development even though it was not specified in such terms within the plan documents. Quantitative objectives were set out by the DP for the five-year period:

a) Residential uses for 200,000 square metres of gross floor area;
b) Commercial uses for 50,000 square metres of gross floor area;
c) Industrial uses for 60,000 square metres of gross floor area.

Findings from interview

The interview with the planning officer was used to collect further information and evidence which could not be obtained from document analysis. Moreover, it has been useful to ultimately confirm the findings from the analysis of the tools as designed within the plan. As with any interview, the planner acted as a key informant who helped to understand the main issues which would have affected plan implementation. Perequazione was conceived as an obligatory tool whose adoption and implementation was the responsibility of developers who were to implement physical transformation. It was emphasised that a particular characteristic of the mechanism contributed to creating those conditions

which actually impeded development from taking place. The plan adopted the system of two building ratios, potential and actual, and the difference between the potential ratio and the actual ratio is to be filled through development rights acquired from areas designated for public services and facilities. If the system was simply conceived like this there would not be any problems.

However, as emphasised during the interview, granted development rights acquired from public areas were divided within the DP into residential, 25%, and non-residential, for the remaining 75%. So, residential development rights from one sending area (25% of total rights of that area) may not be enough to fill the gap between potential and actual ratios and developers saw themselves obliged to acquire further development rights (both residential and non-residential) from other sending areas in order to meet the actual ratio and start a development. In such a way the costs increased considerably, due to the acquisition of great amounts of unnecessary non-residential development rights, before developers could implement a new proposal (developers ended up purchasing more non-residential development rights than they could actually use within the development site). The situation is even worse when a receiving development site is totally designated for residential use only.

Together with this aspect, impacts on plan implementation are created by the element of competitiveness. In fact, once developers own the

necessary development rights and draw up a planning brief, it is still not certain that they can implement their proposal. This is due to the competitive procedure which leads to the selection of only those proposals that are evaluated by the planning commission as the best ones on the basis of pre-determined criteria. This element introduced a factor of excessive risk for developers. As a matter of fact, in six years from 2005 to 2011 only one development proposal was started (Comune di Monza, 2011). Therefore, the quantitative objectives of the plan which have been reported above were not achieved at all.

The new plan variation which was approved in 2017 aimed to bring about three major changes so as to make the system more practical: perequazione should be a facilitating mechanism to use along with other tools and not the only obligatory implementation tool; free use of development rights generated from public areas without restrictions on the amount of development rights which can be employed for residential use and other uses; and the possibility of using development rights on all development sites rather than being limited to particular areas.

Discussion of practices

This section will discuss the practices as they have been conceived within the plan's regulations. This emphasises the complexity of the system and the impacts that such practices had on plan implementation. Understanding the

regulations can result to be very complicated for those who are not very familiar with this subject.

On the basis of the TAR Lazio judgment n. 1524/2010, it could be held that appeals against the perequazione mechanism as designed within the NTA of the Documento di Piano could have strong implications for the plan and even led to the nullification of the article which regulates the use of this tool. In order to understand this statement it is necessary to analyse in depth the NTA of the Documento di Piano which governed the use of the mechanisms for securing additional areas and services. The article of interest is article 5 (*Equalisation, compensation and transfer of development rights*) and its subsections 4, 6 and 12. These three subsections clearly highlight the link between TDR practices and betterment collection. Subsection 12 was as follows (Comune di Monza, 2007c):

> *The Comune, for carrying out an effective planning action with reference to the achievement of its strategic objectives retains, regardless of the actual property of land parcels* [either public or private], *a share of development rights for the implementation of* [other planning measures] *provided for in subsection 6* (text in square brackets has been added).

Subsection 6 of the same article was very interesting since it governed a specific type of perequazione, termed *perequazione diffusa*, which concerned various and not neighbouring areas within the city's territory. It stated that:

> *Perequazione diffusa is implemented by attributing theoretical development rights* (expressed in terms of gross floor area) *to all private areas designated for public services and roads which do not fall within development sites"*. Subsection 4 clarifies the way that building ratios are determined: *Gross floor area is determined by means of different building ratios which should take into account the location of development sites within the city and their objectives and role with respect to the wider context of urban regeneration.*

This means that development rights which are retained by the municipality on the basis of subsection 12 (betterment collection action), are to be used to support *perequazione diffusa* measures which were foreseen under subsection 6. Indeed, such development rights were to be then granted to landowners of private areas designated for public uses which were located outside a development proposal once private landowners gave up their properties to the public administration (subsection

7). Therefore, such development rights have the characteristics proper of *compensation rights* (see the regional legislation discussed above) and *perequazione diffusa* looks more like *compensazione* rather than *perequazione*. Moreover, on the basis of subsection 4, it is not clear why areas which lie outside development sites should be attributed development rights on the basis and by taking into account the location of the development sites themselves, whilst not the location of the area designated for public services and roads.

As can be seen, this is a great difference when compared with what is provided in the Rome master plan. In fact, the latter's provisions are very much more detailed and set precise figures for developers' in-kind contributions and for the share of development rights to be retained by the local administration. However, in the Monza case, the expression *"the Comune [...] retains, regardless of the actual property of land parcels, a share of development rights [..]"* was critical and can be compared to what was provided by the first tool discussed in the Rome case study, which states that a share of 60% to 80% of the granted development rights is to be retained by the local authority. Here what differs from the Rome case study is the fact that within this article no reference is made to extra or future development rights so such a mechanism might be defined as being outside the scope of the Italian planning legislation. Moreover, even though subsection 1 of article 5 states that the above cited mechanisms are in

accordance with the regional legislation, no reference to such a mechanism is found in the regional planning Act. This would allow landowners to exercise their right to appeal in consideration of constitutional safeguards of the property rights.

Therefore, it is easy to understand the reasons why the plan has not been implemented in practically any of its provisions and new regulations were approved in 2017 to make changes to the TDR mechanism. The new regulations which came into force in 2017, indeed, do not distinguish development rights in 25% residential and 75% non-residential and have cancelled provisions that the municipality can retain development rights.

The structure of perequazione and compensazione mechanisms was so complicated that it almost prevented developers from presenting development proposals. Or even when they did so, the process was both very long and provided them with no certainty. The worries expressed by Oliva (2010b) about the lawfulness of many master plans in Italy definitely concerned Monza's plan. It is also because of this that the changes made in 2017 aimed to modify perequazione and compensazione mechanisms.

4.2.3. Parma case study

Parma is a historic city in the Emilia Romagna Region with a history which dates back to the Roman times when the city was founded. It is located north west of the regional capital Bologna and it is very close to other

important cities such as Modena and Reggio Emilia. Its economy is based on the service sector, which employs some 35% of the working population and an important role within the city is played by the University. It is one of the 9 provinces of the region, with a 2010 population of 194,417 (Istat, 2017a). The major growth had been in the decade from 1961 to 1971 when the population increased by over 30,000 people from about 140,000 to about 175,000 (Comune di Parma, 2008). Unsurprisingly, in line with past trends for major cities, Parma's population decreased from 180,457 in 1981 to 163,457 in 2001 but, in the last decades, the population has grown again to over 194,000 inhabitants. Again, in the same way as for all major cities at that time, the 1969 master plan, eventually approved in 1974, provided for overdevelopment to accommodate a population growth of about 70,000 inhabitants. The plan-making process was started soon after the decree on standards for public services was passed in 1968. In effect, the plan strategy reflected the need to provide the city with improved public services and facilities and was characterised by a detailed calculation of the needs for education facilities, sport facilities, open spaces and so on, which were growing considerably in consideration of the population increase which occurred in the previous decade. As a matter of fact, most residential development took place during the two decades from 1961 to 1981 (Comune di Parma, 2010).

Plan provisions did not find a widespread application and about ten years later in 1978 a planning variation was prepared in order to face the main issues which were characterising the previous PRG. The 1978 plan soon aimed at reducing development densities. It did so considerably in order to take into account the reduced population trends and to tackle the issue of windfall gains accruing to landowners. The planning history of Parma is strongly characterised by plan variations which have come one after the other, and the recent history confirms this. Other general variations that concerned the whole plan were approved in 1983, 1985 and 1992 before a new plan was commissioned in 1998 (Comune di Parma, 1998). In this period an important plan was drawn up for the historic centre, the primary aim of which was to preserve the historic fabric of the town. This plan, which applied only to the historic part of town, was approved in 1981 following the disciplinary focus on the physical conditions of historic centres that had developed internationally over the years (Lazzarotti, 2011). The plan was drawn up on the basis of the national legislation (Act n. 457 of 1978) and assumed a very important role in the management of the city.

The 1998 general plan introduced a new vision for the city and it was intended to be implemented for the first time by means of perequazione. The mechanism was to be applied to single areas identified and regulated in detail by the plan. No transfer of development rights outside an individual area was foreseen. The plan was

eventually approved in 2001, but due to the new regional legislation, it was soon updated in 2002 to comply with the new legislative requirements. The detailed provisions were split into Piano Operativo Comunale and Regolamento Urbanistico ed Edilizio which are discussed in the next section. In order to comply with the structure proposed by the new regional act, the municipality in 2007 approved the first Piano Strutturale Comunale which set out the strategy for a twenty-year period, precisely until 2024 (Comune di Parma, 2010a). In this last plan, particular emphasis is placed upon perequazione as a means by which to achieve 3 key objectives: a system of green areas for the mitigation of impacts; implementation of the provisions for the public city at the lowest costs for the local authority by avoiding the use of compulsory purchase; and recoupment of betterment value through a strict connection between windfall gains created and developers contributions (Savi, 2011). The section dedicated to the 2007 planning documents will seek to point out the main features of perequazione and understand its performances.

Emilia Romagna Regional Planning Legislation

The "second generation" Emilia Romagna planning legislation was introduced in 2000 under the regional act n. 20. It has been amended several times during the past decade, and the most important change was made in 2009. A new regional planning is currently under

discussion whose main changes concern the reduction of land consumption and a new form for master plan. However, the planning system which is still in place was set out by the Emilia Romagna region in 2000 and can be said to be the closest to the guidelines and model presented and discussed in 1995 by the INU (Oliva, 2010a). It is also the closest in terms of the names of the planning documents, which avoids adding further confusion to the illogical myriad of different names which the regions have attributed to their planning documents. The three planning documents are known as: Piano Strutturale Comunale (PSC), Piano Operativo Comunale (POC), and Regolamento Urbanistico ed Edilizio (RUE). Nevertheless, it is worth noticing that unlike the PGT in the case of the Lombardy region, in this case no reference is made to an overall document which contains PSC, POC and RUE. No name has been given to the whole of these three "partial" documents, which however are called "tools for urban planning"[33].

The PSC is defined as the general planning tool which the local administration must prepare with reference to the whole municipal territory in order to set out the long term strategy for physical development, environmental protection and conservation and cultural identity preservation. It is also stated that the PSC does not determine land uses and functions and it does not grant

[33] These are defined in the regional act as: Strumenti della pianificazione urbanistica comunale.

development rights to the private property, emphasizing its *"non-prescriptive"* nature. However, the debate and polemics about this point which have been presented in section 3.1 *The reforming role of the regions* should be borne in mind. Indeed, it is not as simple as that to avoid producing territorial effects and development expectations in landowners and developers when the PSC also locates physical development and determine land uses, building ratios and so on. It can be argued that even a simple classification of a piece of land as being developable within the PSC creates expectations for development. This is a fundamental characteristic that is strictly linked to the system of *perequazione* which should be adopted by all plans within the region.

The POC, in accordance with the Piano Strutturale Comunale, regulates development projects within the municipality's territory for the five years from the moment of approval. The regional law emphasises that the five-year validity of the plan is applied to the provisions for the public parts of the city as well as to private developments. In this way private development is matched up to the provisions for the public city and development rights "expire" after five years if, within this period of time, no planning brief has been either submitted to or adopted by the municipality. The legislation is quite specific about projects to be implemented within regeneration sites (times, actors, financing, land plots involved, and so on must be included within the POC) and provides for the transfer of

development rights from such sites to more suitable development areas to be identified by the POC. Moreover, it is also provided that in the context of the Piano Operativo Comunale the local administration should apply principles of perequazione and can use compensation measures to compensate for the imposition of planning restrictions on private properties. A very important role for the implementation of POC provisions is attributed to Piani Urbanistici Attuativi (PUA) which are urban development plans that should spell out in detail the provisions and developments foreseen within the POC (PUA can be compared to PUOC as defined in the Lazio planning legislation in the previous section). The Regolamento Urbanistico ed Edilizio reflects the characteristics presented earlier within the section 3.1 *The reforming role of the regions* and basically governs small developments within built-up areas and sets out the discipline for rural areas.

As regards the mechanism of perequazione, the regional legislation is broad and limited to short definitions of principle and use within the different plans. It states that the PSC can grant, on the basis of criteria and methods defined within the RUE, the same amount of development rights to areas which present similar characteristics whereas the POC and PUA should make sure that development rights and obligations are equally distributed between landowners independent of land uses. So it seems that the main tool for determination of the amount of development rights is the Regolamento

Urbanistico ed Edilizio and that the POC and PUA make sure that these development rights are equally distributed. As a matter of fact however, the POC becomes the main document within which the tool of perequazione is to be given effect. It is stated that, when determining new developments and regeneration projects, the POC should apply the mechanism of perequazione. Moreover, in the context of the POC and PUA a fundamental tool for the success of a perequazione scheme is the bilateral agreement between the local authority and developers required under article 18. The agreement regulates the developers' financial contributions that are necessary to implement perequazione schemes and that should enable the local administration to implement community services and facilities.

"The three documents" for Parma

The PSC was prepared in 2007 and placed strong emphasis on the tool of perequazione to give effect to the provisions made and to recoup part of the increase in the value of land generated by the granting of planning permission and development rights. The case of Parma presents a peculiarity which is rarely found in other cases. In fact, the city is subject to a "frenetic" planning activity carried out by the planning department which makes it quite hard to move logically among all of the plan variations that have been approved in the last ten years. Thus the RUE which was approved in 2010 had

already been modified twice in 2011, whilst the POC approved in 2009 and its regulations were amended twice in 2010 and again in 2011. Yet another new PSC was prepared in 2011 and new NTA have been approved in May 2017. However, even in this context of changing plans, the role attributed to the tools of perequazione and compensazione appeared to be quite clear. They were to be used to give effect to the provisions for the public parts of the city and especially for the creation of an environmental system in a situation which was characterised by a lack of services and community facilities (Comune di Parma, 2010b). In addition, this seems to be confirmed by the tendencies and developments which took place within the city as a whole. In effect the municipality, in one of its documents (Comune di Parma, 2010b) stated that over 450 hectares were being developed altogether both on greenfield and brownfield sites, whilst areas designated for community facilities still remain undeveloped. This trend worsened the situation and contributes to the shortage of services and facilities. Moreover, the implementation of the environmental system, where a small share of its areas has been introduced within compensazione and perequazione mechanisms, encounters some difficulties and problems (Comune di Parma, 2010b).

Provisions for perequazione and compensazione were very much detailed and the plan regulated various and different situations. The role of perequazione was very important for those areas involved in regeneration

proposals and new greenfield developments. In these cases perequazione was the major implementation tool and development rights were used to achieve the development density determined by the PSC. For the implementation of such development areas the plan determined a procedure which was intended to select the best development opportunities: the municipality issues a notice for landowners who should manifest their intentions to be involved in perequazione schemes. After having received notice of landowners' intentions it is then up to the municipality to decide what areas are to be granted planning permission for the next five years on the basis of its own priorities. Additionally, perequazione schemes along with development sites should also involve land properties lying within areas designated for the "*urban and sub-urban park*" and areas for "*mitigation measures*". The latter is an element which is hardly found in plan strategies. The aim is to mitigate impacts which are generated by new developments and infrastructures through areas acquired in the context of perequazione schemes.

Overall, the implementation system for greenfield development sites identified by the PSC turned out to be quite complicated and rigid. Thus, a development site acted as a receiving site and was attributed a development density to be reached by transferring on it development rights attributed to various landowners and areas. Some 50% of the total development density was reserved to the owners of the landed properties falling

within the development site. Such owners were granted development rights within the POC for half of the development density defined within the PSC. The remaining 50% of development rights which were needed to reach the pre-determined density was to be obtained in various ways: i) 20% of the density is for development rights granted to owners of areas which are involved in perequazione schemes in the context of the proposed environmental system. These development rights could be transferred onto the development site once the owners who had been selected by the municipality had given up their properties; ii) another 20% of the density was reserved to the public administration that could use these development rights for bonus purposes to encourage landowners to give up their properties within perequazione schemes. Of interest here was the way such development rights are generated. It was stated that these were additional and did not affect private development rights granted to owners within the development site; iii) the last 10% that is needed to reach the development density is again reserved to the public administration which is to use it for bonus purposes to encourage sustainable housing.

Discussion of Practices

This system, as set out within the plan's regulations, appears to be quite complicated. However, the interview conducted with a planning officer indicated that the way

the system worked in practice was very different from what can be understood from the regulations. Surprisingly, no transfer of development rights was involved in the implementation of the proposed developments and a key role was played by the bilateral agreement between developers and local authority. This agreement is more of a unilateral undertaking which is proposed by the developers on the basis of a structure specified by the local administration and regulated under article 18 of the regional planning law.

The first element to be emphasised is the fact that no transfer of development rights was involved. Owners of areas falling within the development site undertake an agreement with the municipality under which every single detail of the development is set out. Transfer of property from owners to developers, when these are different individuals, usually occurs on the day before or after the signing of the agreement. In such a moment the developer has acquired 50% of the total density specified for the site by the plan. Thus, the price paid to the owner reflects a lower value than the whole value which should be paid if the total density were considered. This allows for a reduction of the betterment value which is accrued to landowners. However, it has been highlighted that this is possible due to the economic situation and conditions of the housing market. The cost of land decreased by some 60%, but only 15% of this can be attributed to the perequazione mechanism.

The remaining 50% of the total density was divided into three different and independent parts and was to be obtained following a specific process which should necessarily take place as follows: the first 20% involves areas designated for the "*urban and sub-urban park*" and for mitigation measures. Developers bought such areas from owners at a price that takes into consideration development potential and transfers them to the public estate. For doing this the developer was granted 20% of the development density. The second 20% was allowed when a developer made a financial contribution to the local authority for the purpose of building the public city. Again, such a contribution was arranged within the agreement and ear-marked for public services and infrastructures. The last 10% was allowed when the development is sustainability-oriented with energy-saving characteristics. Moreover, a further 20% could be granted, so arriving at 120%, if the developer was willing to construct a technological installation, such as a photovoltaic system, that brought about advantages for the wider community.

So no transfer of development rights was involved. No trace of betterment collection is found except for the reduction of windfall gain accrued to owners of land falling within the development site. Nevertheless, the whole system was not free from downsides. Developers sought to oppose the public administration but, due to the situation of the housing market and to the way agreements were structured, there seemed not to be

alternatives. Probably, in a flourishing housing market, developers could have more investment opportunities and would be likely to invest outside the city in other local contexts. However, in 2010 the *Unione Parmense degli Industriali* (Entrepreneurs Union of Parma) appealed to the regional administrative court against the mechanism. But it did so with regard to the RUE where small developments are regulated, whilst not with regard to the POC, in order to avoid placing a further burden on the building industry (La Repubblica, 2010). The appeal was rejected and the system confirmed by the regional administrative court.

The perequazione system presented in this case study shows features that seem to be unique. In effect, it is certainly uncommon to find a mechanism that is structured in such terms and the results achieved by the local administration are quite positive. Undoubtedly, such a mechanism involves a higher level of negotiation with developers and landowners than in the cases of Rome and Monza. In fact, the municipality would be inclined to accept development proposals where developers are willing to pay more or where they showed less reluctance to accept the conditions set out by the administration.

In such a context, the role of developers in building community facilities and services was reduced and "limited" to contributing financially towards their implementation. The risk however could be that of seeing the "private city" implemented whilst the "public city"

remains on paper with a consequent shortage of services and facilities. On the other hand there is an advantage that is related to the absence of transfer of development rights. In fact, for a TDR programme to work it should have specific characteristics (see section 3.2) which involve both sending and receiving sites and their relative owners. In a case like this, in which the transfer of development rights was substituted with purchase and financial contributions, plan implementation resulted in a quicker process than in the previous two cases.

4.3. Perequazione and land value recapture: drawing some recommendations

The present chapter has sought to show the potential impact that TDR practices may have on plan implementation and therefore on betterment collection, given the fact that perequazione and compensazione are adopted within the implementation phase. The point of interest is the fact that due to the lack of national legislation, perequazione schemes are designed and structured in different ways which vary from one plan to another. The findings from the three case studies help to understand that it is not the principles of equalisation and redistribution that affect plan implementation, but it is more the way the mechanisms seek to secure community infrastructure and services so as to collect some betterment value that influences the results achieved.

The investigation of the three case studies has allowed the overall pattern of complexity that characterise

perequazione schemes to be underlined. An exercise of generalisation can be attempted in consideration of the current evolution of practice and theoretical debate. Generalisation in the context of this research has identified those elements that can contribute to making a perequazione mechanism impractical from the point of view of betterment collection. In fact, plan implementation and betterment collection are closely linked and it can be argued that the second is dependent on the first one. Indeed, if plan provisions are not implemented and given effect, which is usually to be done through perequazione, betterment recoupment cannot be achieved. So, to achieve betterment collection, it is fundamental that perequazione schemes are practical and easily realisable. However, some negative characteristics have emerged from the case studies and for perequazione schemes to generally work easily and smoothly it would be useful to avoid them. It is recommended that local authorities should design their mechanisms trying to avoid these elements which are otherwise likely to create problems and difficulties.

The first element that should be avoided is to regard perequazione as the only and compulsory implementation tool. This recommendation is drawn from the case study of Monza where basically all plan provisions were intended to be implemented through perequazione. This is a policy that can be too risky because plan strategies and betterment collection are too much dependent on the

way perequazione is designed. If the latter does not work the whole plan may need to be reviewed.

The second characteristic which should be emphasised concerns development rights being retained by the local administration. This has been highlighted in the case study of Rome. It has been shown that this kind of provisions within the regulations can give rise to appeals against them, with adverse consequences for the plan. It seems clear that the taking away of individual rights is not allowed on "primary" rights assigned by the plan. Even though the judgment of the Consiglio di Stato "saved" the Rome master plan, the contradictory decision on Bassano del Grappa shows that there is still much confusion over these tools and the principle of any *a-priori* determination of developers contribution. It is because of this that if such provisions are to be included within a plan's regulations it is opportune to accurately study the system so as to make sure that there is no scope for private developers to appeal against plan provisions.

The third element which is commonly found within plans is the overall pattern of complexity that characterises perequazione schemes. This has come to attention in the cases of both Monza and Parma, although in different ways. It is also recognised that the number of perequazione schemes that are implemented is much lower than the number of schemes designed within master plans. This is due to a general complexity, typical of TDR schemes, and also highlighted by Pizor (1986) for the American context. The Monza case study shows

that transfers of development rights between areas of private ownership designated for public uses and development sites are not straightforward. Moreover, constraints on densities and pre-set land uses and building indices have contributed to make the tool impractical. As regards the case of Parma, the system set out is so complex that it is very difficult to understand the way it was intended to function from the study of the plan's regulations. However it is useful to point out that perequazione in the case of Parma is working better than in the other two cases. This is probably due to the total absence of development rights transfers, because perequazione is being implemented in a singular way which involves direct purchase and monetary contribution to the public city.

This multiple case study analysis has highlighted that perequazione schemes can indeed affect plan implementation. The point of interest is that, when perequazione is attributed the objective of collecting betterment, the structure of the plan and the process of implementing plans provisions become too complex and difficult to manage. It is recommended that TDR schemes be kept as simple as possible by involving the lowest number of development rights transfers between very different and distant sites and that collection of betterment is more likely to be achieved when other tools, such as *contributo straordinario* as in the case of Rome, are used along with perequazione.

5. Conclusions

The aim of this work has been to emphasise the role of TDR practices in current Italian planning practice as a means to collect the increase in the value of land which is determined by the granting of planning permission and land use changes. After a detailed discussion of the history of land value recapture in Italy since 1865 which has highlighted failures of tax-based measures and the move to planning-based practices, the findings of this work have been twofold: firstly, to emphasise that when looking at current land value recapture practices in Italy there is a need to take into account and analyse tools that make use of transfer of development rights (TDR); secondly, that the increasing tendency to use such tools demands that they be critically assessed.

The whole work then falls into the debate on TDR practices such as *perequazione*, *compensazione* and *premialità*, and looks at them, especially at perequazione and compensazione, by clearly recognising their active and primary role in betterment collection. Such an aspect is certainly overlooked within the literature, whilst it is the explicit focus of this work. Generally, in effect, academic debate and planning practice tend to neglect this aspect and rather to focus upon other objectives such as: the achievement of equity among landowners and developers in the distribution of advantages and disadvantages which generate from the planning activity; and avoiding using public expropriation to obtain areas

of public interest. Even public administrations and city councils when drawing up plans tend to conceal the betterment collection objective.

However, the aim of recouping betterment value appears to be clear also from one of the first works on the subject of perequazione (Pompei, 1998). In this sense, the present work adds to existing literature by recognising perequazione practices as currently being the primary tool in Italy for the recoupment of a portion of the increase in the value of land. This is confirmed by the empirical approach that has been used throughout the work which has also allowed the problematic issues that characterise the working of these practices to be identified and has emphasised what can be done to avoid them. Within academic debate, the potential of such practices may be said to be overestimated. Reporting an expression used by Camagni (2011) they have come to be defined as an "*aspirin*", a kind of one-fits-all remedy, taking into little account the issues that may arise from their use or even prior to their use.

It has been seen that problems tend to arise when these practices are used by local authorities to obtain a quota of private development rights within development proposals, always in the logic of returning a portion of betterment value to the community, and when the practices are assigned the exclusive role of implementation tools. These must be avoided if plan implementation is to be made an easier process.

The former problem has been highlighted in the case study of Rome and partially in the case of Monza and, if appeals against such provisions are to be avoided, it is important that the taking away of individual development rights by the public administration is not determined on "primary" rights assigned by the plan but on rights which are subject to negotiation prior to being granted.

The case studies of Monza and Parma have helped to point out the general pattern of complexity which characterises individual systems of perequazione. It is important that a system of perequazione is kept as simple as possible and that it is not the only tool for plan implementation since this can jeopardise the whole plan's strategy and vision. As many academics argue, a first important step to solve these problems would be to introduce a national planning act which is to set out guidelines for the use of perequazione within local plans (Oliva, 2010b; Stella Richter, 2010; Urbani, 2010).

Indeed, the widespread inclusion of such practices within local plans is not followed by a similar and comparable implementation since many problems may arise in this stage as it is shown in both the cases of Rome and Monza. This is consistent with the issues faced in the US by the first TDR programmes back in the 1970s.

Betterment collection could then be pursued through a mix of measures which rely also on the already existing system of urbanisation fees, *oneri di urbanizzazione e costo di costruzione*, and in-kind contributions such as

areas for *standard urbanistici*. The inclusion within the urbanisation fees of other items such as social housing and further contributions to facilities and services along with up-to-date fees would allow a part of the betterment value created to be recouped.

However, as Campos Venuti emphasises (in Oliva, 2010a), there will be the need to once again earmark for planning purposes the revenue which derives from *oneri di urbanizzazione* and to solve the question which sees local authorities obliged by the European Community to apply public procurement regulations to such public works. The fact that the revenue from oneri di urbanizzazione is not earmarked for planning purposes is one of the main reasons for the lack of resources at disposal of public administrations. Only a mix of measures which include TDR practices, oneri di urbanizzazione and costo di costruzione earmarked for planning purposes could guarantee a feasible system of land value recapture in Italy.

Bibliography

Alterman, R. (2010) *Takings International: A Comparative Perspective on Land Use Regulations and Compensation Rights*. American Bar Association.

Ascrizzi, V. (2010) *Tre anni buttati via*. Tua Monza, Novembre 2010, p. 42.

Bartolini, A. (2008) I diritti edificatori in funzione premiale. Le c.d. premialità urbanistiche. *Convegno nazionale dell'Associazione Italiana di Diritto urbanistico, AIDU, su I rapporti tra legislazione statale e legislazione regionale* (Verona, 10 ed 11 ottobre 2008).

Bartolini, A. (2009) I diritti edificatori. *Convegno Fondazione Astengo, Perequazione, compensazione, premialità e crediti edilizi. Potenzialità, nodi critici, ruolo ed esperienze*, Roma 24 giugno 2009.

Bellomia, S. (2008) Diritto privato regionale, perequazione urbanistica e nuovi strumenti di governo del territorio. *Rivista giuridica dell'edilizia*, 2 (2), pp. 71-75.

Benevolo, L. (1992) *Roma dal 1870 al 1990*. Roma-Bari: Laterza.

Bernoulli, H. (1946). *Die Stadt und her Boden. Towns and the Land.* Erlenbach-Zürich: Verlag für Architektur.

Boscolo, E. (2008) Le perequazioni e le compensazioni. *Convegno nazionale dell'Associazione Italiana di Diritto urbanistico, AIDU, su I rapporti tra legislazione statale e legislazione regionale* (Verona, 10 e 11 ottobre 2008).

Bottini, F. (2006) Monza: cronologia dei Piani Urbanistici nel XX Secolo. Available at: http://eddyburg.it/article/articleview/6783/0/124/.

Bowers, J. (1992) The Economics of Planning Gain: a re-appraisal. *Urban Studies*, 29 (8), pp. 1329-1339.

Camagni, R. (year unknown) *Il Finanziamento della Città Pubblica*. Available at: eddyburg.it/filemanager/download/600/volantino%20CAMAGNI-1.pdf.

Camagni, R. (2011) L'uso improprio della perequazione urbanistica: il caso del PGT di Milano. *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, Seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano*. Available at http://www.eyesreg.it/2011/l'uso-improprio-della-perequazione-urbanistica-il-caso-del-pgt-di-milano/.

Camarda, D. (1999) Public Consensus and Planners' Expertise. A twofold problem for Italian planning law. *Town Planning Review*, 70 (1), pp. 25-39.

Campos Venuti, G. (1995) I principi e le regole della nuova legge urbanistica. *Urbanistica Informazioni*, 143, pp. 3-5.

Campos Venuti, G. (2001) Il piano per Roma e le prospettive dell'urbanistica italiana. *Urbanistica*, 116, pp. 43-46.

Campos Venuti, G. (2008) Dal piano unico, rigido, con varianti al piano triplice, flessibile, con regole. *Urbanistica Dossier*, 101, pp. 5-9.

Canato, C. (2007) Esperienze di perequazione sostenibile: modelli e strumenti a confronto, *Rivista giuridica di urbanistica*, 4 (2), pp. 426-450.

Casini, L. (2009) Perequazione e compensazioni nel Nuovo Piano Regolatore Generale di Roma. *Giornale di diritto amministrativo,* 2, pp. 203-210.

Casini, L. (2011) Equalisation and Compensation Mechanisms in the New Rome Urban Development Plan. *Italian Journal of Planning Practice*, 1 (1), pp. 33-45. Available at: ijpp.uniroma1.it .

Cecchini, D. (1996) Processo di Pianificazione a Roma. Il piano delle certezze. *Urbanistica*,106, pp. 120-128.

Cecchini, D. (2001) I caratteri del Piano. Roma, laboratorio di una nuova urbanistica. *Urbanistica*, 116, pp. 47-56.

Chiodelli, F. (2011) Forme possibili: la relazione di TDR con zonizzazione e indice. *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano.* Available at http://www.rightsfordevelopment.info/#ppp.

Chiodelli, F. (2016) Equal Treatment in Land Use Planning: Investigating the Ethics of the Transfer of Development Rights. *Scienze Regionali*,15(1), 131-138.

Chiodelli, F. & Moroni, S. (2016) Zoning-integrative and zoning-alternative transferable development rights: Compensation, equity, efficiency. *Land Use Policy*, 52, 422-429.

Codecasa, G. & Garda, E. (2011) Il "ciclo di vita" dei diritti edificatori: strumenti e dispositivi per il governo delle densità urbane. *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, Seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano*.

Comune di Monza (2007a) *Piano di Governo del Territorio, Piano delle Regole, Relazione*. Available at: www.comune.monza.it.

Comune di Monza (2007b) *Piano di Governo del Territorio, Documento di Piano, Relazione*. Available at: www.comune.monza.it.

Comune di Monza (2007c) *Piano di Governo del Territorio, Norme Tecniche*. Available at: www.comune.monza.it.

Comune di Monza (2010) *La Città Rinnovata*. Tua Monza, notizie e servizi dal tuo comune, Novembre 2010.

Comune di Monza (2011) *Comune di Monza, Urbanistica e Territorio*. Available at: www.comune.monza.it.

Comune di Parma (1998) *Elenco varianti al PRG 1998*. Available at: http://www.archiviostorico.comune.parma.it/includes/filedownload.asp?ELEMENT=swn8Qdc55K_9.pdf&filetype=pages)

Comune di Parma (2008) *Popolazione residente nel comune di Parma al 31 dicembre 2008*. Available at: http://www.statistica.comune.parma.it/cgi-bin/allegati/pages/nRIu4YXkk2_63.pdf.

Comune di Parma (2010a) *Citta di Parma. Piano Strategico Strutturale Comunale – Documento Preliminare. Parma 2020, una Green City equilibrata e compatta*. Available at: http://www.pianificazioneterritoriale.comune.parma.it/cgi-bin/allegati/TipoTavole/PSC%20-%20Piano%20Strutturale%20Comunale/Approvazione%20Documento%20Preliminare%20Variante%20Generale%20al%20PSC/PR_PSC_doc_preliminareRR.pdf

Comune di Parma (2010b) *Disciplina urbanistica*. Available at: http://www.pianificazioneterritoriale.comune.parma.it/cgi-bin/allegati/TipoTavole/PSC%20-%20Piano%20Strutturale%20Comunale/Approvazione%20Documento%20Preliminare%20Variante%20Generale%20al%20PSC/disciplina%20urbanistica.pdf

Consiglio di Stato (2010) *Sezione quarta. Sentenza del 13 luglio 2010, N. 4545*. Available at: http://lazio.inu.it/wp-

content/uploads/2010/07/sentenza-CdS_4545.2010.pdf.

Costonis, J. (1974) *Space adrift: Landmark preservation and the marketplace.* Chicago: University of Illinois Press.

Decreto Ministeriale 2 Aprile 1968, 1444. *Limiti inderogabili di densità edilizia, di altezza, di distanza tra i fabbricati e rapporti massimi tra spazi destinati agli insediamenti residenziali e produttivi e spazi pubblici o riservati alle attività collettive, al verde pubblico o a parcheggi da osservare ai fini della formazione dei nuovi strumenti urbanistici o della revisione di quelli esistenti, ai sensi dell'art. 17 della legge 6 agosto 1967,n. 765.* G.U. del 16 aprile 1968, n. 97.

Democratici di Sinistra (2006) *Monza, la Regione, la Cascinazza: Una storia lombarda*. Available at: http://www.cascinazza.info/cascinazza_doss.htm.

De Lucia, V., Salzano, E. & Strobbe, F. (1973) *Riforma urbanistica 1973*. Roma : Edizioni della Lega per le autonomie e i poteri locali.

Dodi, L. (1951) *La città e il suolo urbano* (Trad.) Milano: Officine Grafiche Anotnio Vallardi.

EU (1997) Commission communication on State aid elements in sales of land and buildings by public authorities. *Official Journal of the European Union C 209* , 10/07/1997 P. 0003 – 0005. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710(01): EN:HTML.

EU (2005) Commission Decision of 28 November 2005 (2005/842/EC) on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. *Official Journal Of the European Union*. Available at: http://eur-lex.europa.eu/JOIndex.do?year=2005&serie=L&textfield2=312&Submit=Search&_submit=Search&ihmlang=en.

Falco, E. (2011) Equalisation and Compensation in Italy: Empirical evidence for a new National Planning Act. *Planning Practice and Research*, 26 (1), pp. 59-69.

Falco, L. (ed) (1995) Le riforme possibili. *Urbanistica Quaderni*, 6.

Fried, R. C. (1973) *Planning the Eternal City: Roman Politics and Planning since World War II*. Yale: Yale University Press.

Gabrielli, B. (2011) Il Progetto nel Piano: i casi di Bergamo, Sassari e Verona. Seminario del Dottorato, Dipartimento DATA, Sapienza Università di Roma, 4 maggio 2011.

Healey, P., Ennis, F., & Purdue, M. (1995) *Negotiating Development: Rationales and Practice for Development Obligations and Planning Gain*. London: E & FN Spon.

Il Tempo 28 /7/ 2011 Campus a Pietralata, assegnate le Aree. Dopo 50 anni prende il via il progetto dello SDO.

Insolera, I. (1971) *Roma Moderna. Un secolo di storia urbanistica 1870-1970.* Torino: Piccola Biblioteca Einaudi.

Insolera, I. (1993) *Roma Moderna. Un secolo di storia urbanistica 1870-1970. Nuova edizione.* Torino: Piccola Biblioteca Einaudi.

Inzaghi, (2011) *Via libera al mercato dei diritti di costruzione,* il Sole 24 ore, 16 maggio 2011.

Istat (2017a) Istituto Nazionale di Statistica (National Institute for Statistics). http://demo.istat.it/.

Istat (2017b) Disuguaglianze, distribuzione della ricchezza e delle risorse finanziarie. Istituto Nazionale di Statistica (National Institute for Statistics). Available at: https://www.istat.it/it/files/2017/07/A-AUDIZIONE-PRES-ALLEVA_26-LUGLIO-2017.pdf?title=Disuguaglianze+economiche+nel+territorio+-+26%2Flug%2F2017+-+A+-+AUDIZIONE+PRES+ALLEVA_26+LUGLIO+2017.pdf

Johnston, R.A. and Madison, M.E. (1997) From Landmarks to Landscapes. A Review of Current Practice in the Transfer of Development Rights. *Journal of the American Planning Association*, 63 (3), pp. 365-378.

Karrer, F. (2007) L'economia immobiliare e la pianificazione urbanistica: tendenze culturali e

pratiche innovative. *Convegno Synergia Formazione: Contrattazione Immobiliare e mutui ipotecari, 20 Febbraio 2007.*

Karrer, F. (2008) Seminario su: *La Perequazione Territoriale. La Pianificazione di Assetto del Territorio Intercomunale in Provincia di Padova: Ambiti di Applicazione del Modello Perequativo*. Paper made available to the PhD students in the Department of Urban and Territorial Plannig, DPTU - Sapienza, Università di Roma.

Karrer, F. (2009) La Perequazione nel nuovo sistema di Pianificazione Strutturale ed Operativa. *Conferenza su Perequazione e Recupero*, Firenze 27 Marzo 2009. Paper made available to the PhD students in the Department of Urban and Territorial Plannig, DIPTU - Sapienza, Università di Roma.

La Repubblica (2010) Tasse agli edili e ricorsi. Scintille Manfredi-Pagliari. Available at: http://parma.repubblica.it/cronaca/2010/02/19/news/tasse_agli_edili_e_ricorsi_scintille_manfredi_-_pagliari-2627454/.

Lazzarotti, R. (2011) Historical centres: changing definitions. *Italian Journal of Planning Practice*, 1(1), pp. 73-89. Available at: http://ijpp.uniroma1.it/index.php/it/issue/view/15/showToc.

Legge 6 agosto 1967, n. 765. Modifiche ed integrazioni alla legge urbanistica 17 agosto 1942, n. 1150. G.U. del 31 agosto 1967, n. 218.

Legge Costituzionale 18 ottobre 2001, n. 3. Modifiche al titolo V della parte seconda della Costituzione. G.U. del 24 ottobre 2001, n. 248.

Magnani, I. & Muraro, G. (1978) *Edilizia e sviluppo urbano*. Bologna: Il Mulino.

Majoli, G. (2010) In arrivo il nuovo PGT di Monza: un vero disastro ambientale. Vorrei ambiente, 10 Maggio 2010.

Marcelloni, M. & Modigliani, D. (1996) La macchina del piano. *Urbanistica*, 106, pp. 128-134.

Marchegiani, F. (2010) Acompagnare i nuovi Piani. Pratiche e strutture per la pianificazione locale in Emilia Romagna. (Unpublished PhD Thesis), Roma, Sapienza Università di Roma.

Marchese, G. (2009) *La Perequazione Urbanistica*. (Unpuslished MSc Thesis), Facoltà di Architettura-Economia, Sapienza Università di Roma. Corso di Laurea: Pianificazione e Valutazione Ambientale, Territoriale e Urbanistica. Sapienza, Università di Roma.

Marongiu, G. (2001) *Storia dei Tributi degli Enti Locali (1861-2000).* Padova: Cedam.

Mazza, L. (1994) Conservazione e trasformazione: una ridefinizione del piano regolatore, in Scattoni, P. and Vila, E. (eds) *Organizzazione del Territorio e gestione urbanistica nei paesi in via di sviluppo.* Università degli Studi di Firenze – Facoltà di Architettura, Firenze, pp. 17-31.

Mengoli, G. (2011) Contribution and talk to the Seminar: *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano*.

Micelli, E. (2002) Development Rights Markets to Manage Urban Plans in Italy. *Urban Studies*, 39 (1), pp. 141-152.

Micelli, E. (2010a) Prg di Roma, il Tar Lazio boccia la perequazione se l'edificabilità viene ripartita tra privati e Pa. *Edilizia e territorio, Norme e commenti*, 6, pp. 6-8.

Micelli, E. (2010b) Prg di Roma, secondo no del Tar. Bocciate anche le regole sulla cessione compensativa. *Edilizia e Territorio, Norme e commenti*, 9, pp. 9-11.

Micelli, E. (2011) Contribution and talk to the Seminar: *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano*.

Morano, P. (2007) La stima degli indici di urbanizzazione nella perequazione urbanistica. Firenze: Alinea.

Nigro, G. (1999) La pianificazione comunale: Pratiche, innovazione, riforma, in Nigro, G. (ed) *Piani Regolatori Generali di Ultima Generazione*, Roma: Gangemi Editore.

Nigro, G. (2009) Perequazione verticale e perequazione orizzontale: lo sviluppo di un modello. *Convegno Fondazione Astengo, Perequazione, compensazione, premialità e crediti edilizi.*

Potenzialità, nodi critici, ruolo ed esperienze, Roma 24 giugno 2009.

Oliva, F, Galuzzi, P., & Vitillo, P. (2001) *Progettazione urbanistica. Materiali e riferimenti per la costruzione del piano comunale*. Santarcangelo di Romagna: Maggioli Editore.

Oliva, F. (2006) La riforma che vogliamo. *Urbanistica*, 131, pp. 4-6.

Oliva, F. (2010a) Giuseppe Campos Venuti. Citta' Senza Cultura. Intervista sull'urbanistica. Bari: La terza.

Oliva, F. (2010b) Fermi 15 anni ad aspettare quella legge. *Edilizia e Territorio*, 9, 8-13 marzo 2010, p. 1.

Piccinato, G. (2010) A brief history of Italian town planning after 1945. Town *Planning Review*, 81 (3), pp. 237-259.

Pittori, P. & Stella Richter, P. (1996) *Codice dell'Urbanistica*. Roma: Edizioni kappa.

Pizor, P.J. (1986) Making TDR Work: A Study of Program Implementation. *Journal of the American Planning Association*, 52 (2), pp. 203-211.

Pompei, S. (1998) *Il Piano Regolatore Perequativo. Aspetti Strutturali, Strategici e Operativi*. Milano: Hoepli.

Pruetz, R. and Pruetz, E. (2007) Transfer of Development Rights Turns 40. *Planning and Environmental Law*, 59, 6, pp. 3-11.

Pruetz, R. and Standridge, N. (2009) What Makes Transfer of Development Rights Work?: Success

Factors From Research and Practice. *Journal of the American Planning Association*, 75 (1), pp. 78-87.

Putnam, R. D., Leonardi, R., Nanetti, R.Y., & Pavoncello, F. (1983) Explaining Institutional Success: The Case of Italian Regional Government. *The American Political Science Review*, 77 (1), pp. 55-74.

Renard, V. (1999) Où en sont les systèmes de transfert de COS. Available at http://base.d-p-h.info/fr/fiches/dph/fiche-dph-8292.html.

Renard, V. (2007) Property rights and the transfer of development rights. Question of efficiency and equity. *Town Planning Review*, 78 (1) pp. 41-60

Rosa, R. (2010) Quattro torri in periferia. Monza cresce in verticale. La variante al Pgt in consiglio comunale dopo l'estate. L'opposizione "Variante a rischio bocciatura: svendita del territorio e norme che esautorano il consiglio". Corriere della sera, 18 Luglio 2010.

Roscani, B. (1972) La rendita edilizia in Italia, in Indovina, F. (ed) (1972) *Lo spreco edilizio*. Venezia: Marsilio Editori.

Salzano, E. (2007) *Fondamenti di Urbanistica*. Bari: Laterza.

Salzano, E. (2008) Sull'articolazione dei piani urbanistici in due componenti: come la volevamo, come è diventata, come sarebbe utile. *Notiziario dell'archivio Osvaldo Piacentini*, Tomo II, p. 17-26.

Salzano, E. (2010) *Memorie di un Urbanista: l'Italia che ho Vissuto*. Venezia: Corte del Fontego.

Savi, I. (2011) Il trasferimento dei diritti edificatori. *Il trasferimento dei diritti edificatori: potenzialità, problemi, prospettive, seminario DiAP -Politecnico di Milano, 8 giugno 2011, Milano*. Available at http://www.rightsfordevelopment.info/#ppp.

Scattoni, P. and Williams, R. W. (1978) Planning and Regional Devolution: The Italian Case. *The Planner*, 64, pp. 38-40.

Scattoni, P. (1987) Processes of Planning and Land Development in Italy. The case study of Chiusi (Unpublished PhD Thesis), Newcastle upon Tyne, University of Newcastle.

Scattoni, P. (2004) *L'urbanistica dell'Italia Contemporanea*. Roma: Newton & Compton.

Scattoni, P. and Falco, E. (2011) Why Italian Plannig is Worth studying. *Italian Journal of Planning Practice*, 1 (1), pp. 4-32. Available at: http://ijpp.uniroma1.it/index.php/it.

Scattoni, P. and Falco E. (2012) The hidden factor in planning and local politics in Italy: the case of Tuscany, *Town Planning Review, 83 (1),* pp. 47-67.

Sica, P. (1978) *Storia dell'urbanistica, L'ottocento.* Roma-Bari: Laterza.

Silva, E. (1960) *Elementi di economia urbanistica*. Milano: Giuffrè editore.

Stanghellini, S. (1995) La nuova legge urbanistica: i principi e le regole. *Urbanistica*, 104, pp. 6-10.

Stanghellini, S. (2008) Obiettivi, modelli e tecniche di perequazione urbanistica, in Carbonara, S. and Torre, C.M. (Eds), *Urbanistica e perequazione dai principi all'attuazione*. Milano: Franco Angeli.

Stanghellini, S. (2009a) Gli strumenti per le politiche dei suoli urbani in Italia. *ACE, Architecture, City and Environment*, 9, pp. 71-82. Available at: http://upcommons.upc.edu/revistes/handle/2099/8039.

Stanghellini, S. (2009b) Il principio perequativo nel piano urbanistico. *Convegno Fondazione Astengo, Perequazione, compensazione, premialità e crediti edilizi. Potenzialità, nodi critici, ruolo ed esperienze*, Roma 24 giugno 2009.

Stanghellini, S. (2010) Perequazione, compensazione e incentivi per un progetto di città, *Urbanistica*, 143, pp. 68-79.

Stella Richter, P. (2010) *Convegno L'urbanistica Italiana dopo le sentenze del Tar sul PRGC di Roma.* Lunedì 22 marzo 2010, Facoltà di architettura «L. Quaroni» - Aula Magna.

Sullo, F. (1964) *Lo scandalo Urbanistico*. Firenze: Vallecchi.

Tar Lazio (2010a) Sezione seconda-bis. Sentenza del 4 febbraio 2010, n. 1524. *Edilizia e territorio*, Norme e commenti, 6, pp. 9-28.

Tar Lazio (2010b) Sezione seconda-bis. Sentenza del 17 febbraio 2010, n. 2383. *Edilizia e territorio*, Norme e commenti, 9, pp. 16-33.

Testa, V. (1933) *La nuova legge urbanistica inglese.* Available at: http://eddyburg.it/article/articleview/3021/0/44/.

Tellis, W. (1997) Introduction to Case Study. *The Qualitative Report,* 3 (2), pp. 1-11. Available at: http://www.nova.edu/ssss/QR/QR3-2/tellis1.html.

Urbani, P. (2008a) Dal Piano strutturale al piano operativo, passando per le pianificazione differenziate. *UrbanisticaDossier, 101,* Inu Edizioni.

Urbani, P (2008) La riforma regionale del prg: un primo bilancio. Efficacia, contenuto ed effetti del piano strutturale. Il piano operativo tra discrezionalità nel provvedere e garanzia del contenuto minimo della proprietà. Available at: http://www.pausania.it/.

Urbani, P. (2008c) Problemi giuridici della perequazione urbanistica, *Rivista giuridica dell'edilizia*, fascicolo 4, 2008, III, p. 5.

Urbani, P. (2010) *Sistemi di pianificazione urbanistica e principio di legalità dell'azione amministrativa. A proposito delle sentenze del Tar Lazio sul PRG di Roma.* Available at: www.pausania.it.

Uthwatt Committe (1942) *(Final Report) Expert Committee on Compensation and Betterment,* Cmdn 6386. London: HMSO.

Yin, R. (1994) *Case Study Research: Design and Methods* (2nd ed.) Beverly Hills, CA: Sage Publishing.

Zhu, J. (2004) From Land Use Right to Land Development Right: Institutional Change in China's Urban Development. *Urban Studies*, 41 (7), pp. 1249-1267.

Zonca, P. (2010) *La Variante al P.G.T. torna al passato!!!* Tua Monza, Novembre 2010, p.45.

Enzo Falco, PhD

This book intends to establish itself as a reference in the field of land value recapture in the Italian context. It explores and reviews the trends and history of land value recapture in Italy over the last 150 years and highlights the challenges faced by different measures over time as well as their successful implementation.

It also intends to shed light on the current TDR-based practices in order to raise awareness and encourage reflection on the current and future issues which are likely to characterise land value recapture practices in Italy.

TU Delft Open

ISBN: 978-94-92516-70-1