

## Research on the Implementation Mechanism of Privately Owned Public Space——Planning Implementation of the Publicly Transferred Land in Fuzhou City 2008-2017

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**Abstract:** Public space is the core content of urban planning. Privately Owned Public Space refers to the contractual control of urban planning management through the land development process, by stipulating the land development rights (preconditions) to open the part of the space to the public. Privately owned public space separate the property rights from use rights of the land and provide public space through space sharing, taking the advantage of the cost control by the enterprises and property owners. The provision of the privately owned public space includes incentive zoning and prescriptive regulation. Incentive zoning is a kind of transaction behavior between the public interest represented by the government and private interests represented by private developers. Prescriptive regulation is the establishment of rules and regulations by the land transfer mechanism and property rights system, which is realized through cost transfer and space sharing. The empirical study on the implementation of the public space for private property rights for public land transfer in Fuzhou City shows that through appropriate institutional design, peace and harmony between public and private can be achieved, and the quantity, quality and service effect of public space can be improved. In the transition period of urban development, it provides a new possibility for the construction of public space in other cities.

**Key words:** public space; implementation mechanism; planning; property right

### Introduction

Public space is the core content of urban planning implementation and management, and the quantity and quality of the public space always need to be improved to meet the needs of the city. As the main investor in the construction of public facilities and the main provider of public services, the city government is the main body of investment, construction and management of urban public space. In contrast to this, Privately Owned Public Space refers to the contractual control of urban planning management through the land development process, by stipulating the land development rights (preconditions) to open the part of the space to the public. Privately owned public space separate the space property rights from usage rights, and produce public space through space sharing, with the advantage of the cost control by the developers and property owners.

The privately owned public space first appeared in the United States in 1961 through incentive zoning (Kayden JS, 2000, Schmidt S. et al, 2011, Yang Z. and Xu M., 2013, Yoon H. and Srinivasan S. 2014, Yu Y., 2016), followed in Hong Kong, Taipei, Seoul, Tokyo and other cities (Qi Y., Yan Y. and Yang W., 2015, Dimmer C. et al., 2013, Yeung M., 2014). Cities in China

that carry out public space provided by incentive policy include Shanghai, Nanjing, Wuxi, Hangzhou, Guangzhou, Beijing, and Shenzhen (Tang S., 2016).

Till of the end of 2014, the City of New York had built a total of approximately 3.5 million square feet (325,000 square meters) of privately owned public space in 332 projects through the incentive zoning policy, 98% of which were concentrated in Manhattan Island. Those projects were distributed in the densely populated down town and middle town accounted for 14% and 30% respectively, effectively alleviating the lack of open space in densely populated areas (Yu Yang, 2016).

### **Concept of the privately owned public space**

Urban public spaces such as streets, squares, and parks are not pure public goods, but rather a quasi-public goods with crowding. Space usage rights can be “exclusive” through space access control. That means the urban public spaces have the attributes of the club item—non-competitive but exclusive, non-exclusive for all members of the club but exclusive for non-club members, such as green space in the urban access control community, the theme park needing tickets to enter, etc. (Zhang K. and Du N., 2012).

If a city has a range of open spaces at different levels and can be supplied to the public in the form of well-designed and managed “club spaces,” it will be more efficient, livable and sustainable (Webster, C., Zhang, Bo., and Li J., 2008).

“Privately Owned Public Space” first appeared in New York in the 1960s. Kayden (2000) proposed that its meaning consists of two parts: “private property rights” refers to the land where the public space is located and /or the legal status of the building, the owners will continue to control the overall access and use rights of their private properties, and without the express permission of the owner, the citizens generally cannot obtain access and use rights. “Public space” means a tangible location on private property, and the owner has provided the public with legally binding access and use rights, ownership is maintained privately.

Privately Owned Public Space refers to the contractual control of urban planning management through the land development process, with the agreement on land development rights (preset conditions) and the public rights (some part of the land open to the outside world). Privately owned public space separate the property rights of the public space from the right to use, realize the production of public space by space sharing. In contrast, in other land transfer projects, the government handed over the construction and management of public spaces such as mountains or public green spaces around the project to the real estate developers, which were built and managed by the developers and remaining the public property rights. The maintenance of public property rights has not changed. Such situations also belong to the introduction of social investment to build public space, contrary to the privatization of public space, privately owned public space realizes the publicization of private space and is conducive to the realization of public interest.

### **Implementation mechanism of the privately owned public space**

There are two types of the privately owned public space. The first one is that the government turns the responsibility for the construction of public space into a private burden, and transforms

the property rights of the public space into private ownership, thus shifting the responsibility for building public space, such as the public green belt along the urban roads and the rivers. The second type is the public space not within the government's construction plan, which is set up by land transfer and private development and construction projects to provide, a part of the private property but open to the public, such as street green space, squares, and public parking lot, etc. In the first case, the number of public spaces did not increase, the government shifted the cost, and the society participated in the joint construction of public space. In the second case, the number of public spaces has increased, and it is possible to improve the quality of public spaces and to make the distribution of public spaces balanced.

Regarding the supply of public space, Hughes (2001) divides the types of policy instruments provided by public space into supply, subsidy, production and regulation. The Chinese city government mainly produces tools in the process of expanding urban public space (Zhang Q., 2009), characterized by the government directly responsible for the production of public goods and services (Liu Z., 2010). Therefore, the emergence of public space in private property rights is a useful supplement to the current government-led public goods offering.

There are two main types of privately owned public space provision, one is incentive zoning and the other is prescriptive regulation. The premise of the implementation of the incentive zoning method is to ensure that the profits generated by private developers through the development of private public space is greater than the cost of their input. The incentive zoning method mainly meets this premise in two ways: one is to increase the profit of the developer; the other is to reduce the cost of the development. The increase in profits is mainly based on the floor area rate incentive policy; the reduction of development costs is mainly achieved by relaxing the planning conditions (mainly including the distance of the building red line, the proportion of the building base to the construction land and the relevant provisions on the building volume etc.) (Zhang, T. and Yu, Y., 2010). Some cities in China have also proposed similar incentives for zoning, such as Shanghai, Shijiazhuang, Harbin, Qingdao, Taiyuan, Lanzhou and other 16 cities (Li, J., 2016).

The implementation of incentive zoning is based on the private ownership of land property, separating the ownership and use rights of the public space, and trading the public space use rights with the public interest represented by the government and the private interests represented by private developers. Through negotiation, private developers give up part of the space – “right to use” and the government compensates by incentives. The risks of this kind of implementation are that case-based negotiations may bring market unfairness and political rent-seeking. The quality of public space is difficult to quantitatively evaluate. The increase of the volume-rate ratio, that is, the increase in development, brings negative externalities to the surrounding areas.

In contrast to incentive zoning, by the control detailed planning mechanism in China, the construction of public space can also be implemented through prescriptive regulation. The prescriptive management and control implementation mechanism is to include the construction requirements of the function, location and area of the public space in the land transfer contract. The specific form may be the textual expression or the statutory plan.

The technical content of the control detailed planning is transformed into the contract clause, which is essentially the additional responsibility of changing the control method of space from technical requirements to property rights. The implementation mechanism of this approach is

to transfer the responsibility and cost of the construction, management and maintenance of public space from the government to private property owners. The risk is that if the government abuses this method, it is actually evading its responsibility as the main provider of public goods, increasing the cost of land development and construction, and pushing up the land price. The construction cost and long-term maintenance cost are borne by the property owner.

Incentive zoning and prescriptive regulation have their own advantages. The method adopted by local planning management departments is based on actual conditions and should be clarified at the local regulations. In terms of the current control detailed planning and implementation management in China, incentive zoning and prescriptive regulation are applicable to different situations.

Under the system of planning adjustment, if the original floor area ratio is reasonable, there is still technical feasibility to increase the development volume, and incentive measures can be adopted, especially in the need to provide facilities and space involving major public interests such as subway stations. It is used to compensate for the loss of private property rights.

However, if the plot volume ratio is the maximum, then increasing the development volume will cause overload of public facilities and various social problems. If the system of planning adjustment is vague, it is necessary to adopt prescriptive regulation and to establish the requirements for public space construction before land transfer.

However, no matter which method is adopted, the policies and procedures are required to be clear, and stakeholders have the right to participate in the negotiation process and influence the results. If their interests are damaged, they should be compensated.

### **Fuzhou Private Property Public Space Practice**

Taking the urban area of Fuzhou as an example, there are two types of implementation methods for privately owned public space, and in the “Technical Regulations for Urban Planning Management of Fuzhou City” (2000 edition), the floor area ratio reward for providing public space for construction projects has been stipulated, but in the planning and management practice since 2000, the Fuzhou Urban and Rural Planning Bureau has not approved a volume-rate awards project arising from the provision of public space. In the new edition of "Fuzhou City Planning Management Technical Regulations" (2016 edition), the contents of the relevant award regulations were deleted.

According to the statistical analysis of the planning conditions and related information of 261 plots of land sold in Fuzhou City from 2008 to 2017, 90 plots of land parcels with public space were clearly defined by means of prescriptive regulation, and the area of the privately public space was 737,235 square meters, accounting for 6.1% of the total land area (12,075,857 square meters). The total price of the privately owned public space through the land transaction is 9.6 billion yuan (CNY).

As far as the implementation effect is concerned, the public green spaces and the squares along the main road of the city have a good effect after being built, which has effectively supplemented and improved the urban public space system. Privately owned public parking spaces are not open to the public because they do not have uniform identification and management requirements, but only serve as public parking spaces in the community. After the unified transformation along the river landscape, the river green space is integrated and

connected to enhance the transformation to form a strip park. It is worth noting that there have not been any disputes or negative events in Fuzhou that have been brought due to the opening of the privately owned public space.

The prescriptive regulation mechanism for the privately owned public space in Fuzhou includes the following four basic elements:

(1) Information disclosure

The land transfer announcement is publicly released before the land is transferred, and the planning conditions such as the location, area, and function of the privately owned public space are clearly defined. All land bidding participants can obtain relevant planning condition information from the land administration department, including the relevant planning requirements of the privately owned public space, and calculate the land bidding cost based on this.

(2) Property rights

Different from the incentive zone, the method adopted by the prescriptive regulation is to add additional conditions of property rights of the project, open the specific space to the public through space sharing, and realize the production of public space through the additional responsibility of property rights.

(3) Technically feasible

The opening up of private property public space has two basic technical requirements: First, the open public space is located at the edge of the land, and the non-open part is relatively complete, such as at urban road intersections, along urban trunk roads, along urban riverside sections, at community entrance, etc. Excluding the open public space, the remaining plots remain intact and the rest of the plots can still be managed separately if necessary. Second, the open space is still an integral part of the overall land use. The economic indicators such as floor area ratio, building density and green space rate are calculated together with the rest of the land, and the overall indicators of the land are balanced through the design of the plan.

(4) Cost control

In the process of construction and management of public space, because of clear property rights and responsibilities, the construction cost is controlled by the real estate developer during the development and construction process, and the daily management is managed and maintained by the property company, which is beneficial to the advantage of the cost control of the market entity and improve the space quality and management efficiency.

The current implementation process also has the following problems:

(1) The construction of private property public space requires review as an important content in the planning management approval and acceptance, but the land and property registration management department does not indicate in the land certificate and title certificate when registering property rights. This is the most important institutional paralysis.

(2) The privately owned public spaces built in Fuzhou has not been clearly marked on the spot. There are no use regulations, notices, and corresponding inquiry system, which make the public lack information and guidance in the process of use.

(3) After the establishment of the privately owned public space, there is no public supervision and no law enforcement supervision. The management and opening of the privately owned public space, depends solely on the self-discipline of the property owners.

In response to the above problems, in order to ensure the implementation, the relevant

provisions of the public space should be clearly reflected in the property rights registration, the supervisory duties of the competent authorities should be clearly defined, and clear identification signs should be set up on the spot, and an inquiry and use information service system should be established, which is to facilitate public use and supervision.

## **Conclusion**

Privately owned public space is actually realized through the mechanism of land development. Property owners bear the cost of construction and maintenance, and the public enjoys the public space. The privately owned public space of prescriptive control reflects the institutional characteristics of China's socialist market economy. As the representative of the land owner and the public interest, the government assumes the responsibilities of the organizers, negotiators, managers, and supervisors, and realizes the production of public space through policy formulation and system design.

The emergence of the privately owned public space, whether it is incentive or regulatory, is the construction of laws and institutions by public administration department. In the land transfer mechanism and property rights system, planning technology is transformed into policies and systems, through cost transfer and space sharing. The advantages of the privately owned public space are the clear property rights responsibility, the controllable maintenance and management costs. The essence of incentive zoning implementation is planning adjustment, and the implementation process of which is to negotiate from the bottom up. Prescriptive regulation is government-led, technically feasible, and cost-controllable, the implementation process of which is carried out from the top down.

Privately owned public space is only a supplement to public space, which is an increase method rather than an alternative one, and the government should not shirk the main responsibility for public goods.

China's land transfer system is separate from ownership and use rights. The ownership is owned by the state and the land use right is transferred. Due to the shortage of local government public construction funds, local governments hope to use social funds to build public space. The emergence of the privately owned public space has the legal basis and economic motivation. The case of Fuzhou can be used as an empirical demonstration of the effectiveness of the privately owned public space construction in densely populated areas of China.

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