THE ALPHAVILLE URBANISMO AND THE LEGAL ORDER OF THE HOMELAND: FROM ILLEGALITY TO APPARENT LEGALITY

A Alphaville Urbanismo e o Ordenamento Jurídico Pátrio: Da Ilegalidade para Aparente Legalidade

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ABSTRACT

The purpose of this article is to understand the Alphaville Urbanismo S.A company's mode of operation, in the light of the national regulatory system, seeking to verify their (i)legality. The interest of the research was based on the finding of possible social and environmental setbacks in the approval and execution of Alphaville's entreprises, when compared to Allotments traditional subdivisions (open Allotments) , governed by Federal Law 6.766/79, which are obliged to donate areas to the use of the general population. It was essential to compare the object of this article with the rules and principles of law, including the new institutes created by Federal Law n° 13.465/17. For this analysis a bibliographic survey of Brazilian's doctrine and legislation was carried out in the end, the research proves that this model has chronologically departed from an illegality to an apparent legality, necessitating, also, legal interpretations and legislative changes (federal or municipal), to fit the democratic urban planning of cities. In view of this observation, the present article also sought to make contributions in order to suggest relevant issues that may be established as conditions and compensations, when the edition of municipal laws, which deal with the theme.

Keywords: Alphaville. Allotments. Right. Urban planning.

RESUMO

O objetivo do presente artigo é compreender o modo de operação próprio da empresa Alphaville Urbanismo S.A à luz do sistema normativo nacional, buscando verificar sua (i)legalidade. O interesse do artigo decorreu da constatação de possíveis retrocessos socioambientais na aprovação e execução dos empreendimentos da Alphaville, quando comparados com os loteamentos tradicionais (abertos), regidos pela Lei Federal nº 6.766/79, que são obrigados a doar áreas ao Poder Público, para uso da população em geral. Foi imprescindível fazer o cotejo do objeto deste artigo com as normas e princípios do Direito, inclusive com os novos institutos criados pela Lei Federal n° 13.465/17. Para esta análise foi realizado um levantamento bibliográfico da doutrina e legislação brasileiras. Ao final, este artigo buscou comprovar que esse modelo partiu cronologicamente de uma ilegalidade para uma aparente legalidade, necessitando, ainda, de interpretações jurídicas e alterações legislativas (federal ou municipal), para se adequar ao planejamento urbano democrático das cidades. Em virtude dessa constatação, o presente artigo buscou, ainda, dar contribuições no sentido de sugerir questões

relevantes que poderão ser estabelecidas como condicionantes e compensações, quando da edição das leis municipais, que versem sobre o tema.

Palavras-chave: Alphaville. Loteamentos. Direito. Planejamento urbano.

INTRODUCTION

Closed residential spaces, in the Alphaville style, are not an isolated phenomenon, but the residential version of a new form of segregation in contemporary cities. They are part of a broader category of new urban developments called “fortified enclaves”, as they are private properties for collective use and emphasize the value of the private and restricted, while devaluing what is public and open in the city. Physically, they are demarcated and isolated by walls, railings, empty spaces and facades that maintain an apparent harmony between them. They are controlled by strong security systems, with inclusion and exclusion rules. They serve to meet the material and symbolic desires of the middle and upper strata of society and have contributed to significantly altering the urban design of cities, highlighting a pattern of spatial segregation that hinders the interaction between the different classes that are prevented from enjoying them. living spaces, thus increasing the tension between them (CALDEIRA, 2016).

The proliferation of these developments has influenced people's relationship with public space, stimulated "the denial of the street" and provoked a new use of land in the peripheral areas of the city, thus generating the configuration of a new urban structure (BARROSO, 2015).). More and more people live in divided, fragmented and conflict-prone cities. The way the world is seen and defined depends on which side of the lane or wall individuals find themselves on and the type of consumerism they have access to (HARVEY, 2014).

The choice of the Alphaville brand, as the object of this article[1], resulted from the fact of being the pioneer in the creation of closed subdivisions and for being, even today, the largest company in the field of construction of closed horizontal residential projects, as well as for using a marketing strategy related to social status and security. Thus, Alphaville serves as an important source for analyzing the material and symbolic aspects involved in these projects. Another relevant factor in the

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delimitation of the research object was the fact that the referred company approves and executes its model, through its own modus operandi (which are its main characteristics) that allows greater profitability and speed, thus allowing a great capillarization of the its main product in extensive areas of the national territory.

The interest of this article stemmed from the observation of possible socio-environmental setbacks in the approval and execution of Alphaville's projects, when compared to traditional (open) subdivisions, governed by Federal Law No. for use by the general population.

The objective is to understand Alphaville Urbanismo SA's mode of operation in the light of the country's legal system, making a parallel with the recent institutes created by the new Law No. Specific), seeking to verify its (i)legality.

In the end, after an exhaustive critical doctrinal and legal analysis on the subject, starting from the consolidated reality, we will seek to interpret it in a rational way without breaking away from the rules and protective principles of the city, in order to seek more adequate measures. , reasonable, humane and democratic, that can minimize the effects on the urban environment and the community.

THE ALPHAVILLE STYLE OF LIVING

FROM THE GENESIS OF THE ALPHAVILLE STYLE

The conjuncture of urban crisis resulting from the Industrial Revolution had several consequences. The context of intense social, demographic and economic transformations at that time resulted in a city of previously unknown territorial extension, with an unprecedented population and densities. The recognition of urban and building form as intrinsic parts of the social and moral question of the urban crisis of the second half of the 19th century would help to create an image of the city as disease and chaos. Against this negative image of the city, criticisms and counter-proposals of other modes of urbanization would be presented that, on several occasions, found the alternative in the dispersed city, in the opposite of compact reality.

Some urban proposals developed from the second half of the 19th century to the beginning of the 20th century, when the disciplinary field of Urbanism was constituted, definitively incorporated dispersion into the city's design repertoire, within the most diverse intentions, interpretations and dimensions.

Broadacre City was proposed in 1934 by Frank Lloyd Wright as a radicalization of dispersion as an urban principle. His criticism of the large dense city and his defense of North American individualism formed the conceptual bases of the project, being Wright's counter-proposal to the urbanization and industrialization of the United States of America (USA). For Wright, the centralities would be strongly diluted, and, to some extent, the urban facilities spread across the city would assume this role as meeting and socialization places, forming smaller nuclei of community living. Wright sought the almost absolute freedom of the individual and equitable democratization expressed in an urban scheme completely decentralized and dispersed throughout the territory (CHOAY, 1992).

In the 1960s and 1970s, also in the USA, based on a general plan to offer specific neighborhoods for leisure and vacations, several exclusive condominiums, known as gated communities, were built. These places can be considered the first environments where North Americans could create fenced spaces or wall themselves off. It should be noted that, in the North American context, the expansion of the suburbs has a special characteristic: the intensive use of advertising emphasizing the lifestyle, with insecurity not being the predominant factor. Another American characteristic is the fact that these places are not closed off by walls and bars (D'OTTAVIANO, 2008).

Thus, it was not just an escape from urban chaos, but a search for a lifestyle of its own. In this way, houses in the American suburbs with their new style of living are sold as the American ideal of life, known as the American way of life. With the incorporation of value, through the advertising discourse, the suburbs then become valued residential areas, where people with high purchasing power start to want to live. These were ethnically homogeneous neighborhoods that sold the opportunity to live in a community, among equals.

Realizing a favorable environment for capital expansion, the real estate sector began to use the Broadacre City concept in its own way, presenting to the high-income consumer market an urban development model with a strong North American influence, which, through great advertising , creates a new style of living linked to the American way of life. This new product, when inserted in the Fordist model (of serial production) of capitalist development, starts to be expanded to other countries, being transplanted to Latin America, including Brazil, reinforcing the ties of geopolitical dependence and, obviously, , opening up new opportunities for real estate capital.

In the case of Brazil, this phenomenon of construction of closed housing complexes referring to the ideal American model is recent: despite the first Alphaville reporting to the beginning of the 1970s, only in the 1980s this model begins to expand gradually.

In the national context, the first large company to propose this format was Construtora Albuquerque Takaoka (currently, Alphaville Urbanismo SA), in the early 1970s, when it built the first Alphaville Residencial, seeking to meet the needs of executives from companies located in the Centro Industrial and Business Alphaville, in Barueri/SP. The urban design pattern proposed by the company refers to a certain image of the North American suburb, in horizontal residential complexes, close to nature, far from traditional urban centers, but accessible through highways, and which value homogenization – among equals. The Alphaville brand also seeks to add to the property the immaterial value related to the desire to live in an ideal society, in which there are no social problems, such as insecurity, as well as valuing aspects of social distinction, through advertising.

In the view of Pellegrino (1995), this model considered to be a “first world” is transplanted, already outdated, between a vision of what is “archaic” and “modern”, with the temporal clash between discontinuous cultural and technological contexts. This pattern of progress arrives in Brazilian lands with huge and multicolored advertising panels and all technophilic vision, in complete indifference to the natural landscape and the original environmental conditions, adopting architectural and landscape plastic norms already surpassed in the “first world”.

THE ALPHAVILLE MODUS OPERANDI

The beginning of Alphaville Urbanismo SA occurs with the construction company Albuquerque Takaoka, which was founded in 1951 and, later, in 1994, became the company Alphaville Urbanismo SA Still in the 1970s, the Construtora would create the concept of "club condominium" through of the launch of Conjunto Ilhas do Sul, in the city of São Paulo, inspired by the model of American gated communities. At the same time, in 1972, the Construtora acquired land from part of Fazenda Tamboré, located in the Municipality of Barueri, in the Metropolitan Region of São Paulo, and built the “Alphaville Residencial” and Alphaville 2, in the vicinity of the Industrial and Business Center of Barueri, launched there. in 1976. In 1979, it would launch the Alphaville 3.

However, the lack of habit of living in this type of enterprise almost led the construction company to bankruptcy (VARGAS, ARAUJO, 2014) and it was necessary to intensify real estate advertising for the business to take off in the following decade and attract new investors in numbers.

significant, expanding the business in the southwest vector of São Paulo through the acquisition of land adjacent to the residential Alphaville, fragmenting the territory into smaller fractions and undertaking new subdivisions, launched gradually, annually (SILVA, 2016).

In 1995, the partnership between Renato de Albuquerque and Nuno Lopes Alves created Alphaville Urbanismo and began the expansion process towards, initially, Campinas/SP and with the entry of new investors such as Gafisa, in 2006, and of Blackstone and Pátria Investimento, in 2013, when the company started to launch projects throughout Brazil, becoming a national leader in closed horizontal projects. The company has expanded its products to more than 50 cities, today with 124 developments in 22 Brazilian states and the Federal District. The company has a portfolio of two products: the Alphaville and Terras Alpha projects. The company is also responsible for the development of Cidade Alpha, urban centers smaller than a city, but larger than a neighborhood, such as Barueri and Brasília.

It is possible to divide Alphaville Urbanismo's activities into two formats: a) construction of “residential” and b) “urban centers”. In view of the ease and speed of residential-only projects, this model has been the rule for expansion throughout the national territory.

Although located in different social realities, the logic of reproduction of Alphaville Urbanismo, that is, its modus operandi, has, as a rule, characteristics in common, such as, for example: a) search for cheaper land in the periphery for real estate development; b) partnership between real estate developers, large landowners and the State; c) location close to major mobility road axes; d) approval as open subdivisions, based on Law No. 6,766/79 and on municipal legislation on land subdivision; e) assignment of areas donated to the Public Power, through concessions or permissions for the use of public assets, to the aforementioned associations, and the consequent closing of public areas; and f) creation of an association per enterprise to assume management and maintenance, ensuring the “Alphaville standard”.

Second War (2013, p. 20):

> Despite being located in different social realities, the production logic of these enterprises has characteristics in common, such as the search for cheaper land in the periphery for real estate development, the association between real estate developers, large landowners and the State, and the use of a symbolic speech to promote a new way of life.

With this mode of operation, Alphaville Urbanismo S.A. created “a real real estate product in series”, expanding its brand to the entire national territory, regardless of the local characteristics where it is installed. We now discuss how each of the above-listed characteristics is structured.

Choosing cheaper areas

The main and most notorious feature is the maintenance of the peripheral location of its projects, always located in areas of urban expansion, areas that were often considered rural by municipal legislation until the moment when the company and its partners decided to start a new business and proposed changes in land use to city halls.

Both Alphaville Barueri/SP and Alphaville João Pessoa/PB, for example, were created on old farms. In the first case, the distance from the locality alone made land cheap. In the second case, despite being located in an area close to the traditional center, it was located in an area of great environmental restriction, which, consequently, limited the constructive rates and reduced the value of the land.

As they are cheaper areas, they allow greater margin for negotiation and partnership with landowners in their acquisition, as well as allowing a large margin of profitability in sales, after the appreciation occurred by the construction of leisure areas and other common areas and, above all, when the Alphaville brand adds value to the product.

Partnership with landowners

Establishing partnerships with local landowners is a common practice in developments. The partners enter into the business with the lands and receive a certain number of lots, around 30% of the total lots to be evaluated, as a financial consideration. This strategy facilitated Alphaville's entry into many regions of the country, as several partners sought the company directly to offer their land, even before Alphaville showed interest in undertaking new subdivisions in certain cities.

Proximity to highways

The location factor is one of the pillars of Alphaville Urbanismo's projects, whether creating a new center (Alphaville Barueri and Alphaville Brasília), being close to traditional centers (Alphaville João Pessoa) or allowing rapid displacement to central areas, through automotive vehicles. individual (Alphaville Paraíba, Alphaville Francisco Brennand, Alphaville Pernambuco and Alphaville Pernambuco II). This last model is the most common of the company.

The location away from traditional centers and close to highways has allowed the company to have greater ease and lower cost in acquiring new areas for the construction of new projects. The brand realized that it was faster and more advantageous to concentrate efforts only on the construction of housing and indoor leisure areas, appropriating the central areas from the location close to the fast access roads of individual transport, mainly the highways. Marketing had the role of convincing the target audience about the advantages of living in an Alphaville, even if it is miles away from the downtown area.

Approval as a traditional allotment

Alphaville's projects are approved by city halls as traditional subdivisions, based on Federal Law No. 6,766/79, which provides for urban land subdivision, and municipal land subdivision laws.

To this day, the legal framework of Alphaville's ventures is a tempestuous topic in doctrine and in the courts. Alphaville Urbanismo S.A. approves its developments as traditional subdivisions, that is, open, however, later, it closes the public areas.

Closing public areas through concessions or permissions for the use of public assets

After approval as a traditional subdivision, seeking to ensure the closure of the entire enterprise, Alphaville Urbanismo requests from the municipal government the concession or permission to use, free of charge, public goods donated as streets, green areas and community equipment.

What is verified is the use of legal institutes that allow the assignment of use of public goods for the common use of the people (streets, squares, green areas, etc.) , misrepresenting the main purpose of the property (streets are closed and collective living areas are exclusive). The assignment of use of public goods is a discretionary administrative act of the Public Power, allowing (and not obliging) that the public agent, in the judgment of convenience and opportunity, grants or not the act, always respecting the public interest and the legislation. For this reason, either Alphaville carries out misleading advertising (article 37, §1, of the Consumer Defense Code) or it has excessive confidence in its relationship with the Government, because, even in the face of a discretionary act, it places as one of its contractual clauses that: "will use its best efforts to obtain from the competent government authorities an administrative act, or even to enter into an administrative contract that makes it

possible to close the perimeter of the residential area of the Allotment", as can be seen from the reading of Clause Twenty-Three of the Private Instrument of Promise of Purchase and Sale of Property Subject to Allotment (Figure 01), below:

Figure 01 - Clause Twenty-Three - Perimeter Closure of the Residential Area of the Subdivision
Include figure, attached.

ALPHAVILLE
PERNAMBUCO 2

Quadro Resumo, em caráter irrevogável e irretratável, o qual fica investido dos poderes para, no impedimento de qualquer **COMPRADOR** ou de todos, e em seu nome, receber e atender citações, notificações, intimações, circulares, avisos, cartas e comunicações, relativas a esta Promessa de Venda e Compra, especialmente no caso de execução deste.

III3. A **VENDEDORA**, neste ato, ratifica os poderes conferidos à **ALPHAVILLE**, em caráter irrevogável e irretratável, na forma do art. 684 do Código Civil, para receber e dar quitação da parte do preço do Lote que lhe é devida, podendo transigir e firmar acordos, compromissos, confessar, renunciar direitos, rescindir a Promessa, judicial ou extrajudicialmente, contratar advogados outorgando-lhes os poderes ora conferidos, no todo ou em parte, inclusive para o foro em geral.

CLÁUSULA VINTE E TRÊS – FECHAMENTO DO PERÍMETRO DA ÁREA RESIDENCIAL DO LOTEAMENTO.
A **ALPHAVILLE** tomará as providências necessárias e cabíveis, envidando seus melhores esforços, para obter das autoridades governamentais competentes ato administrativo, ou mesmo para celebrar contrato administrativo que possibilite o fechamento do perímetro da área residencial do Loteamento ("Ato Administrativo" ou "Contrato Administrativo"), de forma a permitir o controle de acesso ao interior da área residencial do Loteamento.
Obtido o Ato Administrativo ou celebrado o Contrato Administrativo com as autoridades governamentais competentes, a **ALPHAVILLE** executará as obras necessárias para o fechamento do perímetro da área residencial do Loteamento, na forma do Memorial das Obras do Loteamento, por meio de muro, alambrado, gradil ou cerca, que poderá ocupar áreas públicas e privativas, limítrofes dos lotes confrontantes com o referido perímetro, sem ensejar aos proprietários dos respectivos lotes direitos a indenização de qualquer natureza.
O Ato Administrativo ou o Contrato Administrativo, conforme o caso, em razão da respectiva natureza legal, poderá não caracterizar direito adquirido dos proprietários de lotes do Loteamento.
O fechamento uma vez autorizado pela autoridade competente, não significa o fechamento do Imóvel e sim do perímetro da área residencial do Loteamento com o consequente controle de acesso, nos termos do disposto neste instrumento.

Origin: Alphaville Urbanismo, 2017.

This practice of assigning the use of public areas intended for squares, streets and community facilities for the private use of Alphaville residents has distorted the public purpose of the goods, since the private use of public goods is exceptional, and should only be allowed if it is compatible with the main purpose of the good and respect the primary public interest. As a rule, the unavailability of the public interest must prevail, therefore, despite the legal possibility of consent to the private use of a public good by an individual, it is important that the Public Administration considers the impossibility of disposing of the public good as it sees fit and that it should not be valued private interests of specific individuals to the detriment of the interests of the whole community (DI PIETRO, 2004).

Di Pietro (2010) states that the private use of the public good, although possible, should only be granted if it is compatible with the main purpose of the good:

> The use, whether common or private, must always be exercised without harming or preventing the achievement of the main purpose to which the good is affected. In this way, an individual, armed with a legal title, can use privately a stretch of street to install a newsstand; but this use, which affects a small part of the property, can only be granted to the extent that it does not impede or hinder free movement, since this is the main purpose for which this good for the common use of the people is intended (DI PIETRO, 2010, p. 18).

Regardless of the aforementioned criticisms, Alphaville Urbanismo adopts as its operating mechanism the approval as a traditional (open) subdivision, later, it obtains the assignment of use of public areas to the local Government and carries out the total closure of the enterprise.

Constitution of associations to maintain the standard

Seeking to maintain the standard of the Alphaville brand, in each development an association (private non-profit legal entity) is created, constituted by the residents, which will serve as the true guardian of the values of the Alphaville model.

The great differentiating feature of Alphaville from other competing companies is precisely the overvaluation of the so-called “Alphaville standard”, which takes into account the organization and maintenance of projects. This standard is not maintained directly by the company, but through the associations that are created in each enterprise.

> Self-management guarantees the Alphaville standard in the projects. Maintained by the owners, Associação Alphaville is responsible for hiring personnel, physical maintenance, security and club administration. The formation of the board takes place through elections held every two years. The association is also responsible for supervising construction and occupancy rules passed on by Alphaville, with the objective of maintaining the urban excellence of the projects (SILVA, 2016 p. 259).

It is an articulated (and economical) strategy to maintain the urban standards that characterize the model defined by Alphaville, ensuring that all projects continue to serve as an advertising platform for future projects.

Thus, the well-known “Alphaville standard”, maintained by the associations, adds value to the brand as a whole, allowing the company to be recognized as the great name of the national sector, having its projects on a waiting list for the acquisition of lots. The dream of living in an Alphaville is the object of desire of a large number of wealthy consumers.

Of all the features that make up the project's modus operadi, there is no doubt that the most intriguing is the assignment of public areas for condominium use. This model allows areas, which should be accessible to the general public, to become, by a true “magic”, for the exclusive use of residents, without any constraints and compensation, overlapping individual interests with collective interests and serving as class distinction and homogenization mechanism.

ALPHAVILLE URBANISM AND THE HOMELAND LEGAL ORDER: FROM ILLEGALITY TO APPARENT LEGALITY

In this section, we seek to present the chronological framework of the object of study in the Brazilian legal system. For this analysis, it was necessary to take Alphaville's projects as a basis from its modus operandi, which allowed its expansion in series.

The company Alphaville Urbanismo S.A. explains, right at the beginning of its contracts (Clause One - Allotment), that the project is a subdivision, in accordance with Federal Law No. 6,766/79.

As demonstrated, the attempt to classify and approve it as a traditional subdivision is one of its main features. In fact, due to the dimensions and peculiarities, Alphaville's developments should be approved as a traditional subdivision, enabling the orderly and planned expansion of the city. The question that arises is that it only approves it as a traditional (open) subdivision, however, then it completes the complete closing with bars and walls.

Traditional subdivision is regulated by Law No. 6,766/79, which provides for the subdivision of urban land. This law conceptualizes land subdivision for urban purposes as the division of land into legally independent units, with a view to building, being carried out through subdivision and dismemberment. Allotment is understood as "the subdivision of land into lots intended for construction, with the opening of new traffic routes, public areas or the extension, modification or expansion of existing roads" (Article 2, §1, of Federal Law No. 6,766/79).

The parceled land loses its individuality and generates lots with direct access to the road or public place, creating new traffic routes and public places (allotment). The fact is that the subdivision of urban land lends itself to enabling the division of large areas (glebas) into lots intended for building

and, consequently, provides opportunities for the growth of the city, being, therefore, a true instrument of urban planning and design. It is for no other reason that several cities and neighborhoods emerged from subdivisions.

Thus, unlike condominiums, in the subdivision there is a large direct intervention in the city that will need specific rules, especially conditions that can minimize the negative impacts on the city.

The legislation, aware of the reflexes with the creation of a subdivision, ensured the need to guarantee basic infrastructure, reserve areas for community public equipment and green areas, and that traffic routes were opened and interconnected. These constraints stem from public norms that require compliance by those who wish to intervene in the city through subdivision.

Article 4, item I, of Federal Law No. 6,766/79, states that areas destined for the public circulation system, urban facilities, community public facilities and free spaces for public use must be provided for in the subdivision project. In its article 22, it establishes that, from the date of registration of the subdivision, roads and squares, open spaces and areas destined for public buildings and other urban equipment, included in the project and the descriptive memorial.

Thus, it is clear that in the subdivisions, the circulation routes (which are part of the urban equipment) and the areas destined for community equipment (such as squares, for example), after approval by the city hall and consequent registration in the property registry, become public goods for common use by the people, owned by the municipality where the project was approved, and their alienation or change of destination is not permitted.

What happens in practice is that Alphaville Urbanismo S.A. only approves it as a traditional subdivision and, later, closes the entire public area (routes, green areas and community facilities) completely decharacterizing the institute.

This simulation is not just a peculiarity of Alphaville, it is also carried out by countless other companies. Due to the closing of public areas in traditional subdivisions, the doctrine started to call these developments closed subdivisions. It is said to be closed because, when closing a subdivision, a change is made to the project initially planned and approved in accordance with the federal law on urban land subdivision, Federal Law No. 6,766/79 (BARROSO, 2015).

According to Antunes (2016), in recent decades, there has been a trend in many Brazilian cities that is the construction of so-called closed subdivisions, which are not condominiums, due to the fact that common areas are public and donated to the municipality, nor traditional subdivisions, because they imply a control of circulation and access. The field has no governing legislation.

For many years, the federal legislation of the country did not contemplate this modality of land subdivision, which, however, is an increasingly present reality in Brazilian cities (SARMENTO FILHO, 2008).

Defenders of the legality of closed subdivisions claimed that their foundation was found in article 8 of Federal Law No. 4,591/64, which provides for condominiums in buildings and real estate developments. However, Silva (2010, p. 38), warns about the abusive use of the device, since, in his reading, it would support “the use of reduced-size areas inside the blocks, which, without a street , allow the construction of sets of buildings in the form of villages, under condominium domain”. For the aforementioned author, closed subdivisions do not legally exist, “configuring a distortion and deformation of two legal institutions: the condominium use of space and the subdivision or dismemberment”, being, therefore, real estate speculation.

It remains clear that, despite the importance of condominiums, whether of apartments or houses, to enable the best use of urban land, it cannot be used as a tool for city planning, and it is essential that its installation occurs in areas that have previously been parceled out, planned and incorporated into the city, avoiding urban land clutter and its undesirable consequences. In this sense, the building condominium cannot be established on a plot not divided and planned, but on a plot duly served by basic infrastructure and already incorporated into the city.

The building condominium, governed by Federal Law nº 4.591/1964 and by the Civil Code, is not constituted as a type of urban land subdivision, but sets built within the same land, which is property of all. Small or large built complexes are condominiums when all common use space, such as accesses, streets, squares, infrastructure and implanted equipment, is the property and responsibility of the group of residents, the condominium owners (OLIVEIRA, 2000).

According to Frei (2002), from a legal point of view, closed subdivisions did not exist, as there was no federal legislation to support them. For the author, in fact, they constituted a distortion and a deformation of two legal institutes: the condominium use of space and the traditional subdivision, being, in fact, another supposedly sophisticated technique of real estate speculation, without the limitations, the obligations and the burdens imposed by Public Urban Law (FREI, 2002).

Thus, despite the specialized doctrine understanding that these projects did not have legal support and that the closing of public areas was illegal, real estate developers continued to build these projects and privatize public spaces, but now they would seek some legal instrument that would give rise to greater legal certainty. In this sense, in several Brazilian cities, real estate developers started to create associations of residents for each enterprise and bargained, with the Public Power, permissions

or concessions for the use of public areas, through law or administrative act, with the aim of carrying out the closure and appropriation of these spaces.

In the understanding of Barroso (2015), seeking to give an air of legality to these closed subdivisions, some municipalities have issued permission for the use of public assets for the public areas incorporated into these developments, with a focus on the possibility of private use of public assets by private.

Even with this strategy, numerous lawsuits were proposed, mainly by the Public Ministry, questioning the lack of public interest in this assignment of use of public goods to a select group of people and, consequently, the constitutionality and legality of closed subdivisions.

Due to the long years of judicial questioning, the Federal Supreme Court (STF), in October 2015, through Extraordinary Appeal No. general in the sense that municipalities with more than twenty thousand inhabitants and the Federal District can legislate on specific programs and projects for urban space planning through laws that are compatible with the guidelines established in the master plan.

This thesis started precisely from the discussion on the constitutionality of the Federal District law, in the use of its municipal competence, which provided for a differentiated form of occupation and subdivision of urban land in closed subdivisions, dealing with the internal discipline of these spaces and the urban requirements. minimums to be observed in them.

The decision of the STF (BRASIL, 2015) focused on highlighting the municipal autonomy in the elaboration of laws that deal with new forms of occupation and subdivision of urban land, leaving the Supreme Court to analyze the constitutionality of this new urban figure in the light of the norms and constitutional, urban and environmental principles, which relate to the protection of the city.

Informing that municipalities can create new urbanistic figures, as long as they are compatible with the master plan is to distort the real debate: are large subdivisions that close off public areas, that do not have interconnected roads to the road system and that contravene the Right to the City, constitutional?

Despite not reaching the core of the issue, the fact is that the STF legitimized the municipalities to edit municipal laws that regulate closed subdivisions. In any case, the decision of the STF did not allow municipalities to pass laws without any parameter, with the exclusive purpose of regularizing illegal situations or giving scope for new ventures to privatize public areas. The established thesis sought to emphasize the importance of legislation observing the master plan.

In our view, due to the dynamic cohesion of urban norms, the STF decision should be read as follows: municipal laws dealing with closed subdivisions must respect the Federal Constitution in its entirety (in compliance with the principle of uniqueness), the federal laws that deal with urban policy (Federal Law No. 10,257/01, Federal Law No. 6,766/79, among others) and, above all, the master plan, which establishes the guidelines for urban planning, being possible, for that , the establishment of restrictions, administrative limitations and counterparts, which can minimize the negative impacts of these projects on the city.

In December 2016, the Presidency of the Republic edited Provisional Measure (MP) No. 759/16, which was quickly converted into Federal Law No. 13,465/17, on July 11, 2017, providing for rural and urban land regularization , on the settlement of credits granted to agrarian reform settlers, on land tenure regularization within the Legal Amazon, as well as instituting mechanisms to improve the efficiency of the procedures for alienation of Federal properties and taking other measures.

Social movements criticized the new legislation, due to the lack of dialogue and rapid approval. Under the pretext of facilitating the procedures for urban land regularization of social interest (low income), which was necessary, institutes of dubious constitutionality were created, such as, for example, the controlled access subdivision, which violates the fundamental rights of locomotion. , intimacy, among others.

On the other hand, this new legislation was well accepted by the real estate market, which started to credit this rule as the basis for the legalization and immediate regularization of closed subdivisions, in the style of those designed by Alphaville Urbanismo S.A.

As it is an extremely recent legislation, there is a scarcity of material on the subject, basically limited to a few articles and studies. In this way, only with the natural doctrinal maturity of time will it be possible to accurately understand the institutes. Thus, obviously, any initial analysis may be premature, but it does not detract from its importance, especially when it seeks to foster the debate on the legal framework of enterprises of large companies called "urbanizers" in the new figures created by the recent Federal Law No. 13.465/17 , which, of course, should be an object faced by city halls, first, and by the courts, later.

As the present article has as its object of study the projects of Alphaville Urbanismo, its modus operandi will be taken as its basis, in order to make a legal analysis of its current legality or not, in the face of the new legislation.

As explained in the previous topic, the following characteristics of Alphaville's projects can be pointed out: a) they are approved as traditional subdivisions before the city halls and, later, they close the entire area, based on an assignment of use of public assets; b) they carry out true division of the soil, in large areas (greater than several blocks); c) they are built without infrastructure in the surroundings, usually in areas further away from and close to highways; d) are not fully integrated into the city; e) the internal roads, as they are closed, are not interconnected with the local road system; f) the lots are sold without building; g) public areas donated to the municipalities return to the enterprise.

Due to the fact that one of the main characteristics is precisely the total closure of the area, the use of the institute called controlled access subdivision would not fit, because, by express legal provision, the impediment of access to pedestrians or vehicle drivers is prohibited, even non-residents. Certainly, this institute can be used in more popular subdivisions, but in the Alphaville brand it is impossible, considering that the closing by walls and bars is integral in them, preventing access to the general public.

The controlled access subdivision lends itself to regularizing what is unfortunately seen in almost all cities: public streets are closed off with gates by the residents themselves, under the argument of urban violence. This institute is of dubious constitutionality, as it privatizes public goods for the common use of the people (street), harming the urban mobility of the city, restricting the right to locomotion and privacy. The rhetorical argument of the text ("[...] the impediment of access to pedestrians or drivers of vehicles, non-residents, duly identified or registered") (BRASIL, 1979) will not be implemented in practice, as the physical restrictions and symbolic will be carried out indiscriminately.

Enthusiasts of projects with the characteristics of Alphaville, bet on another new institute created by Federal Law No. 13.465/17, called condominium of lots, provided for in articles 58 and 78 of the aforementioned law. Article 58 amended the Civil Code to include article 1,358-A, starting to admit the possibility of adopting the condominium regime for autonomous units made up of lots; Article 78, on the other hand, added Paragraph 7 to Article 2 of Law No. 6,766/79, to enable the developer to set up the lot as an autonomous unit or as a real estate unit that is part of a condominium of lots.

The new legislation, therefore, allowed the creation of a condominium that will be composed of lots without the need for building, which will necessarily be linked to an ideal fraction of the common areas in proportion to be defined in the act of institution. This means that, in this spatial arrangement, the streets, squares and other areas of common use are not transferred to the property of the

municipality, but remain private property, belonging to the owners of the lot according to the respective ideal fraction (OLIVEIRA, 2017).).

The condominium of lots has similarities with the condominium building, being the rules of this applied, where applicable, to that one, however the basic difference is that in the condominium of lots, the existence of building in the lots is unnecessary. Due to the similarities between the institutes, the restrictions also operate in a similar way, not serving the condominium of lots, in the same way as the condominium building, to replace the forms of subdivision of the land (allotment and dismemberment).

It should be noted that the concept of plot, defined by Urban Law, was not changed, not allowing the existence of plots devoid of infrastructure to be later implemented by the Government. The concept of lot applies equally to lots that are part of subdivisions and condominiums of lots.

> What changes is the form of division of the court resulting from the installment. Instead of autonomous lots, it may be totally or partially organized through the constitution of one or more condominiums of lots, within which there will be not only the lots themselves, but also areas, built or not, of common property of the condominium owners, such as swimming pools, playgrounds, sports courts and private roads. Such areas, however, do not replace the free areas for public use and the road system included in the subdivision project, which will be transferred to public property. (PINTO, 2017, p. 11-12).

The same author also demonstrates that Senator Romero Jucá's own report, in the Mixed Commission of MP nº 759/16, clarifies precisely this impossibility of replacing the condominium of lots by the subdivision:

> Through the condominium of lots, the private blocks derived from the subdivision of the land are allowed to be organized in the form of a condominium, regardless of building. Such a system is not an alternative to the traditional subdivision, as it does not alter the burden to which the entrepreneur is subjected. In addition, the prerogative of instituting easements of passage for the benefit of non-residents and of disciplining the construction of walls and fences is assured to the city hall, with a view to protecting the landscape (PINTO, 2017, p. 13)

Thus, it is clear that the condominium of lots does not replace the traditional forms of land subdivision, since it is constituted on lots, that is, land derived from previous subdivision, not being the fact of the existence of internal roads and areas of use a substitute for the road system and free areas for public use provided for in Federal Law No. 6,766/79.

In this sense, Alphaville's projects cannot, in an unrestricted way, fit into this new figure, under penalty of illegality, for the following reasons: a) there was no previous urban subdivision of the land and consequent urban planning; b) they are large-scale projects, greater than entire blocks; c) the public areas coincide with the internal areas; and d) are not integrated into the city.

The simple approval of extensive disintegrated areas of the city, such as condominiums of lots, will affect the same constitutional, legal and principled prohibitions of the closed subdivisions, causing irreparable damage to the city. Thus, what currently exists is an apparent legality.

The harmonious and systematic interpretation of the legal system for the purposes of framing Alphaville's projects, due to its characteristics, would be the necessary prior realization of the subdivision of the land, according to Federal Law No. 6,766/79, with the mandatory donation of areas public areas (green areas, community facilities and street layout) and subsequent construction of a condominium of lots, based on Federal Law 13.465/17, within one of the blocks already divided.

This interpretation would be more appropriate with the protective norms and principles of the city, especially with the principle of sealing off socio-environmental setbacks. This principle, long known in Environmental Law, is currently recognized in the protection of the urban environment. It is known that the city constantly evolves and changes, and Urban Law cannot be a watertight science, on the contrary, it must allow the necessary mobility of the legal framework that allows social evolution, but without straying from values and socio-environmental advances hard-won in preservation. of the urban environment. The observance of the principle of prohibition of retrogression serves precisely this purpose.

The application of the aforementioned principle in the object of study promptly raises a question: why, in traditional subdivisions, including popular subdivisions, there is an obligation to donate public areas destined for green areas, community facilities and streets, and these areas must remain open for the whole community; while, in Alphaville's projects, does the Government allow closure?

Certainly, the observance of the socio-environmental principle of non-retrogression in the approval of Alphaville's projects would not allow the simple conduct of the closure, without any studies, compensations and urbanistic counterparts.

Thus, the use of the condominium of lots institute in the new ventures of Alphaville must be carried out within the blocks already integrated to the city, that is, after the subdivision of the land with the consequent donation and registration of areas in the name of the municipality.

The new institute, if properly applied, can be an important instrument for the market, without disrespecting the national legal system and the social function of the city.

It should also be noted that the new legislation sought to discipline not only new undertakings, but also existing and irregular ones. In this sense, Federal Law No. 13,465/17 expresses, in its article 13, that urban land regularization comprises two modalities: a) Reurb of Social Interest (Reurb-S), which is land regularization applicable to informal urban centers occupied predominantly by low-income population; and b) Reurb of Specific Interest (Reurb-E), which is applicable to informal urban centers occupied by non-low-income population.

In this way, the Reurb of Specific Interest (Reurb-E) would be possible to regularize the projects already built by Alphaville, since they fit into the concept of informal urban nucleus.

As it is not of social interest (low income) and because there are municipal public areas in its interior, which in the original allotment project were destined for green areas, community facilities and streets, it will be mandatory to pay the fair value of the regularized real estate unit, the be determined in the manner established in an act of the Executive Branch holding the domain, as compensation, based on article 16 of Federal Law No. 13.465/17, in addition to other compensation and urban and environmental restrictions, which may be required by the municipality.

Acquirers in good faith may seek further compensation (right of return) from those responsible for the implementation of informal urban centers, as well as land regularization will not exempt from administrative, civil or criminal responsibilities to those who have given rise to the formation of said urban centers informal (article 14 of the aforementioned law).

CONTRIBUTIONS

With the publication of the decision of the STF, in Extraordinary Appeal No. 607.940, with general repercussion, which makes its observance mandatory, and, from the advent of Federal Law No. 13.465/17, to make considerations for the total illegality of the undertakings object of study would not have technical and legal support.

In this way, after an exhaustive critical doctrinal and legal analysis on the subject, although one may intimately desire other alternatives and conclusions, based on the consolidated reality, it will be sought to interpret it in a rational way without detaching from the norms and protective principles. of the city, in order to seek more adequate, reasonable, humane and democratic measures, which can minimize the effects on the urban environment and the community.

An alarming fact is that numerous Brazilian municipalities have already edited municipal laws[2] disciplining the institute of the closed subdivision and, certainly, many others will follow in the same direction. However, the format adopted has been extremely benevolent with real estate developers and has been little concerned with the democratic planning of cities.

The legal possibility for municipalities to enact legislation dealing with the subject is unquestionable, either because this federated entity is the protagonist of urban planning (article 182 of the CF), or in compliance with the existing autonomy among the federated entities in the Federative Republic of Brazil. (Article 1 of the FC). At this point, the STF's position could not be different.

In any case, nothing would prevent the Union, by virtue of its constitutional attribution from issuing general rules in matters of Urban Law (article 24, item I, of the CF), as it did with Federal Laws 6,766/79 and 13,465 /17, amend its legislation and create more specific, rigid rules consistent with the protection of the urban order. In fact, it would be better if the Union had created clearer conditions for condominiums on lots, such as, for example, the mandatory opening of roads and the donation of areas to the municipality, as it did in Federal Law No. 6,766/79 . Unfortunately, the new legislation does not present any mandatory conditions, restricting itself only to providing (and not obliging) to the municipalities the establishment of administrative limitations and real rights over someone else's property for the benefit of the public power, the population in general and the protection of the landscape. urban areas, such as easements, usufructs and restrictions on the construction of walls (article 78 of Federal Law No. 13,465/17).

Although the federal law has been extremely lenient, nothing prevents municipalities, through their own legislation, from creating new restrictions, conditions and urban and environmental compensation, based on the joint reading of articles 24, item I, §2, 30, items I and VIII, and 182, all of the constitutional text.

[2] As an example of municipal laws that already made it possible to create closed subdivisions, we can mention: Municipal Law No. 1,284/15 of the municipality of Porto Seguro/BA, Municipal Law No. 1993/13 of the municipality of Rio Branco/AC, Law Municipal Law No. 6,148/12 of the municipality of Rio Verde/GO, Municipal Law No. 3,720/07 of the municipality of Montes Claros/MG and Law No. 4,893/12 of the Federal District. This last law even served as a parameter for the STF, through Extraordinary Appeal No. 607,940, to judge the constitutionality of these laws that dealt with closed subdivisions, an opportunity in which the STF established the following thesis: "Municipalities with more than twenty thousand inhabitants and the Federal District can legislate on specific programs and projects for urban space planning through laws that are compatible with the guidelines established in the master plan".

Thus, as a contribution, some relevant issues that may be addressed by the new legislation are pointed out:

a) limitation of the size of the areas. Depending on the size of the area, the legislation could impose the need for the previous subdivision of the land, through subdivision, for later realization of the condominium of lots;
b) minimum distance between projects of this format;
c) specific rules on walls and fences, reducing impacts on the urban landscape;
d) donation of areas to the Public Power destined for green areas, community equipment and streets around them or in nearby communities, corresponding to a percentage of the area of the enterprise, similar to the percentages established in the municipal laws that deal with installments from soil. Depending on the dimensions, the construction and maintenance of these spaces could also be mandatory; and
e) technical study based on the local road system, including the use of free administrative easements on parts of private land, to enable urban mobility.

At first, it may seem that these conditions will make the project unfeasible, but it is necessary to remember that in traditional subdivisions, the builder must donate extensive areas to the municipality (percentage established in municipal laws). And more. It is always good to remember two crucial issues: first, the impacts caused by these closed subdivisions, and, second, the option of the builder to opt for the use of other constructive forms, such as, for example, traditional subdivision, building condominium and condominium of lots inside of the blocks already divided, without, obviously, distorting the institutes.

It is worth noting that certain municipal legislations, which deal with the subject, have some commendable conditions, however, only the maturing of the debate with broad popular participation will be able to improve the legislative proposals. Municipal Law No. 3,720/07, of the municipality of Montes Claros/MG, for example, which provides for the subdivision of urban land and closed subdivisions, presented some good parameters, among which we can highlight: a) institutional and green areas must be located outside the perimeter of the closed subdivision, within a maximum

distance of 100m, and it is not possible for leisure areas and internal gardens to be considered in the percentage of public areas (article 44, § 3); b) if the road guidelines indicate the need to open the roads later, they must be released; c) the sidewalks must be 8.00 meters wide, with grass and trees in part, and their maintenance must be carried out by the residents; and d) the establishment of the maximum size of the area of these projects.

This example demonstrates that the requirement of conditions and restrictions, by itself, will not make new ventures unfeasible, on the contrary, it will adapt the performance of real estate developers, in order to ensure the balanced development of the city. This is precisely the role of urban legislation.

It is also worth mentioning that the same legislation may establish rules for the regularization of existing closed subdivisions, allowing, when necessary, the realization of financial counterparts destined to own funds for urban planning.

Finally, it should be emphasized that proposed new laws require a careful assessment of the urban and environmental implications that arise from these developments in space. It is necessary that in the edition of these new rules, the federal or municipal legislator is imbued with the public character of the Right to the City, as well as society is vigilant and democratically participates in this process, as these closed subdivisions need to be analyzed from the norms and principles of the Law. , with restrictions, limitations and counterparts being established, seeking to guarantee the well-being of all its inhabitants, never ceasing to ask: what city do you want?

FINAL CONSIDERATIONS

This article demonstrated the conceptual and legal distinctions between the allotment and the building condominium, in order to demonstrate the need for specific conditions and rules for each enterprise. As demonstrated, the subdivision is an institute of Urban Law, a branch of Public Law, being an instrument of urban planning, through which the subdivision of the land is carried out, integrating extensive empty areas to the existing urban structure, creating smaller lots destined for to the building. On the other hand, the building condominium is an institute of Civil Law, that is, belonging to Private Law, which does not lend itself to carrying out the planning of the city, on the contrary, it is an institute that must be conceived within lots or blocks already duly integrated to the city, and cannot be built on a plot not divided and planned.

Certainly, the creation of large-scale developments, in the Alphaville style, separated from urban planning, that is, without the allocation of public areas (green areas, community facilities and streets) and without integration with the local road system, will give rise to consequences disastrous for the future of cities. Thus, regardless of the nomenclature, whether it is a condominium building or lots, there is a need for the previous subdivision of the land, as a form of urban planning.

In this way, the alleged legalization, through the new figure of the condominium of lots, of the projects in the Alphaville model, without any conditioning and specific compensatory measures, violates several protective principles of the city, as well as does not demonstrate the best systematic and harmonious interpretation of the order. legal country.

In any case, in the current scenario, based on the decision of the STF, in Extraordinary Appeal No. 607,940, and with the advent of Federal Law No. 13,465/17, simply considering the total illegality of these undertakings would not demonstrate technical and legal support, probably not serving as a study that could motivate critical, coherent and necessary debate on the problem faced here. In this sense, the research was careful to analyze in detail the legal framework of Alphaville's projects. From this, it was found that this model started chronologically from an illegality to an apparent legality, still needing legal interpretations and, mainly, legislative changes (federal or municipal), to adapt to the democratic urban planning of cities.

Due to this finding, this article sought to contribute in the sense of suggesting relevant issues that can be established as constraints and compensations, when issuing municipal laws, which deal with the subject. The elaborated contributions open space for new reflections and concerns, launching future perspectives for the deepening of the subject in question.

Despite the many negative aspects, Alphaville's projects are a consolidated structure, in which the real estate market invests heavily and that does not suffer much rejection by the population, being even desired by a large number of people. In this perspective, the research sought to analyze the normative and principiological aspects of Law in order to stimulate the debate on the pressing need for legal interpretations and legal measures that can, in some way, minimize the negative effects of this model.

What we cannot do is simply “close our eyes” to enterprises that seek to create “valued pockets” in environments without any external infrastructure, without interconnected roads (streets) that allow displacement, without collective areas that allow the interaction of different social classes. , under penalty of violating the legal principles and norms.

It is necessary to think about the city as a whole, considering that buildings that can cause major urban, environmental and social impacts must be allowed with specific restrictions and conditions, always in systemic consonance with the norms and principles of Law. It is up to the Public Power to guarantee the well-being of all its inhabitants (present and future) and to order the full healthy and democratic development of the city.

The role of the Public Power, mainly of the municipality, in the exercise of the production of urban space is essential. The individual, even if he is acting in the urban activity, must respect the principle of the public function of urbanism and the social function of the city. Thus, the true role of urban legislation on land use and occupation is highlighted as a balance between market forces and the defense of the common good. The Public Power must bear the responsibility of mediating these interests, which are often conflicting, in the light of the common good and not the interests of a select group, aiming to ensure a fairer, more balanced and democratic urban development for all citizens. This is what is expected of a truly democratic state.

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