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RETAILING AND URBAN LAW: A DIFFICULT DIALOGUE

PRESENTATION

Having as an example the city of São Paulo, it is possible to observe changes in urban law concerning retailing and services activities as a result of changes in the social and economic context. Nevertheless, more the society find ways to control the urban development, more difficulties it faces to modify law in order to respond to its new demands in a world where the only certainty is the high speed of changes.

Although the control of the development of retailing and services activities never reached, here (in Brazil), the condition of being an urban policy itself, (a difficult talking), it is possible to find some concerns about them although highly dispersed through urban law and codes.

São Paulo city has passed through different emphases over time, as a result of changes in the city's economic dynamics, as it went from being provincial capital to coffee trade metropolis, subsequently becoming the country largest industrial center, and today, it takes on the role of a city of services too.

Retailing and services, whose target is the end consumer, has closely followed the changes in the make up of the population and the urban landscape, both from the qualitative and quantitative point of view. Nonetheless, because of the advent of new technology, and the high price and scarcity of land in the downtown areas, the

emergence of major commercial undertakings (like shopping malls in the 90^{ies}) that can create their own local environment, required greater reflection on the ways of controlling retailing and services within the context of the city. Nowadays, the high offer compared to the demand of retailing and services activities, in formal or informal ways, in different format and size, started a confused process in urban spaces, mainly in traditional business centers. This process asked for new tools to control the retailing and services development, in order to maintain the quality of the public space and the vitality of traditional areas without creating problems for whom needs to work for survive.

We really think that these tools go beyond urban law, reach the field of labor law and taxation, and the discussion of the property social rights.

For starting this talking of the evolution of urban policie sketches concerning retailing and services activities, it is necessary to divide them in five clear periods with different approaches: control over individual behavior; control over foodstuffs distribution, control of the activity location; control over the impact of large undertakings in the urban context.

Finally, we really believe that the urban policies concerning reatiling and services activities are in the midst of an embryonic phase of controlling quality and quantity of shops.

1. CONTROL OVER INDIVIDUAL BEHAVIOR

At the time of the Brasil Empire (1822-1889) when São Paulo became the capital of São Paulo Province (1872), an outstanding administrative center and attained a population of around 30,000 inhabitants, the emphasis of urban policy, general speaking, was basically on the behavior of its citizens, including the relationship between buyers and sellers.

Reading the legislation, decrees and by-laws in force at this time (São Paulo, 1873-1889) allows us to conclude that control over both urban activities and buildings, mainly focused on questions relating to the discipline of individual human behaviour and, consequently, on the relationship between people. These measures aimed fundamentally at ensuring the physical welfare of the town's inhabitants through control over standards of hygiene, morals and safety.

With regard to the urban activities as a whole, the following measures are in evidence from the beginning: control of the traffic of animal drawn vehicles, with the regulation of their drivers together with loading and unloading; the right to public peace and quiet, banning shouting and rioting; ensuring public morality by regulating clothing and acts considered obscene; ensuring the physical welfare of citizens by regulating the transit of animals through the streets and banning the placing of vases in windows, or throwing refuse into the streets, the opening of

doors and windows to the outside at a height of less than 3 meters, requiring also the channeling of rain water in gutters (note that buildings in the downtown area were obliged to be constructed in a row along the road).

In the specific case of retailing, the regulations followed the same pattern, that means, the protection of the individual, in this case, the consumer. The municipality was bound to ensure that the supply and distribution of goods took place correctly with regard to the accuracy of weights and measures, maintaining the quality of the product and the way in which it was wrapped or packaged to ensure sanitary standards.

Another concern included since the beginning was the control over the opening hours of commercial establishments. The maximum limit was 10 p.m., except for places of entertainment and hotels that could stay open until midnight. This concern seemed to focus principally on the control of the working hours of shop employees. Indeed, the 1886 Urban Code incorporated a series of articles typical of labor legislation.

Besides these measures the municipalities started building public markets with exclusive control over food supply and distribution .

At that time (NEVES, 1976), these markets already faced competition from itinerant vendors¹ who set up what were called “casinhas” (little houses), blocking the traffic in the center known as commercial triangle².

Thus, up to around 1870, the great concern with the retailing and services business was to adopt policies that consisted of ensuring: the city food supply; the quality of goods with regard to hygiene and health, and the accuracy of the quantities sold. To achieve this, the municipality was responsible for most of the distribution to the population, through public markets to which the municipality.

2.CONTROL OF FOOD SUPPLY AND DISTRIBUTION

From 1872 onward, when the railroad tracks reached the new coffee growing areas in the western part of the province of São Paulo, the capital started a period of rapid growth, and its income largely dependable on the production and sale of coffee which, undoubtedly, triggered the development of retailing activities. The Coffee Metropolis doubled its population in the next 20 years, reaching 240,000 inhabitants at the turn of the century, and becoming the country's second largest city.

Close to the turn of the century, a new phase of urban policies began paying attention with the Image of the City, concerning urban design and the development

¹ São Paulo city, capital of the state with the same name, lies in the Southeast region of Brazil. It is the biggest and most important city in the country reaching around 10 million inhabitants.

² The commercial triangle was formed by three important streets where the city had been born

of a cultural and entertainment life.

The capital's population growth led to the physical expansion of the city, and a change in the urban structure. Until 1880, the upper and middle class residential area had been in the central triangle itself, mixed with shops and small workshops. From then on activities began to diversify and working class neighborhoods as well as high income neighborhoods started to appear around the old center, giving the triangle an ever more commercial character (NEVES, 1976).

In this propitious environment the first large retailing institutions arose, basically represented by branches of large international groups operating in the import - export business. These stores were also located in the central area that was considered the sophisticated shopping district of the city. (LIMA FILHO, 1975).

This great dynamism, allied to the significant rise in population meant: an increase in the urbanized area; an increase in the number of buildings and in the speed at which they were erected; an increase in vehicle traffic in the downtown areas; the need to decentralize the food retailing trade; higher concerns to sanitary and health standards which were no longer possible to control at an individual level.

Two aspects began to stand out with regard to the development of the retail and services activities. The first has to do with the increasing demand which required a greater number of distributions points. The authorization of the construction of a vegetable market (law 263 of August 14, 1896), a diversified market (Law 1,240 of September 20, 1909) in some district or the emergence of shops on a new avenue out of the central area called Avenida Paulista (law 626 of February 7, 1903) and the start of concessions to encourage private enterprise to build private markets, are symptomatic examples of a decentralization process. (Law 305 of June 18, 1897).

The second aspect has to do with the urban uses substitution process that began to take place in the downtown, where businesses had become inappropriate from the city's point of view or, where the area had become out of the interest of retailers themselves. (law 892 of April 20, 1906, law 904 of June 9, 1906, law 1050 of October 2, 1907, law 507 of March 8, 1901).

Another type of retailing that lacked regulation was the itinerant vendors who began to cause congestion in the traffic in the city center and adversely affect the quality and the image of the central areas. Thus Decree 28 of December 15, 1898 was passed to regulate parking and the localization of street vendors, shoe shine boys, trolleys, and kiosks in the streets and squares of the central zone.

Outside this perimeter permission was given according to the distance between them (more than 10 meters), and stalls should have defined sizes and pleasant designs as well renewed licenses annually.

Nevertheless, most of the concern with regard to the development of retailing and

services activities was still focussed on health control and the stores' opening hours.

A system of granting special licenses to allow certain establishments to remain open beyond the set hours started a "tax industry". Besides the intention to guaranteed peace and quiet to the population, and good public order, and did not employ the same staff working on two shifts (decree 443 of January 9, 1912, decree 1433 of May 15, 1920) it was quite a normal way of increasing the city's income.

However, already in 1910, public markets were not able to supply the increasing population, and the low density of the peripheral neighbourhoods led to the development of a new form of supplying, similar to the middle ages periodic market, held at different places on different days of the week.³

The spreading out of the population to the periphery required new procedures for the management of the urban space and demanded more financial resources.

For the purpose of raising municipal taxes, the city had already been divided, since 1893, into four regions (law 64 of October 16, 1893). This division was, from the beginning, used for defining the locations of urban activities, in particular with regard to the location of cow-sheds. It could be considered an embryonic system of zoning laws.

Concerning the locations for retailing and services use, the references are still somewhat limited, and originate with the "Artur Saboya" code, Law n° 3427 of September 19, 1929, consolidated by Decree n° 663 of August 10, 1934, which also covered the provisions of laws and decrees in force at the time. This law ushers in a new era in the control of retailing and services activities in São Paulo.

3. CONTROL OVER THE URBAN USE LOCATION

Article 40 of Law n° 3227 of September 19, 1929, divided the city of São Paulo into four zones: the central zone, the urban zone, the suburban zone and the rural zone. This same code also created a number of exclusive residential zones (article 40), underlining that local government could allow the creation of commercial centers to serve the neighbourhood. To do this, it would be necessary for interested parties to submit a complete project plan showing the place and design

³ Decree 710 of August 8, 1914, created the city's free markets (street fairs) in squares, streets, avenues or any other place in the town, designated in advance, for the sale of foodstuffs, once or more times a week, from 6 a.m. to 11 a.m., with the subsequent cleaning up being done by municipality. (Decree 717 of September 23, 1914).

of the buildings, and the agreement of at least 75% of the property owners inside its catchment area (400 meter radius of the planned center). No more than one commercial center would be allowed within this area. The preferential siting of these centers would be at the junction of main roads .

The location of private markets was also be regulated to avoid disturbing the peace of residential areas and to limit traffic congestion. Thus, these could not be set up: in the downtown zone; in existing residential zones and others that might be established; within less than 2 km of municipal markets or within 1 km of another already licensed private market.

In fact, there existed an outline of measures for controlling the impact caused by “larger scale retailing”, (article 533), which referred to the granting of permission to establish markets, and to the control over the impact generated in traffic.

From about 1930 onward, the great depression of 1929 and the Second World War, which delayed the industrialization of São Paulo and drastically reduced coffee exports, directly affected the retailing system, both on the supply and the demand side.

Thus, the retailing sector was unable to develop and remained mostly unchanged during this period.

The still slow pace of urbanization, and the lack of dynamism in economy, had not yet kindled any fierce competition for urban land, nor any conflict between the various activities in the city. Thus, significant measures for controlling the use and occupation of land in the urban area as a whole, particularly with regard to retailing, had not yet emerged.

Any way, as the population grew and expanded, the retail trade spontaneously followed it, along the main radial transport routes, which turned into commercial corridors . The lack of individual transport kept the central area as the main focus of attraction for the retail trade. In fact, this scheme of things worked quite happily until 1950 when the city’s population crept over the 2 million mark.

Between 1945 and 1995 new industry was set up, agriculture began to use new techniques and the rural exodus intensified as people left the countryside in search for a better life. The population explosion was beginning.

In 1950, Robert Mose published his report called “Program for Public Improvement in the City of São Paulo” in which he underlined that the city needed modern zoning. (SAGMACS, 1957).

Still in the fifties, large real estate undertakings began to appear and destroyed important architectural features of the city. The public authorities ceased being the city’s principal property developer, falling behind private enterprise, and out-dated

urban legislation allowed inadequate land use and occupation. (TOLEDO, 1981).

The Paulista Avenue was also beginning to be the target of the big property developers, producing a shift to it from the main business center (see map 1).

It was in the 50s too, that legislation made compulsory to construct covered galleries in certain streets in the downtown area. (Law nº 5114 of February 28, 1957).

In the last five years of the 60s, traffic in the city of São Paulo began to become quite chaotic. The Brazilian automobile industry had already produced more than a million vehicles (LIMA FILHO, 1971), most of them stayed in São Paulo.

For the first time, retailers started considering the importance of parking facilities to make business in retail trade. This could be demonstrated by the keenness with which retailers began to rent vacant plots of land to make parking lots, often as much as 300 meters from their stores, and advertising the fact on their store fronts. A similar situation still happens today, but not just in downtown.

The process of turning São Paulo into a metropolis had already begun.

In 1964 the first shopping mall started to be build. It took some years for the concept to mature in marketing terms . This would happen only in the following decade.

At the end of the 60s 8% of the urbanized area of São Paulo city was being used for the purpose of retailing and services activities.(see map). Of this amount, one third was located in the downtown area the and rest was spread out along the main roads radiating out from the central área, in shopping centers of certain neighborhoods or the in the centers of other municipalities in the metropolitan area. (SÃO PAULO, 1968)

The remaining shopping places in the São Paulo metropolitan area were made up of a few groups of shops in residential areas, just serving local customers.

4. RETAILING AND SERVICES DECENTRALIZATION POLICIES

The basic policy proposed by the Basic Urbanization Plan, in 1968 (PUB) reinforced the tendency to decentralize. It recommended the creation of centers along the strategic corridors as well as smaller centers spread around the city. Also in these policies it would be incentivate the coexistence of high and medium density residential use so as to bolster the emergence of offices, schools, hospitals and clubs. (BRUNA, 1975).

Besides these corridors, the proposed policy suggested the creation of sub-regional centers in the main concentrations of population of the metropolitan

region. Selected from among the existing centers, they would have an important function as a catalyst for the decentralization of tertiary employment and act as signposts for urban growth. For this to happen, these areas would have to contain a varied retail trade, offices, doctors' surgeries, regional administration, higher education establishments, medical and sanitary support and be served by at least one subway station. (BRUNA, 1975).

At the same time, to meet the neighborhoods' day-to-day needs, the setting up of local centers was provided for, whose implementation would be the subject of specific projects outside the metropolitan sphere of influence. (BRUNA, 1975).

To take this decentralization policy planners suggested carrying out indirect intervention in the form of public investment in infrastructure and the incentives for building shopping malls and groups of small shops as well direct intervention through rules and regulations on the land use. (SÃO PAULO, 1968).

The 1972 zoning law was based on the solutions that this Plan had proposed (São Paulo, 1968) had proposed. Its observations, recommendations and suggestions, although they had not been transmuted into executive measures, exerted their influence in the preparation of the Master Plan for Integrated Development (PDDI – 1971).

It was through this PDDI that the levels of territorial units were established as the basis for the city zoning. These were three in number, hierarchically defined.: small centers for day by day needs (within walking distance); diversified and occasional needs; and specialized rare needs. These proposals and many others became law (the land use and occupation Law n° 7805 of November 1, 1972). (SINIBALDI, 1974).

With regard to commercial use and the provision of retail services, this law (as modified and added to by Law 8001 of December 24, 1973) undertook the classification of establishments by the size of their built area and by the type of goods or services offered.

Based in this definition permission for installation of any of these categories was granted in accordance with the restrictions imposed on each zone, which were, at first, eight in number.

In fact, the first observation to be made is that there was almost total freedom to set up retailing and service establishments in any of the zones.

From the point of view of the distribution of the zones throughout the city we can see, examining the legislation that Zoning practically ratifies the already existing situation in terms of land use and occupation, as shown in the survey carried out by the PUB, contributing significantly to the spontaneous process of decentralization.

However, reserving areas for more concentrated use by the retail trade, did not

always ensure that these activities would be developed considering that it is the real estate market make this happen. (MARCONDES, 1988 & OLIVA, 1981). At the same time, the banning of these activities from exclusively residential zones led to the appearance of small focuses of retailing in their immediate vicinity, not imagine by the zoning.

What began to happen from then on, was a succession of changes in the proposed zoning sometimes increasing the number of zones; sometimes changing the boundaries of existing zones; sometimes adjusting parameters; sometimes including new demands as a result of the city's urban growth.

One of the most important features of the changes that took place in the 70s was the proliferation of said-to-be modern retailing spaces throughout the city, the state and the country, as a result of the concentration of retailing capital. This meant a significant increase in the scale of the undertakings which began to grow progressively in São Paulo.

The great majority of retailers began to develop their operations in a supermarket style, at a time when the city had (according to Oliveira Lima (LIMA FILHO, 1975) a retailing structure, a road network, and population densities able to support the expansion of the shopping malls.

Retail centers began to proliferate and office centers began to be designed.

From 1975 onward, the architect Carlos Bratke (BRATKE, 1985), together with other architects in the family, began to look for alternative areas in the city, for the construction of office blocks. The the location factors were : cheap land, easy road access, ability to expand, closeness to residential areas, and the absence of major construction projects in the vicinity. In fact, it was a way of creating his own business as an architect. This attitude of real estate capital seeking new opportunities, allied to the work of a single architect, although slow at the beginning, contributed to another displacement of the business centers, towards the side roads of Pinheiros River (see map 2) where the offer of large areas were high, and the price adequate. (VARGAS, 1992).

Nonetheless, only in the 80s the growth of commercial areas and the number of large-scale undertakings started to be significant to call the attention of urban planners reaching the interior of the State and then to the whole country.

At the same time we could see the process of commercial capital concentration in the main branches of the retail trade, maintaining the complete domination of the big chain stores, and of super and hyper-markets, at least in the big urban centers. Shopping malls were emerging as a major force. (VARGAS, 1988).

The location of shopping malls began to be determined, mainly by the availability of space in the region and its ownership. From then on, advertising, promotions and the activities offered transformed the site into a strategic location for retailing and services trade. (VARGAS, 1992)

For the municipalities, the shopping malls become highly desirable undertakings, and they started investing in the sector too. Besides of creating employment, they improve the city's image, renew the surrounding areas, furnish cities with urban infrastructure and facilities, increase tax revenues and contribute to the improvement of leisure and entertainment large areas.

In any event, the great strength of this phenomenon, the size of the undertakings, the way they choose their sites and their power of transforming the urban landscape, began to attract the attention of planners to the impact that they caused around them and their capacity to induce urban growth.

5.CONTROL OVER THE IMPACT OF LARGE SCALE PROJECTS

With regard to the impact on the urban environment, various aspects can be raised: pushing up the cost of land, traffic congestion changes in the use and density of their surroundings, among others.

In article 11, paragraph I, item j, the 1988 Master Plan required the preparation of an Environmental Impact Report (RIMA) for all undertakings that will have a significant effect on the urban landscape. Law n° 10,506 of 1988 transfers to private enterprise the cost of the works and improvement in the road network as a result a given project. (MOREIRA, 1991).

These obligation could be seing as a way of providing infrastructure for the city, since the cost of the works and measures designed to attenuate the foreseeable impact will compulsorily borne by the developer. The undertakings which are under these obligation are the retailing and services projects with built area equal to or greater than 20,000 square meters, with covered or uncovered parking area equal to or greater than 20,000 square meters or land area equal to or greater than 40,000 square meters. (SÃO PAULO, 1991).

Finally, with the same proposal of creating extra resources, the municipality has allowed, through a legal toll called "Interconnected Operations". This means that its is possible to negotiate with the entrepreneurs, allowing them to built more than the that laid down in current legislation. In exchange for this concession, developers take on the construction of low cost housing projects and other facilities for the city, and making appropriate changes to the local road network to minimize the impact of these large projects. The State, which is bankrupt, has increasingly granted concessions in exchange for facilities and infrastructure with resources coming from the private sector.

Nevertheless, the condition of this huge undertakings of creating, like shopping malls, of creating their own local environments, (strategic location for retailing and services business) producing impacts on the surroundings areas, it is important to

analyze case by case. Urban Law needs to be reviewed with regard to granting permission for large projects.

At the same time that these undertakings can be act in the way to induce urbanization, and bring facilities and infrastructure to the city, they may also bring about rises in the urban land price, stimulate changes in the urban land use and higher demographic densities in their cathment area.

They also can be responsible for the deterioration process of downtown areas at the same time that they can be help in their revitalization. It is the local government that should regulate their advances.

Thus, measures for controlling the location of large retailing projects, the adoption of policies to revitalize traditional retailing areas, and measures for supporting small retailers are all fundamental in ensuring the vitality of retailing and services activities throughout urban spaces, both from the point of view of the retailers, consumers and the citizens.

But at this moment, in our cities, we can observe another phenomenon happening, concerning retailing and services activities caused by a significant increase in the offer to face and strong decrease in the demand that should be carefully analyzed.

6. THE CONTROL OVER THE OFFER

Nowadays, what can be seen throughout our cities is an increase of the retailing and services activities offer not followed, in the same proportion, by an increase in demand.

The problem of the small retailers, that always complain about the advance of shopping malls and big stores, is not their main problem. Some researches are showing that the competition among the small retailers, themselves, are became stronger. (SANTO ANDRÉ, 1999

In a situation of low level of economic growth, with high level of unemployment, everybody thinks that they can be a retailer for surviving. This can be observe not just between the small independents retailers, but also between street vendors.

The city is became and enormous bazaar, whose business are working at the limit of the surviving and it is contributing to the deterioration process of the traditional shopping areas, where all business compete for a space in areas with high flow of potential consumers.

This deterioration process leads to a decrease of quality of urban life that not just affect theirs inhabitants but also the urban economy.

In this way, we should start looking at the central areas, and some regional centers, like a Shopping Malls, and think how to use their strategies to maintain the vitality of business areas. This, means: how to control the number and the type of shops; how to stimulate the best combination among shops (tenant mix); how to guarantee consumers flows (magnets); how to promote events to attract more public; and how to improve the image of these areas.

These are just some few points that we should starting thinking in order maintain the control of retailing and services activities, and try to help them to recover their vitality and improve urban life quality.

7.CONCLUSION.

What could be seen through the evolution of retailing and services policies makes clear, the dynamics of the urban life, which changes are happening, more and more, faster, and the difficult of urban legislation to follow these changes at the same speed. Concerning retailing and services activities, the speed and the impact on the urban space are more dramatic.

The control arrives always later and never has the right dialogue, because who makes law not consider, or not know enough about the retailing and services development.. These condition always promotes a situation where the city portrait is not according to urban law and in many ways can be against the urban economy and urban life .

Some aspects that has been involved with these policies through time, like opening hours, work hours, has to be also rethought if we consider that we are now in a 24 hours world, with high level of unemployment.

Other aspect is how two use the property social right , included in federal constitution, to help in this task of revitalization of urban areas concerning retailing and services activities.

Then, we really must start considering these urban activities in their two intrinsic meanings: as an economic and social force.

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