Appraisal of the extraordinary contribution in General Regulatory Plan of Rome

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Abstract — With the new General Regulatory Plan for Rome, adopted with D.C.C. No. 33/2003 and approved with D.C.C. No. 18/2008, in the part concerning the criteria for equalization, they introduce/insert the so-called "Extraordinary Contribution" to urbanization, one of the most important innovations, introduced by the new Plan, which fixes an amount in addition to the cost of primary urbanization and those related to building permit, borne by the promoter of urban transformation development project.

However, at a distance of eleven years after the adoption of the new General Regulatory Plan for Rome and more than six after its final approval, the regulation for the calculation of the Extraordinary Contribution was finally approved by the Rome City Council. One of the reasons for this delay is identified in the legal basis of the additional financial obligation of the project developer, and an appeal brought before the Regional Administrative Court of Law [T.A.R.] was put to rest with the Legislative Decree No. 78/2010 converted into Law No 122/2010 where Article 14(16) permits the introduction of Extraordinary Contribution with the exact wording of the technical conditions of the new GRP for Rome and with the decision of the Council of State, Section IV No 4545 of 13/07/2010.

Several attempts have been made to regulate this additional cost, the last of which was the approval by the Board of Councillors in February 2014 definitively ratified by City Council Resolution No. 128/2014 of a regulation stating, in summary, that the real estate value to which the extraordinary contribution for urbanisation must be applied, i.e. at the rate of 66.6% as described in Article 20(3) of the Rule for Implementation (NTA), is equal to the difference between two distinct transformation values (below VT) of the property transformed: VT1-VT, i.e. the difference between the Value of the Transformation of the property, calculated taking into account the additional construction foreseen by the proposed intervention (VT1), subtracted from the Value of Transformation of the same property under normal urban regulations without further negotiations, so setting the parameters and the method of calculation.

***Keywords*—** extraordinary contribution, general regulatory plan, value of transformation

I. Technical problems inherent in the calculation and legal issues of extraordinary contribution

The General Regulatory Plan (hereinafter "GRP") for Rome, adopted with City Council Deliberation (CCD) No 33/2003 and approved with CCD No 18/2008, in the part concerning the criteria for equalization, i.e. Article 17(2)(B) extraordinary contribution (CS) states: "In the existing urban settlement system, the majority of the leading real estate valuations generated by new urban development projects are subject to the payment of an extraordinary financial contribution that the City Council shall use to finance public works and services in distressed urban areas, with the aim of urban regeneration";

The successive Article 20(3) specifies that the CS is an additional charge and is established in an amount equal to 2/3 of the real estate value achieved with the increase of gross usable surface (SUL)[1] and/or changes in the intended use compared to planning regulations previously applicable. Paragraph 9 successively adds that the City Council defines criteria and procedures for the estimation in a separate regulation.

The Co-planning Conference[2] report identifies, in the guiding factors and regulations, that the economic value gained by the new GRP (through additional building rights and changes of intended use) is for the most part "returned" to the City (the community) through the payment of extraordinary financial contributions.

This new and onerous obligation on the implementing body prompted an appeal to the TAR[3] in which the applicant challenged the legitimacy of the CS in view of the lack of the necessary legal basis at both State and regional levels The judgment of 04/02/2010 accepted the applicant's argument on the issue. The first Judge, in fact, considered the introduction of CS to be without legal basis, believing that the methods adopted in this manner for the pursuit of the objectives of urban (and financial) equalization violated the principle of legality because the extraordinary contribution would constitute a property tax, albeit of non-tax nature, and it as such lacked an express basis for calculation and therefore was in breach of the legal reservation *ex* Article 23 of the Italian Constitution.

As a result of Article 14(16)(*f),* Decree Law 31 May 2010 No 78, converted into Law No 122/2010, the introduction of the CS was permitted when formulated exactly as in the technical regulations of the new Rome GRP. It seemed to have been

[1] Article 4(1) of NTA Gross floor area (SUL): measured in square meters. The sum of the gross floor areas of the building unit, including within the outer perimeter of the walls, excluded from the calculation are stairwells, hallways, elevator shafts, technical volumes, not completely closed spaces, basements, parking space outside walls over 30 cm, glass- or greenhouse surfaces, fireplaces and ventilation surfaces

[2] According to Article 66-bis of Regional Law 38/99, the co-planning conference must be convened to reach an agreement on the approval of the GRP, and that the managers of the of the City Council, Regional and Provincial technical facilities must participate

[3] General Registry Appeal No 6274 of 2008

issued by the municipality of Rome with the express purpose of legitimizing *ex post* the estimations of the CS.
The judgment of the Council of State No 4545 of 13/07/10 recognizes conclusively the legitimacy of the estimates of the CS for urbanisation, stating that it constitutes a levy applicable to the determined higher value of the building in the area upon completion of the construction negotiation process and the definition of indirect intervention programmes, or upon issue of the qualifying title; and also that the authoritative predetermination of the CS does not affect the "optional" nature of institution but rather respects the need to "ensure a level playing field between the owners of the soil in urban regulatory matters" by defining the terms and conditions which the parties to the agreement pursuant to Article 11 of Law 241/90 must guarantee to the city administration in exchange for the increased building volume that the GRP permits them.

II. Hints about the provisional calculation method of the CS (Departmental Circular 13/04/2013)

Once finally overcome the criticalities related to the juridical aspects, the City Council Executive Committee passed the resolution with Decision No 20/2013 entitled: "Rules for the determination of the extraordinary contribution" and, pending approval by the City Council, a departmental circular was issued illustrating the method of calculation. Summarizing, these calculation procedures, partially adopted in the final version, prescribed that the method was that one used for the Value Transformation with the analytic process according to the following prescription: the references must be taken from the list of property market observatory of the italian internal revenue service (hereinafter "OMI") and from the costing list complied by the Engineers and Architects order available from DEI publishing house; commercial surface area is not less than 8% of the SUL, the costs of preparing the site go from 2 to 5% of the cost of technical realization; marketing costs may affect the estimated market value of the completed project by 2-3%, the profit of the property developer of 15-25%, the borrowing costs have been estimated through the analysis of the cash flows.

III. Final calculation method (To replace Departmental Circular 13/04/2013)

As what was planned by City Council hasn't been approved before the end of the mandate, the new administration planned a new resolution, approved by the Council during February 2014 that resumes the prior methodology.
In particular, the method of calculation, criteria and coefficients to be used for the calculations of the greater financial value of the development project are defined consistently and clearly for all the actuators.
The benchmark on which to base the improved real estate value achievable with the implementation of the planned development, and consequently to determine the amount of the extraordinary contribution due by the implementing body, is made up of the feasible real estate value of the property in question on the basis of normal urban estimates, i.e. based on the building not subject to an extraordinary contribution as established by the urban planning instruments in force.
To ensure full compliance with the principles of fairness, consistency, uniformity of treatment and impartiality, the estimated real estate value achievable is to be calculated with the analytical method for the value of transformation, as normally applied in cases of economic benefit. This method is commonly accepted and practised, and having specific scientific validity, it allows objectivity, consistency and reliability.
The method is the subject of much literature and its inequalities are the subject of mathematical formulation research.
The parameters which govern and collate the values for all the actuators are described and defined below, in order to ensure the correct application in compliance with Article 20 of the NTA of the GRP, in particular with the requirements of paragraph 9.
It must always be assumed in every case that the transformation plan is both consistent with the characteristics of real estate (buildings, areas) and is within the limits of what may be feasibility developed.
The analytical method of Value Transformation considers the property affected by the transformation as a product from which - through the expenditure of a certain amount of capital which constitutes the cost of development or transformation - a final product is attained, i.e. the developed or transformed building.
The Value Transformation (Vt) of the property is given by the difference between the Market Value of the building product achieved by the transformation (Vmt), less the processing cost consisting of the sum of the costs (K) incurred in the related transformation, and the Market Value of the building product in the ordinary conditions (Vma), where Vt > Vma.

The Market Value of the finished building product (Vmt) is taken from the latest figures released by the OMI. If this published data is used, the OMI, an agency of the Italian Internal Revenue Service, must be quoted as the source.
The V(mt) for objects in a condition conservatively defined as "normal" corresponds to the "maximum" real estate Market Value per square meter of marketable surface of the building.
Where OMI quotations are related to a real estate conservative defined as "optimal", in the case of new constructions, the Market Value of the finished building product (Vmt) of reference is that described as "maximum". In cases of interventions on existing buildings, the Market Value of the finished building product (Vmt) where the conservative state may now be defined as "optimal" the value of reference is to be the average of the values "minimal" and "maximum".
It should be noted at this point that studies of a considerable number of cases have shown that the commercially marketable surface (SCV) cannot be less than 8% of the gross usable surface in the case of properties destined for residential use.

For details relating to destination definitions must see "Land Agency - glossary of technical definitions in use in the real estate sector." [Agenzia del Territorio – glossario delle definizioni tecniche in uso nel settore economico immobiliare]
Appurtenant car parks, pursuant to Article 41sexies of Law 1150/42, paragraph 2, are freely tradable, contributing therefore as real estate units to the calculation of the Market Value.
In the event that the interventions are undertaken on existing buildings, the value of the transformation is calculated on the basis of the proposed construction project involving the preservation of uses and forms of conduct and management of the property in force at the time of presentation of the proposed action;
In the event that the proposed interventions are undertaken on existing buildings, and/or foresee the construction of buildings destined for usage categories not included among those for which the OMI provides Market Value data, the market values required for the calculation of the transformation values should be determined with indirect or analytical estimation procedures (by applying the income generated by the operation and management of the property as a result of the transformation of the asset, and that generated by the operation and management of the property in the event of a preservation of the intended use and the forms of tenure and management in force at the time of submission of the proposal).
The cost of transformation (K) is the sum of the costs (Σ iKi) incurred in carrying out the development or transformation, which are the following:

- the cost of the construction work itself;
- the cost of preparing the site and of utility connections;
- costs relating to the charges pursuant to Article 16 of Presidential Decree No 380/2001;
- the cost of professional services - unforeseen technical and related costs;
- marketing expenses;
- financial expenses;
- profit or gross margin of the developer.

The cost of the building construction work is to be estimated parametrically using the valuesper square meter of the building as in the price list for buildings published by the College of Engineers and Architects of Milan (referring to the latest edition available from DEI at the time of the estimate), with reference to the specific use destinations. In the case where relevant parameter valuesare not available, the calculations by analogue, referring to the category most similar; in the case of demolition and reconstruction the cost of the demolition of existing buildings should also be considered in addition to the parameter value derived by the price lists quoted; in the case of restructuring, the construction cost is derived from an itemised bill of quantities based on rates in force in the Lazio Region and duly sworn to by the person responsible for the design of the urban transformation/construction project.
The cost of preparing the site and of utility connections may constitute from 2% to 5% of the building construction work cost and offset all reclamation, site preparation and connections, and investigation archaeological, geological, etc. undertaken. The evaluation shall take into account the average of the values, the differences should be adequately justified, and it remains understood that the minimum and maximum amounts will not be exceeded.
Costs relating to the charges pursuant to Article 16 of Presidential Decree No 380/2001 include charges of primary and secondary urbanisation and contributions to the construction cost, calculated according to the values established by the Rome City Council in the Council Deliberation in force when calculating the extraordinary contribution for urbanization.
Professional-technical costs and related-unforeseen costs include all costs of a technical-professional nature (urban, architectural, structural and plant engineering studies, safety services, works supervision, performance testing, cadastral requirements etc.). The value is estimated as a percentage of the cost of the works to be carried out when calculated as the sum of the technical cost of construction of the building, the cost of site preparation and of archaeological surveys. From trial calculations carried out using previously applicable professional fees (Ministerial Decree 04/04/2011) and the Ministry of Justice Decree No 140, 20.07.2012, taking into account the current low values present in the real estate market, it is seen that the percentage can vary between 8% and 12% of the cost of the building construction work, the cost of site preparation and of utility connections. The evaluation shall take into account the average of the values, the differences should be adequately justified, and it remains understood that the minimum and maximum amounts will not be exceeded.
Financial expenses are the costs of the capital employed in the investment. This cost is a function of the amount of capital required, the duration of exposure and the rate of interest payable.
The borrowing costs are calculated considering the cost of debt capital during a planning and construction time horizon when the interest on the debt is the sole responsibility of the project supervisor. The time horizon is fixed at five years unless otherwise justified by the size of the project.
The debt cost or the interest rate to be applied is equal to the Euro Interest Rate Swap EurIRS/Euribor spread for a final term loan of fifteen years.
EurIRS is the Euro Interest Rate Swap, the index of fixed rate mortgages; Euribor is the index of the variable-rate mortgages.
The source for nominating the EurIRS and Euribor values shall be the Italian financial daily *"Il sole 24 ore"* or the web site www.Euribor.it.
The spread (deviation or margin) is a percentage value that fluctuates on average between 2.50% and 3.50% and is dictated by the major European banks such Deutsch Bank, BNP Paribas, Credit Agricole. It represents the remuneration for the credit institute granting the loan.
Unless another value is justified, only the pre-amortisation period of five years as follows will be considered:

- first year 10% (construction permits issued)
- second year 30% (advance for early intervention implementation)
- third year 40% (advance for early intervention implementation)
- fourth year 20% (balance on project realisation)
- fifth year 0% (marketing)

The percentages reflect the gradual assumption of risk on the part of the lender relative to the progressive completion of the works placed under warranty.

The interest on the debt accumulated as the five year period progresses constitutes the financial burden of the investment. In practice, the advance paid in the first year is equal to 10% of the total requested and the interest is for all five years of construction, in the second year the bank advances 30% and the interest accumulated is calculated for four years, and then progressively 40% for three years and 20% for two years.

The burden of the financial charges can thus be calculated for each of the phases of pre-amortisation according to the table attached below, evaluating the interest rate to be applied at the moment of loan request.

From the sixth year, the interest on the debt becomes the burden of the purchasers.

The profit or gross margin of the developer is the total profit that the promoter of the project derives from the use of all funds in the real estate transaction. In appraisals using the Value Transformation method, and using the Operation Manual of the Italian Territorial Real Estate Agency estimates, the profit of the developer is expressed as a percentage of revenues in relation to a number of variable factors both for external conditions and for the intrinsic characteristics of the project: general economic conditions, industry intervention, market trends, financing methods, type of real estate transaction (location, size, intended use), cost forecasts and revenues and their reliability, commencement of the time of return, as well as additional variables specific to a real estate transaction.

The detailing of these values according to the specific characteristics of the project, provided with adequate justification, allows for an exact evaluation of each case. The default levels for the lower threshold are set in any case at 15%, and the upper threshold at 25% of the Market Value of the finished building product (Vmt).

The percentage values referring to the individual cost items shall be adequately modulated in order to respect the above percentage thresholds, with reference to the specificity of the individual urbanisation projects.

The Value of Transformation is then calculated with the formula:

$$VT = Vmt - \Sigma iKi > Vma$$

where:

- VT is the Value of Transformation of the property;
- Vmt is the Market Value of the object of the property development project;
- Σ iKi is the summation of all the processing costs incurred during the property development;
- Vm is the Market Value of the building product under conditions in force.

In conclusion, the value subject to the CS for urbanisation, defined as 66.6% in Article 20(3) of the NTA, is equal to the difference between two distinct transformation values of the property in question: VT1-VT. That is to say, the difference between the Value of the Transformation of the property, calculated taking into account the additional construction foreseen by the proposed intervention, and the Value of Transformation of the same property under normal urban regulations without further negotiation processes.

The Value Transformation (VT1) is computed in the manner described above, on the basis of the proposed enhancement of the property in question, as a result of the negotiation process.

The Value Transformation (VT2) is calculated in the manner described in this Circular, theorising the development of the same property on the basis of urban norm estimates, namely the realization of the intervention urban construction categories and building dimensions (SUL) for which, on the basis of the existing urban norms, the CS for urbanisation is not due.

In the event that the proposed interventions are undertaken on existing buildings, and/or foresee the construction of buildings destined for usage categories not included among those for which the OMI provides Market Value data, the market values required for the calculation in the manner described in this report of the values of the transformation VT1 (related to the proposed enhancement of the property covered by the measure) and VT2 (the value relative to the same property assuming that the use destination and forms of tenure and management in force at the time of submission of the proposal) must be determined using indirect or analytical estimation procedures.

The scope of this methodology covers all direct or indirect development where the required urban planning permits have not yet been signed or where a required permit has not yet been issued.

IV. First application

Only in order to give a concrete meaning to the effect of C.S. it is reported the first City Council resolution (No. 63 date 29/9/2014) that approved the urbanistic transformation program called “Via Longoni” according to the procedure described earlier. In this case the total SUL is Sqm 10.835,10 which Sqm 2.929 destinated to residential use and were subject to an extraordinary contribution that was earlier estimated in € 508.474,40 (€/Sqm 173,60 x Sqm 2.929) but according to the new criteria during the phase of approval it was updated in € 983.681,88 equal to €/Sqm 335,84. It is absolutely clear the high effect of this aspect in the price making Dynamics, reason why the underestimation of this topic in an phase could lead to remarkable appresial criticalities to the whole productive process.

V. Definitive approval and Conclusions

The first consideration is that despite the new GRP adopted by the City of Rome with CCD No 33 of 19/20 March 2003 and finally approved with CCD No 18 of 12 February 2008, the expected regulation for the calculation of C.S. was approved six years later.

Continued uncertainty in this period has inevitably resulted in it not always being applied in a homogeneous manner. This includes by offices which deal with direct intervention projects and by those which work with programme agreements.

Another consideration is that inherent in the fact that the new GRP provides for compensation planning[4] (reduction and transfer of the volumes foreseen to another site) based on the equivalence of property values. These values could also be regulated using calculation methods analogue with the method designed for the calculation of the CS, as this compensation process also deals with the calculation of property values.

Last but not least is the fact that OMI calculations do not have probative value, and with Law 88/2009 the OMI values were demoted from legal presumption to mere indications of evasion. The values deduced from the OMI data base therefore constitute only a reference range, useful for the assessment of the value of the property. It would, however, be correct to refer to known prices of similar properties to that being valued. A market-oriented evaluation cannot make use of automatic and conventional calculations.

One is also left perplexed by the fact that the proposed calculations make no reference, considered within the rate of return of capital industrial (r^1), to the risk factors, market uncertainties, unpredictability, inflation, devaluation, anxiety linked to the complexity of the transformation within time horizons rarely much longer than five years, and of the unknowns in the lease market.

Finally, operators increasingly demand a change of use from commercial and tertiary sectors to residential, transformations which would seem uneconomical because the OMI values often identify higher values for non-residential use, resulting theoretically in a negative extraordinary contribution.

The summation of all the critical points mentioned above, not corrected before approval by the City Council, in the implementation phase could end up creating values which penalize operators, or worse, could be damaging the municipal revenue to the detriment of the entire community.

The Rome City Council proceeded with Resolution No 128 of 11/12/2014 to the final approval of the calculation of the extraordinary contribution [hereinafter CS, contributo straordinario] without making any substantial changes, the previously expressed observations remaining unchanged.

In confirmation of what was explained regarding concerns about the requirement set out in the Regulation in reference to the most current prices reported by the OMI, the following is that published on the website of the Italian Revenue Office[5]: "the values contained in the database of property prices in the OMI:

- cannot be meant to substitute the "estimate", but only to aid the same.
- refer to the ordinary character of buildings and, in particular, the conservative state prevalent in the homogeneous area.

The use of OMI quotations as part of the estimation process can only lead to indications of the widest maximum values. Therefore an estimate made by a professional technician is the only one able to represent and describe the property exhaustively and with full effect and provide the reasons for the value attributed to the asset itself.

Furthermore, we are unable to agree with the obligation in the absence of OMI reference value data for properties "destined for usage categories not included among those for which the territorial OMI provides market value data, that the market values required for the calculation of the transformation values should be determined with indirect or analytical estimation procedures (by applying the income generated by the operation and management of the property as a result of the transformation of the asset, and that generated by the operation and management of the property in the event of a preservation of the intended use and the forms of tenure and management in force at the time of submission of the proposal).[6]

The first consideration is the lack of clarity in the phrase: "by applying the income generated by the operation and management of the property" seems to relate more to the assessment of a company rather than to its real estate. It is impossible not to note that the cited Regulation in the calculation of the CS indicates for each entry, references and mandatory maximum and minimum thresholds (e.g. OMI values, the cost of the construction itself, area preparation and utility connection costs, costs relating to the charges pursuant to Article 16 of Presidential Decree No 380/2001, the cost of professional services - unforeseen technical and related costs, expenses for marketing, financial expenses, and the profit or gross margin of the developer) while nothing explicit about the calculation of the Market Value through "indirect estimation or analytical procedures." This procedure makes use of two fundamental aspects:

1. Net Income (Rn), that is, the contracted annual fee received by the owner (Gross Income) with the deduction of all expenses, such as routine maintenance expenses, the amount of depreciation, insurance, vacant and uncollectable, taxes and fees.
2. The Capitalization Rate (r) which expresses the price of use of the monetary savings transformed into real estate capital within a time unit. This ordinarily falls in a range from 1% to 5%, Carlo Forte considered it possible to admit that the 400 points of variation between the minimum and maximum rate were

[4] Article 17(2)(c) and Article 19 of the NTA

[5] http://www.agenziaentrate.gov.it/wps/content/Nsilib/Nsi/Documentazione/omi/Banche+dati/Quotazioni+immobiliari/

[6] Rome City Council Assembly Resolution No 128/14

determined by a number of "ascending and descending influences that act, each with a positive sign (ascendant) or negative (descendant) on the average rate.

Whereas, therefore, in estimating practice the Market Value is obtained by:

$$(Vm) = Rn / r$$

It is obvious with that the assessment based on the capitalization of net income, with the current average interest rates so low (3%), the movement of even a quarter of a point in appreciation of the capitalization rate results in significant variations of the values and thus the degree of discretion of the evaluator also with regard to the analysis of the costs to be deducted from the Gross Income, on which a homogeneity of evaluation does not always exist.

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