



**ESTABLISHING NEW GOVERNMENT NORMS
CONCERNING NEW URBAN PLANS REPLACING THE
TRADITIONAL SETTLEMENTS IN DAMASCUS**

Dissertation

Presented in partial fulfillment of the requirement for the
DEGREE OF DOCTOR OF PHILOSOPHY

Faculty of Humanities and Social Sciences
Institute of Urban and Cultural Area Research

Presented
by

Helal Alwaz

LEUPHANA UNIVERSITY
Lüneburg, Germany
April 2018

Reviewers

Prof. Dr. Ursula Kirschner, Leuphana Universität Lüneburg
Dr. Reinhard Goethert, Massachusetts Institute of Technology
Univ.-Prof. Dr. rer. nat. Anton Escher, Johannes Gutenberg Universität
Mainz

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By Helal Alwaz 2018

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I had my Master Degree in 1995. Since then, I have had the ambition to write about renewing the traditional quarters in Damascus from the planning point of view. I would like to thank my advisor Prof. Dr. Ursula Kirschner as well as Dr. Bassam Sabour for giving me the chance to materials my dream. Dr. Basim Hakim' encouragement boosted my will to pursue my goal. I am indebted to Professor Ronald Lewcock for his advices in the beginning of this research and dedicating sometime to read the draft despite his busy schedule. I am very grateful that Prof. Dr. Anton Escher participated in shaping this research. A special thanks to Dr. Reinhard Goethert who had never hesitated to help me since I met him at MIT in 1989. One more time, this work went through many awkward obstacles but the support spirit of Prof. Dr. Kirschner smoothed everything.

I would like to thank all my friends and relatives who helped me collecting a lot of data from Damascus Municipality and the neighborhoods, the subjects of this research.

Finally, working for more than four years on this research took its toll on my family. I hope I can make it up for my wife and children.

Table of Contents

Acknowledgements		iii
Table of Contents		iv
List of Figures		vi
Maps of the research area		ix
Foreward		x
Abstract		xiii
Chapter I	The Research Area	
	1 Introduction	4
	2 Research questions	8
	3 Methodology of the research	9
	4 The structure of this research	10
	5 State of research & thematic classification	10
	Historic background	15
Chapter II	The Traditional Settlement	
	2.0 Introduction	24
	2.1 Traditional Building Guidelines	24
	2.1.1 Land ownership	27
	2.1.2 Access	33
	2.1.3 Liability of Harm	38
	2.1.4 Related Building Guidelines	44
	2.2 The Morphology of Selected Sub-quarter	45
Chapter III	The Driving Forces Behind The Modern Settlement	
	3.0 Introduction	55
	3.1 Building Permit Procedure in Damascus	61
	3.2 Social Changes	71
	3.3 Planning And Politics	72
Chapter IV	The Modern Settlement	
	4.1 Access And Open Spaces	77
	4.2 Land use	82
	4.3 Security	84
	4.4 Privacy	85
	4.5 Harm	86
Chapter V	Recommendations	104
Chapter VI	Conclusion	122

Appendix A	Chronological Sequence of Civilization in Damascus	127
Appendix B	Islamic philosophy of law	129
Appendix C	Acquisition Decrees (Laws 26, 60)	140
Appendix D	Reorganizing Decree	169
Appendix E	Planning Decree	191
Bibliography		200
Glossary & Arabic Terms		204

List of Figures

- Figure 1-1 The house is located closed to location number 2 Bab Jayrun (Nasser Rabbat, 2012)
- Figure 1-2 A traditional house form Old Damascus (*al-Qaimarieh, Msalabeh*. (1995, by the author)
- Figure 1-3 First-floor after modification (1995, by the author)
- Figure 1-4 Houses touching each other on the first floor level (1995, by the author)
- Figure 1-5 Caging windows at the first floor level for security reason (2010, by the author).
- Figure 1-6 Closing windows and adding tarps at balconies to prevent being overseen. (2010, by the author)
- Figure 1-7 The Stereotypical Muslim city of the Middle East, Based on Sauvaget's Text (1934-1941). A Historiographic Essay Author(s): *Nezar Alsayyad Source: Built Environment* (1978), Vol. 22, No. 2, Islamic Architecture and Urbanism (1996), pp. 91-97. Published by: [Alexandrine Press](#) Stable URL: <http://www.jstor.org/stable/23288983>. 06/20/2013
- Figure 1-8 Mid-13th Century, Early 16th Century. *Al-Muhandes Al-Arabi* (magazine, issue No. 110, 1993)
- Figure 1-9 Early 19th Century, Early 20th Century. *Al-Muhandes Al-Arabi* (magazine, issue No. 110, 1993)
- Figure 1-10 Urban development of Damascus. *Al-Muhandes Al-Arabi* (magazine, issue No. 110, 1993)
- Figure 1-11 Damascus's planning zones according to Ecochard' Plan, 1968 (Damascus Municipality)
- Figure 2-1 A Property Deed Document (1981, Damascus Property Deeds Department)
- Figure 2-2 the private claim to ownership of a dead-end street. (1995, by the author) Taken from cadastral plan al-MazzeH no. 63 Section 4.
- Figure 2-3 *Fina* was associated with opening, mainly exterior walls (1995, by the author) Taken from cadastral plan al-MazzeH no. 63 Section 4.
- Figure 2-4 People built benches in their *fina* (1995, by the author)
- Figure 2-5 Cadastral plan (1998, Damascus Property Deeds Department)
- Figure 2-6 Damascus's suburbs according to Ecochard' Plan, 1968 (Damascus Municipality)
- Figure 2-7 A new plan superimposed on cadastral plan (1986, Damascus Municipality)
- Figure 2-8 A typical alley in one of Damascus' suburban traditional quarter, (2011, by the author)
- Figure 2-9 A special case of circulation (1995, by the author)
- Figure 3-1 Damascus's planning zones according to Ecochard' Plan, 1968

- (Damascus Municipality)
- Figure 3-2 Damascus's suburbs according to Ecochard' Plan, 1968 (Damascus Municipality)
- Figure 3-3 Damascus's Map (2017, Open Street Map)
- Figure 3-4 A small portion of al-Mazzeah Quarter before 1986 (2015, redrawn by the author from the original plan)
- Figure 3-5 Block (*Jazeera*) 1581/3 in Mazzeah Quarter (2016, by the author)
- Figure 3-6 An original **Requirements Plan** (*mukatat wagaeeb*) (1999, Damascus Municipality)
- Figure 3-7 Increasing externality (2015, by the author)
- Figure 4-1 One entrance along more than 100 m alley, (2011, by the author).
- Figure 4-2 Another example of a wasted and dreadful space in an organized settlement, (2011, by the author).
- Figure 4-3 Site 731 is totally in the new street plan (2016, by the author)
- Figure 4-4 Site 731 in the front been overlooked by several new buildings, (2010, by the author).
- Figure 4-5 Site 726 with caged windows on the first floor, (2010, by the author).
- Figure 4-6 Site 739 has residential use for the first floor (white stone) and site 740 with close shops on the first floor, (2010, by the author).
- Figure 4-7 Cars are parked along closed store, (2010, by the author).
- Figure 4-8 Precedence factor is no more in use, (2012, by the author)
- Figure 4-9 Site 722 blocking large section of the street causing different forms of harm, (2010, by the author)
- Figure 4-10 The abandoned store (site 722) badly affecting the business of the Neighbors, (2010, by the author).
- Figure 4-11 Having no roof, the abandoned store became a source of health Hazard, (2010, by the author).
- Figure 4-12 The ground floor of the block by early 2012
- Figure 4-13 A Requirements Plan for the new site (1993, Damascus Municipality)
- Figure 4-14 A zoom in of the original **Requirements Plan** for sites 733, 732, 730, 728 & 727 in al-Mazzeah Quarter. (1993, Damascus Municipality)
- Figure 4-15 A Requirements Plan for the new site (1992, Damascus Municipality)
- Figure 4-16 A Requirements Plan for the new site (1997, Damascus Municipality)
- Figure 4-17 A zoom in of the original **Requirements Plan** for site 746/1, 746/2 & 746/3 in al-Mazzeah Quarter. (1992, Damascus Municipality)
- Figure 4-18 A zoom in of the original **Requirements Plan** for site 742 & 737 in al-Mazzeah Quarter. (1993, Damascus Municipality)
- Figure 4-19 A light well providing the site with natural light could not be considered a courtyard (1995, Redrawn by the author) Taken from the original requirements plan of site 941 Al-Mazzeah.
- Figure 4-20 Owners of the first two floors facing the old building cannot open

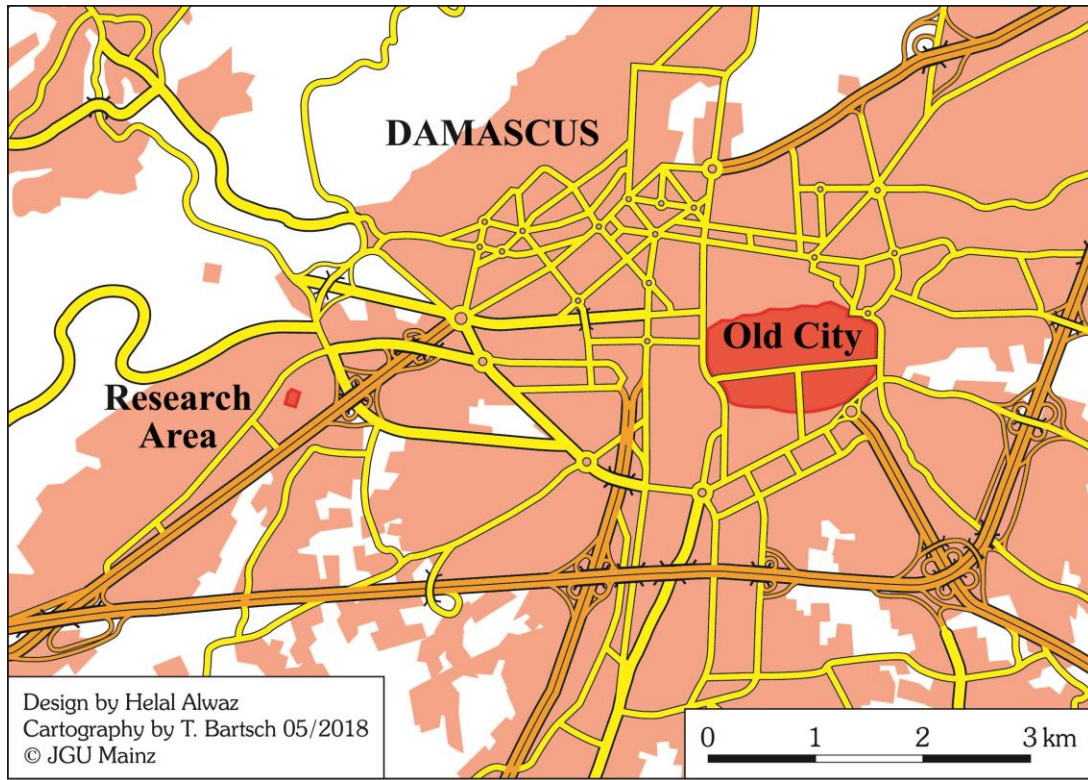
- their windows as long as the old building is not demolished, (2011, by the author)
- Figure 4-21 A piece of public property to be bought by the owner of site 912 (1995, Redrawn by the author) Taken from the original requirements plan of site 912 Al-MazzeH.
- Figure 5-1 Unharmonious appearance of the traditional buildings (2009 by the author)
- Figure 5-2 Le Corbusier' vision of urban planning (within-timelesshistory.blogspot.com) 3/21/2015.
- Figure 5-3 Le Corbusier' idea of producing mass housing (within-timelesshistory.blogspot.com) 3/21/2015.
- Figure 5-4 Section and plan of the Support System (2016, by the author)
- Figure 5-5 Axonometric view of variation of units' assembly (2016, by the author)
- Figure 5-6 A schematic design of the Basement (2016, by the author)
- Figure 5-7 A schematic design of the First Floor (2016, by the author)
- Figure 5-8 A section in the schematic design (2016, by the author)
- Figure 5-9 A schematic design of the upper floor (2016, by the author)
- Figure 5-10 Exploring several scenarios such as an extended family using the space as one unit, or subdividing the space to three or four units (2016, by the author)
- Figure 5-11 A schematic elevation of the complex (2016, by the author)

The following Cadastral Plan shows where some of the photos (Figures) are taken from in this research' al-MazzeH neighborhood.



Locations and directions of photos taken in the research area

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Old Damascus on the right side and the research area on the left

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Forward

March, 2018

By now, the world knows about the war in Syria. Destruction, atrocity, refugees, despair and all different facets of evil are there on display. The Syrian crisis began in March 2011, it has been described as a civil war, a proxy war and a sectarian war. However you frame it, the war is a humanitarian crisis; hundreds of thousands killed, and much more wounded or missing, roughly the same number in detention, millions refugees in the region and all over the world, and millions more internally displaced.

The war has partitioned the country into different controlled areas. The Regime put its weight, from day one, on large cities especially Damascus where it kept the fighting mostly on the rim of the city. Up till now, the quarter where this research has its cases studies is still intact, since it is under the control of the Authority and its proximity to the Presidential Palace and many security apparatuses. The status of the other 24 similar old quarters in Damascus is unknown by the author except for Jobar, Barzeh and Kaboun Quarters at the eastern side of Damascus (dots numbers 1, 2, 3 from Figure 3-2). Those Quarters are the frontline between the Capital which is under the control of the Authority and the Eastern suburbs where the rebels are.

In late 2012 when I started my Ph.D. research, the Syrian conflict was in the beginning of its second year and the expectation was that it would end soon. But the situation, now, is worse with no end in sight. The involvement of both international and regional forces makes it even harder to predict the future of Syria if it will stay as a single state or will be divided into several states.

The destruction to the physical built environment in Damascus is insignificant comparing with its suburbs and other cities. While the devastation to the social structure is tremendous everywhere. Especially when we see the compulsory change of the demography of certain cities and quarters on top of the huge number of death, arrest and migration. Many opponents of the Authority have escaped detention by leaving Damascus to

external or local destinations which are not under the control of the Authority, while others, some of them loyal to the Authority, found shelter in Damascus escaping from hotly contested areas. On the top of that, the Authority is confiscating the properties of whoever challenges it or shows no allegiance.¹ This punishment quite often spreads to the property of the relatives too.

It is highly uncertain if or when the war will eventually break. Ultimately, the winner of this war will leave its marks on the new built environment and the social structure of its people. The rational embraced in this research to develop new planning guidelines will expose the essence of the new Authority and its vision of the urban physical shape and social order.

This research shows how the Authority intervenes directly and deprives individual of his/her role and responsibility in shaping the built environment. When the Authority seizes the rights and responsibilities of local community, a deliberate violation of the principle of subsidiarity has occurred.² If upper class bureaucrats operate in a top-down manner and deny any flexibility to their subordinates, the effectiveness of this department will be diminished. Many thinkers attribute the failure of the Soviet system and other Communist regimes to the top-down centralized planning. Such systems kept the citizens in perpetual dependency.

The traditional built environment was the product of a local community and its needs, belief, customary law (Urf), building materials, available technology and self-reliance. The mechanism of rebuilding traditional neighborhoods as well as the other neighborhoods must take into consideration the needs, affordability, belief of the uses.

Sooner or later the rebuilding process will take place. Past experiences have demonstrated clearly that the Authority is incapable of embarking on such a humongous task from master planning to laying down infrastructure and setting up the rules for small details. The Authority is to do only those things which the individuals and local communities could not effectively do for

¹ Decree 10, 4/3/2018.

² Subsidiarity is a key principle of Catholic social thought. This tenet holds that nothing should be done by a larger and more complex organization which can be done as well by a smaller and simpler organization. <https://acton.org/pub/religion-liberty/volume-6-number-4/principle-subsidiarity>. 4/6/2018.

themselves. This is more economical and faster since people are desperate for shelters and can't wait the bureaucratic process of rebuilding.

Ironically, ruining most of the country's built environment gives the Authority another chance to correct its past planning mistakes. The principle of "no harm and no reciprocal harm" is still applicable. The user participation in decision making was practiced widely in the past and it is still welcomed by individuals and communities. Eliminating or reducing externality is one facet of the Authority's obligation of providing fairness and justice. Planning and building at such large scale is extremely costly, even for rich countries, thus an incremental progress approach is considered at all levels; Authority, community and individual.

This study will aid in the vital period of reconstruction. It offers a survey of the rules that exist and where adjustment is needed for people to contribute. It is critical and urgent in the rebuilding, and it will continue to provide a direction for development in the future.

Abstract

The Authority, through its planners, implements its housing and urbanizing policy at the macro level by preparing the master plan and zoning processes. How far can the Authority intervene and limit the bundle of rights of the private ownership tenure? And how can externalities be minimized in the process of transformation from the traditional quarter to the new settlement? Political values, whether tacit or explicit, are manifested in the resultant designs. A theoretical base for new urban planning guidelines involving a comprehensive study of housing in Damascus with emphasis on social and cultural factors is the ultimate aim of this research.

The research starts with a historical review of the Muslim City in general and distinguishes between cities that existed before Islam then conquered and modified by Muslims and cities established by Muslim Authority. The focus is only on the residential quarters in the city and the local market, mosque and etc. (outside the old walled city of Damascus). Other Muslim city' urban elements such as Grand mosque, caliph's residency, Citadel and etc. are not in the scope of this study. A brief historical review of Damascus before and during Islam and the development of residential quarters are illustrated.

Later, the study analyzes the traditional residential quarter and explores the building guidelines that governed the evolution of the built form of the quarter. (Literature reviews based mainly on researches conducted by others).

Then, the study explores the multi facets changes (economic, social and political) that the Middle Eastern region went through, in the last century, in general and the effect of those changes on the city form, case of Damascus. The effect will be traced through examining the decrees that the Authority issued in order to govern land reform and manage public and private domains. Then, looks at the ramifications of those decrees on the urban form

of Damascus. Also, investigating the decrees that were the guide for producing new planning and organizing developments.

The study inspects the end products of the planning and organizing process by studying several cases of building permits. Then, provides morphology of the new residential sub-quarter and its urban form.

Based on lessons learned from the previous decades of housing policy, the study will recommend foundation for governmental norms to produce responsive physical and social urban forms.

ESTABLISHING NEW GOVERNMENT NORMS CONCERNING NEW URBAN PLANS REPLACING THE TRADITIONAL SETTLEMENTS IN DAMASCUS

The Authority (Housing Ministry and Damascus municipality) through its planners, implements its housing and urbanizing policy at the macro level by preparing the master plan and zoning processes. On the other hand, through the Building Code, the Authority enforces its housing policy at the micro level. Thus, there is a great deal of dialogue between the Building Code and the planning and zoning processes. From the point of my concern, my thesis subject¹, I found that there are several sections and sub-sections in the Building Code that refer to and are governed by the Authority's approved plan. Hence, while I extensively studied the Building Code's sections that affect the building process, I believe that the macro level's portion of the Building process still needs a specialized study.

One objective of this study will explore the motives that drive the new urban plan, macro level. Though, in the academic years, many urban designers and architects often seem to regard "good design" as somehow independent from political factors affecting its production and use, design efforts are influenced by politics in several ways. For example, an urban design proposal is subject to challenges by a variety of groups (of conflicting interests) during the planning process. Also, political value, whether tacit or explicit, is manifested in the resultant designs.

I believe that the study I am proposing will complement my Master's thesis research. This thorough study of the Authority's housing policy will provide a useful reference for re-establishing new governmental norms concerning building law.

PERSONAL BACKGROUND & CONTEXT OF THE RESEARCH

I spent my childhood in al-Mazzeah traditional neighborhood, west of Damascus, where the social relationship between neighbors was strong, akin to family ties, especially on occasions like weddings, the birth of children or deaths. At the age of 12, my family moved to a unit on the fourth floor of a walk-up building, about 200 meters away. This relocation did not alter my

¹ *"Decoding the Building Code in Damascus"* (Thesis, McGill University, Montreal, 1995).

relationship with friends and relatives I had left behind in the old neighborhood.

I received my B.S. degree of Architecture from Damascus University, Syria, in 1981. Afterwards, I worked for seven years as an inspecting architect in the *Permits and Control of Construction Office* with the Municipality of Damascus. There I learned and implemented the Authority's policy and strategy on housing. Simultaneously, at a second job, I worked with several private architectural firms, where I confronted the limited freedom that architects possessed when it comes to designing under the Building Code requirements and the Authority's other regulations. In acquiring work experience, both in the public and private sectors, I realized the effect political and economic factors have on the built environment and consequently the resulting effect the built environment has in shaping people's behavior and social interactions.

The Municipality of Damascus issued its redevelopment plan in 1986 for al-Mazzeah old quarter, where I used to live. The residents, both owners and tenants, as well as developers, started to explore their options. For two years, I was involved in many cases either explaining the rights and duties of unacquainted partners or clarifying ambiguous city requirements. The experience I accumulated over those seven years (1981-1988), seeing the housing policy and challenges from different point of views, encouraged me to write about this subject in depth in order to address the shortcomings and suggest alternatives.

Between 1988 and 1993 I had attended several housing courses and participated in several biennial, seminar and housing workshops at MIT, Cambridge, MA. In 1995, I received my Master Degree of Architecture, minimum cost housing, from McGill University, Canada. My thesis for the Master Degree in 1995 was my first take at the subject of housing in Damascus.

After I had left Syria for more than two decades, I returned back in 2009 to leave again in 2012 because of the civil war. During that time and in the previous several quick visits to Syria, I always tried to update myself about the situation in the old neighborhood by observing the changes in the built environment and visiting the relatives and friends there. Also, I touched bases with my old connections in the Municipality and collected data whenever I could. My familiarity with the neighborhood, its residents and

their social life as well as my experience with the professional and legal sides of the building process in Damascus helped me immensely in understanding the legal part concerning the housing policy, analyzing the new physical forms and the social reactions. In late 2012 when I started my Ph.D. research, the Syrian uprising was in the beginning of its second year and the expectation was that it would succeed soon. By early 2017, the situation is now worse with no end in sight. The involvement of both international and regional forces makes it even harder to predict the future of Syria if it will stay as a single state or will be divided into several states.

Up till now, the quarter where this research has its cases studies is still intact, since it is under the control of the Authority and its proximity to the Presidential Palace and many security apparatuses. The status of the other 24 similar old quarters in Damascus is unknown by the author except for Jobar, Barzeh and Kaboun Quarters at the eastern side of Damascus (dot number 1, 2 and 3 from Figure 3-2). They are the gate between the Capital which is under the control of the regime and the Eastern suburbs where the rebels are. Being the front line, the destruction in those quarters is tremendous but there is no way to verify or quantify the physical damages to the built environment. Same goes for the social life in those quarters. The author's sister used to live in Jobar with her husband and three children. Like many of the residents of Jobar, in early 2012 she had to leave her house and settle in another quarter. She does not know when and if she can go back to her house or for that matter if her house is still exist.

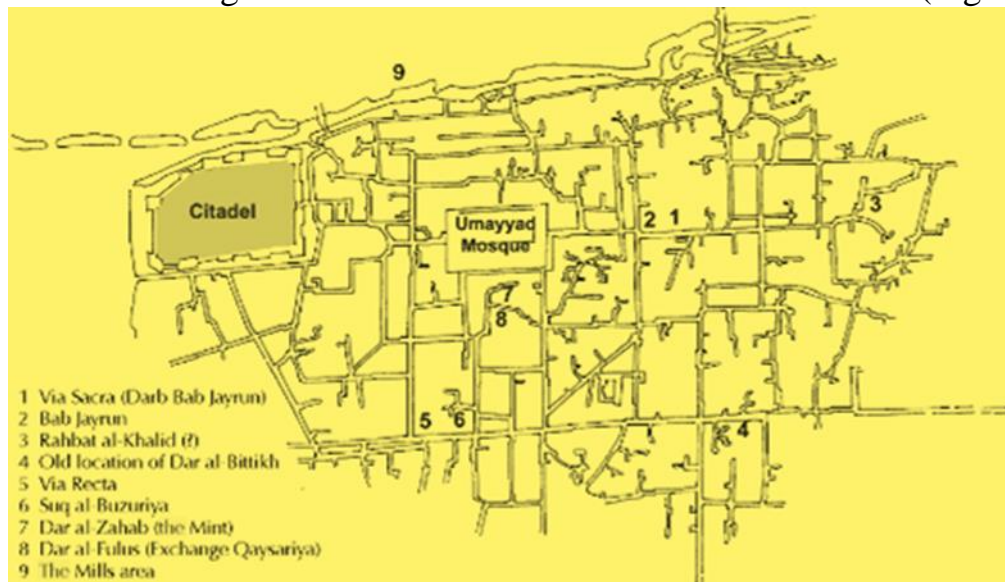
Having spent my childhood in the traditional quarter in addition to having relatives and friends still living in the same quarter, some of them in the same old houses and other in the new buildings that replaced their old houses, had gave me a deep knowledge of the physical arrangement of the houses, the residents and their social life. Had worked for seven years at the Municipality of Damascus, and as a second job, worked in several private architectural offices, most of my work in both sectors was residential. I have dealt with several projects in the traditional quarter in different capacities, as a designer or consultant or a building inspector.

Like I stated earlier, during my several short frequent visits, in the past, I stayed up to date on the housing situation in Damascus through relatives in the neighborhood and contacts at the Municipality. In this regards today, the war had a dull effects; on one hand, it is very hard to go

back and collect more information, and on the other, one can be sure that there is no new building development taking place in such a deplorable time.

1- INTRODUCTION

Many people have admired traditional houses in Damascus, where a distinctive arrangement between the lots and streets, or between two lots, was created as a response to users' needs. Almost every house has a unique correlation with at least one of the surrounding houses or the street abutting it. An example to illustrate one of the arrangements is a two-story house in *al-Qimariyeh* quarter in the Old City of Damascus.² The house consists of two rooms on the ground floor and three rooms on the first floor (Fig. 1-1).



The house is located closed to location number 2 Bab Jayrun
(Nasser Rabbat, *The Development of the Suq in Damascus*, 2012)³

Figure 1-1

The room on the northern side of the first floor is supported by the exterior, load-bearing wall. This room projects half way onto the street and half way into the courtyard. The room on the western side of the first floor was part of the neighboring house. The family needed an extra room for their newly wed son. The next-door neighbor, a wealthy man, offered a room from his house for free as a wedding gift. The family sealed the old opening and carved new windows and a door from their own house, so that the room became part of their own house. Through these acts, the family fulfilled its housing

² The house is located close to the intersection of *al-Qimariyeh Street* and *Qimariyeh Bath Lane*.

³ Burkhardt Von Rabenau, *the Bazaar in the Islamic City, Design, Culture, and History*, (the American University in Cairo Press: Cairo New York, 2012).

requirements. The physical form of the settlement and the social life that exist within it helped the family to respond effectively to their new needs. Today, this close arrangement is particularly unique because local planners, designers and builders no longer consider these spatial flexibilities in their design and/or works. Users, as well, are deprived from using this kind of adjustable configuration in their houses (Fig. 1-2, 1-3).

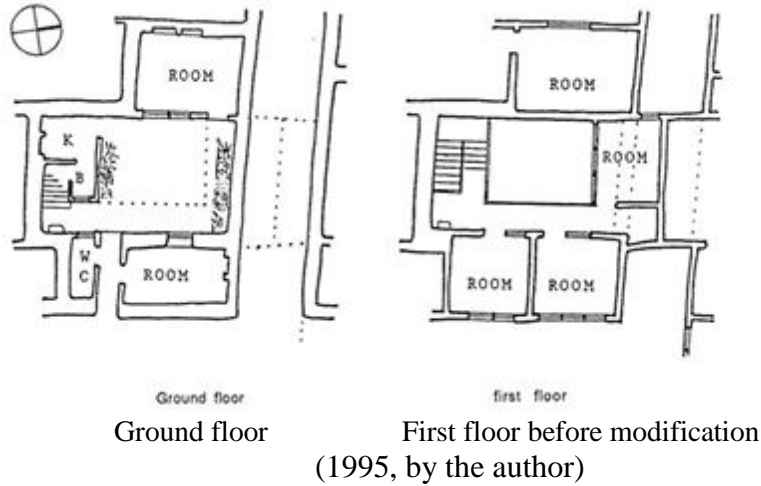
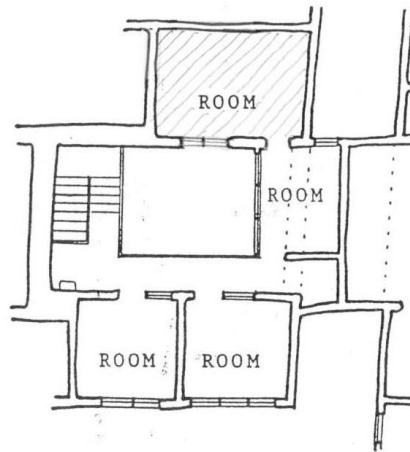
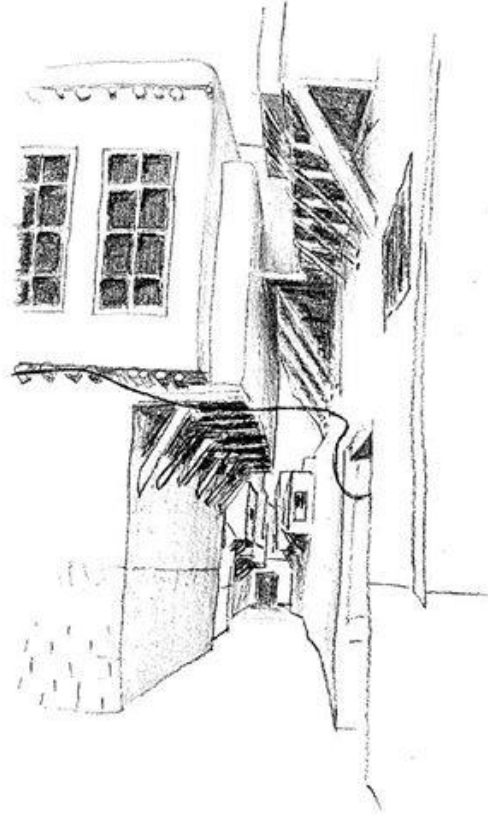


Figure 1-2



First floor after modification, (1995, by the author)

Figure 1-3



The traditional code produced densely built environment. As seen above, houses touch each other on the first floor level. (1995, by the author)

Figure 1-4

Architectural schools in Syria, established in the 1950s, have adopted a western style curriculum.⁴ They have dedicated neither enough time nor sufficient teaching material to explore the principles that produced the traditional built environment in Syria. In addition, the Damascus Municipality and other Syrian city and town municipalities inherited the French Building Code after independence from the French colony in 1946. The first post-French colonial building code for Damascus city was established in 1948 and used till 1978 when it was altered. It retained, however, its European spirit (extroverted building typology and geometrical built environments).

Today, new houses in Damascus as well as in the rest of Syria, for that matter, are the product of rigid building codes, switching from the introverted to the extroverted house system, at the unit scale. From the

⁴ *The curriculum was modeled on modern western schools of thought such as: the Organic and Functional Schools of Architecture, the Bauhaus in Germany, the Cubist and the Impressionist art movements. Meanwhile, in the traditional Islamic architecture curriculum, the focus was on monumental public buildings such as Madrasas, baths, Khans, Caravansaries etc. See Edward W. Said, Orientalism (N.Y.: Vintage Books, a division of Random House, 1978) pp. 322-323.*

moment people move into their apartment, they do any action possible to adapt their unit to their needs. For example: for the sake of privacy, people adopt several solutions that protect them from being overlooked. The solution varies from adding curtain wall with reflective glass as well as a shutter in addition to fancy curtains behind it, for wealthy people, to installing an owning or simply covering the opening with a tarp and almost blocking the light and air, for poor people. Those adaptations not only provide privacy but also reduce the noise and pollution coming from the street. (Figure 1-5).



Caging windows at the first floor level for security reason on the right side by the A.C. and across the street next to the opened store (2010, by the author)

Figure 1-5

Security factor is a paramount issue especially for residents of ground floor units. The most popular solution for protection is caging the openings with iron bars. Switching from the introverted to the extroverted house

system as well as many other new regulations and building guides resulted in dissatisfying built environments. (Figure 1-5 & 1-6).



Closing windows and adding tarps at balconies for privacy (2010, by the author)

Figure 1-6

2- RESEARCH QUESTIONS

One might question if living in the traditional quarter in Damascus (outside the old walled city) was really good or it was just a nostalgia, especially by the elderly. No doubt that the homogenous social structure of the quarter was a huge factor in addition to the adaptive built environment that accommodated the ever changing needs. The pace of changes in the socio-economic structure in the second half of the last century had exceeded by far the response ability of that organic body. The Authority implemented its housing policy as well as its social structure order in the process of replacing those traditional quarters. Observing and analyzing the new settlements exhibited that the residents are not satisfied with the physical output. Moreover, dividing the space, to either private or public, with a bold

border made social life limited within the private realm. The gray area between private and public where social interaction took place in the traditional quarter disappeared. Physical transaction and flexibility among private properties are not allowed anymore. The physical elements of the traditional built environment promoted positive social interaction among neighbors. Hence, the vital objective of this research is answering the following question: *How can the Authority through its housing policy's tools (legislation, planning, Building code and etc.) create a harmonious built environment which will stimulate a good social life?* In the process of trying to answer this question there are two more question must be addressed; how far can the Authority intervene and limit the bundle of rights of the private ownership tenure? And how can externality be minimized in the process of transformation from the *housing policy's tools (legislation, planning, Building code and etc.)?*

3- METHODOLOGY OF THIS RESEARCH

This research is primarily an exposition of current housing conditions in Damascus and an illustration of the reciprocal effect between the built environment and the social life of both the traditional quarter on one hand and the contemporary neighborhood on the other.

This study will compare between the forces behind the evolution of the traditional built environment and the social life present within it on one hand, and the housing policies which created the new settlement, replacing the traditional, as well as the social life existed within it on the other. The reciprocal effect among the building guidelines (legislations), the built environment and the social life are paramount indicators for proposing new urban planning guidelines, which will thereby produce a more harmonious built environment and social life.

Relaying on my experience as a former resident of traditional quarter and an ex-employee of Damascus Municipality, I had sensed the disharmony in the process of replacing the traditional quarter with new settlement. Many conflicts rose up among family members, neighbors, owners/tenants before the Building Permits was issued. The dissatisfaction in the new building was illustrated on the elevations. Initially, I started by taking photos of the new buildings focusing on the additions and alterations to the buildings. Then, I tried to analyze the reasons behind such action, be it preventing harm, responding to some need and etc. My familiarity with the social life in the

quarter did not stop me from asking the residents, in some cases, to confirm my conclusion. I searched the source of the problem be it legislative, planning, coding. Later, I illustrated few cases by studying the effects of the Municipality' requirement plan on the physical environment as well as the social relationship among the residents. Finally, in my proposal I tried to empower the users by giving them the right to participate in shaping their living environment.

4- THE STRUCTURE OF THIS RESEARCH

A historical background of the Islamic city in general and an extensive historical study of Damascus and its evolution will be the starting point followed by analysis of a chosen traditional residential quarter from an urban planning point of view and the reciprocal effect between the physical form and the social life present within it. Then, I will analyze the contemporary housing settlement that is replacing the traditional quarter and compare the relation between the physical form and the social life in the traditional quarter on the one hand and the same relation in the contemporary settlement on the other. During this part, a thorough study will be conducted on the regulations and urban planning process that produces the new urban form. A theoretical base for new urban planning guidelines involving a comprehensive study of housing in Damascus with emphasis on social and cultural factors is the ultimate aim of this research. A schematic design will be used to illustrate the effects of the proposed new urban planning norms opening the door for a user responsive architecture and built environment.

5- STATE OF RESEARCH AND THEMATIC CLASSIFICATION

Many studies have been conducted on the traditional and modern settlements of the Middle Eastern region. Some of these studies focused on the technical, economic, climatic and social aspects of the house. Others have discussed urban settlements in terms of public space, traditional building guidelines and legal tenure.

In the last few decades, several symposia and workshops were held in Damascus and around the world with the objective of preserving or reviving the old city of Damascus and other similar cities in the Islamic World. Several symposiums were held in Damascus, the main concern was of an archaeological and tourist nature and not of an architectural and urban

settlement nature. Most of the suggestions made regarding traditional houses in the old city advocated the preservation of the houses, the reuse of the same indigenous building materials, and the conversion of houses into shops where people could produce and sell traditional wares such as inlaid wood, colored glass, fabric (*Damasco*), and terra cotta, among others.

Though this research starts from a general theme (the evolution of an Islamic city) a subject that had been explored several times from different point of views, the main objective of this research has never been studied yet in term of the location (outside the old walled city of Damascus) which is categorized as an old neighborhood but not archeological on one hand and in term of its uniqueness to Damascus since it analyzes and critiques the urban policies adopted by the Syrian Authority at the nation level as well as the Damascus Municipality level. This research is intended to demonstrate how legislation has affected the physical form of the built environment as well as the social life of its inhabitants.

Before the start, it is important to assert that many scholars, among them Stefan Weber, consider the archeological and historical status of Damascus is not limited to the old walled city.⁵ Weber archived more than a thousand (public, commercial and dignitaries private residency) buildings of a high architectural historical value in Damascus *Extra mural*.

Islamic City

What is an Islamic city? What are the urban elements or characters that distinguish the Islamic city from other cities? For an outsider; dense mass punctuated with small courtyards, very narrow crooked thoroughfares with overpass partitioning the scenery, many dead-end streets with gates, sporadic benches along the wall of introverted houses, almost windowless walls at the ground level, lattice or other obscuring vision elements at the windows on the upper level and mostly mud plastered walls. All the above are common patterns throughout the residential sectors of the Islamic cities around the world.

Using the term *Islamic City* to label all urban settlements in the Islamic world is a vague expression due to the fact that some cities existed

⁵ Stefan Weber, *Damascus: Ottoman Modernity and Urban Transformation (1808-1918)*, Aarhus, Aarhus University Press, 2009.

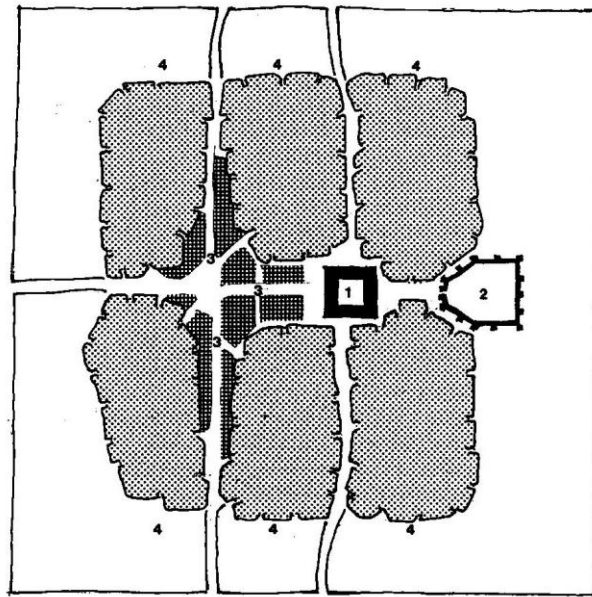
before Islam and under went variable levels of modification after they were conquered and inhabited by Muslims. Jean Sauvaget stated that the Greco-Roman geometric block structure of Damascus and Aleppo had started to *decompose* and radical alteration of the plan took place under Arab-Muslim rule.⁶ Meanwhile, the towns or cities that were built in the early days of Islam could be classified into two types; the spontaneous, which were developed without planning by the Authority such as Karbala,⁷ and those which were created, mainly garrison towns, such as the original round city of Baghdad (initial foundation in 145 A. H. /762 A.D.). Creswell saw the main factor of resemblance among al-Basrah (founded in 17 A. H. /638 A.D.), al-Kufah (founded in 13-23 A. H. /634-644 A.D.) and Fustat (founded in 20-21 A.H./641-642 A.D.) to be the “ chaotic labyrinth of lanes and blind alleys, of tents and huts alternating with waste ground.”⁸ Alsayyad, in his book, stated that there were three parties involved in shaping the urban form of a new Islamic town: Caliph (head of the Islamic state), the governor (regional head) and the inhabitants. The ruler’s role was merely facilitating negotiation among parties to decide on the location and the boundaries of their (*Kittah*) sites, while the internal layout of each site was the product of negotiation between the inhabitants. Tribes, clans and extended families competed for land allocation. Closeness to water sources, market and Mosque were among the favorable factors. While the overall urban form was the outcome of the Caliph’s concern with enforcing the Islamic ideal of community, the defensive factor was paramount (the location and details of the city wall, gates and citadel as well as the location of the primary Mosque).⁹

⁶ Nizar Alsayyad, *Cities and Caliph*, (NY. Greenwood Press 1991), pp. 18. Also A Historiographic Essay Author(s): Nezar Alsayyad Source: *Built Environment* (1978), Vol. 22, No. 2, *Islamic Architecture and Urbanism* (1996), pp. 91-97. Published by: *Alexandrine Press* Stable URL: <http://www.jstor.org/stable/23288983>. 06/20/2013.

⁷ Jamil Akbar, *Crisis in the Built Environment*, (Singapore: Concept Media, 1988), p. 80.

⁸ Akbar, Chapter 4.

⁹ Alsayyad, Chapter 6.



1-Mosque (*masjid*) 2- Citadel/Palace 3- Market 4- Residential Quarters
The Stereotypical Muslim city of the Middle East, based on Sauvaget's text (1934-1941)

Figure 1-7

The width of the main roads in al-Kufah were decided by the Caliph Omar while a group of distinguished knowledgeable men from different tribes decided on the positions and number of the streets and roads taking in consideration the interests of their respective tribes.¹⁰ The organic fabric of these Muslim traditional environments was the outcome of many small-scale decisions by the users. The users occupied properties that formed lanes and dead-end streets. If growth and evolution caused some disputes, dialogues were forced among interested parties. Such dialogues resulted in agreements, which shaped the physical environment. Hence, building and planning principles were not codified and were open to interpretation.

A considerable number of scholars among them *Abu-Lughod, Marcais brothers, Sauvaget, LeTourneau and Von Grunebaum* conceived, with little variation, the typical image of the physical form of the Muslim city. Its typical elements, physical layout and unique structure can be described as follows:

The Muslim city is a city whose nod is a Masjid jami, or Friday mosque, with a well defined and somewhat central royal quarter and

¹⁰ Akbar, p. 86.

a qasabqh or a major spine extending from one main gate to another along which lies the important buildings scattered along the linear bazaar which branches out into the city forming irregular but functionally well-defined specialized markets. The city also has a citadel or a defensive post on the outskirts and this seems to tie well with its successive walls. Housing was mainly made up of inward oriented core residential quarters, each allocated to a particular group of residents and each is served by a single dead-end street. As for its spatial structure, the Muslim city had no large open public spaces and the space serving its movement and traffic network were narrow, irregular and disorganized paths that do not seem to represent any specific spatial conception.¹¹

Looking at the urban form from city features (mosque, public square, public bath, governor palace, citadel, city wall etc.) and the relationships among them, Alsayyad does not believe that this model represented accurately the traditional urban settlement, and was too simplistic to be of any considerable use. To him, the model is too general and did not consider the time factor or the nature of urban growth functions.

Alsayyad combined several analytical systems and theories to analyze a city. He divided solid into two types: the public institutions (object or land mark) and the fabric solid that is the dominant field of urban blocks. Void is also classified into two types, public squares and gardens that compliment the public (object) buildings and the primary circulation network through open-ended and dead end streets. He classified the above elements as the physical form of the city and the land-use pattern and activity as the functional form of the city.

Regardless of the validity of this model and the accuracy of the alternative approaches to describe the Islamic city, this research is intended to deal only with the housing zones and the daily commercial activities existed within it (the dominant field of urban blocks and the circulation networks that service it) in the Islamic city. All scholars described the residential sectors as inward oriented with narrow irregular street networks leading to safeguard residential quarters. Most houses entered from dead end streets, and the border of the quarter runs along the walls between houses rather than streets. Some allies were gated for protection overnight.

¹¹ *Alsayyad, p. 6.*

HISTORICAL BACKGROUND¹²

Damascus and Aleppo are believed to be among the longest continuously inhabited cities in the world. Recent archaeological excavations have indicated that human beings have lived in the area Damascus, particularly near the *Barada* and *Awaj* rivers, since at least the Middle/Late *Acheulean* era of the lower *Paleolithic*.¹³ The materials discovered from these excavations provided evidence of long lasting occupation in the region. A sequence of artifacts was found dating from the eighth millennium through the first half of the sixth:¹⁴ a polished axe of clear *Neolithic* style and some pottery, which can be dated to the late fifth or early fourth millennium.¹⁵ In addition, some details of the techniques used to build huts were found. Huts were made of reeds, from the nearby *el-Hayjaneh* and *el-Uteibeh* lakes, on top of platforms constructed from hand-made mud-bricks.¹⁶ G. Pettinato has stated that: “*The city of Damascus is mentioned in the third Millennium tablets from Tell mardih/Ebla.*”¹⁷ Babylonian Civilization followed by the Hurrian Civilization dominated the southern region of Syria during the Middle Bronze Age, around the first half of the second Millennium B.C.,¹⁸ while the Egyptian Civilization replaced the Hittite’s in controlling this region during the Late Bronze Age, around the second half of the second Millennium B.C.¹⁹ The first clear appearance of Damascus in history came when the Egyptian pharaoh Tuthmosis III conducted several expeditions against Syria and Palestine. In an inscription of Tuthmosis found in Nubia, Timasku also known as Damasku was listed among the conquered towns.²⁰ This justifies its claim as the oldest continuously inhabited city in the world.

In the late second millennium, Damascus became the capital of an Aramaean kingdom that at its height extended from the Euphrates in the east to the Dead Sea in the southwest. Later, Damascus fell to the Assyrian Empire, which intended to control the trade routes. Alexander the Great

¹² Appendix A provides a chronological sequence of civilization in Damascus.

¹³ Wayne T. Pitard, *Ancient Damascus* (Winona Lake, Indiana: Eisenbrauns, 1986), p. 17 for a chronological sequence of civilization in Damascus refer to Appendix –A-

¹⁴ Pitard, p. 18.

¹⁵ Pitard, p. 24.

¹⁶ Pitard, p. 25.

¹⁷ Pitard, p. 25.

¹⁸ Pitard, pp. 37-47.

¹⁹ Pitard, pp. 49-51

²⁰ Pitard, p. 54 and Philip Khuri Hitti, *Capital Cities of Arab Islam* (Minneapolis: University of Minnesota Press, 1973), pp. 61-84.

conquered the Fertile Crescent, including Damascus, in 333 BC.²¹ During that time, a Hellenistic urban planning system was introduced. The characteristic elements of this plan included the temple of Jupiter on the western side of the city center; the *Acropolis*, a fortified last refuge for the citizenry under siege at the north-western corner of the city, the *Agora*, which included a marketplace and a theater located at the southern side of the temple, and a large area of residential quarters. The streets, which ran the length and the breadth of the city, divided it into a series of rectangular blocks. Every residential block was occupied by courtyard houses with a maze-like streets running in-between them.²²

Damascus came under Roman control during the first century B.C. The Romans imposed a new urban plan on the city that integrated the original Hellenistic town and the older Aramaic part into a single entity. Like other Roman towns, two great colonnaded streets, the Decumanus and Cardo, dominated the plan of Damascus.²³ The former street crossed the town east to west, while the latter, running from north to south, was the ancient road adjoining the temples and *agora*, which was then transformed into a forum. A *castrum* was also built in the northeast corner of the city. The rectangular shape of the city measured 500x750 meters and was surrounded in 395 AD by a high defensive wall broken only by seven gates.²⁴

After the Eastern Roman or Byzantine Empire achieved its final separation from the west in 395 AD, Damascus became part of this Byzantine Empire and was made capital of the region.²⁵ Several buildings were erected or rebuilt as churches during this era, among them the obsolete temple of Jupiter, which was rebuilt and transformed into the church of Saint John the Baptist. Later, the western hills of the city were included within the Roman wall as well as a Byzantine palace.²⁶ By the time Damascus fell to the hands of the Ghassanid Arabs and Sassanid Persians, the physical order of the city had started to disintegrate, and many encroachments on city streets took place. Nevertheless, the urban grid was still both functioning and visible.²⁷

²¹ Philip Khuri Hitti, *Capital Cities of Arab Islam* (Minneapolis: University of Minnesota Press, 1973), pp. 61-84

²² Norbert Schoenauer, *History of Housing* (Montreal: McGill University, 1992), p. 104.

²³ Schoenauer, pp. 83-85.

²⁴ Alsayyad, pp. 82-85.

²⁵ Hitti, pp. 64-65.

²⁶ Alsayyad, pp. 82-85.

²⁷ Alsayyad, pp. 82-84.

For the sake of spreading the Islamic message, the second caliph Omar dispatched Muslim troops towards the north, where they conquered Damascus in 634 AD. (A.H.13).^{28 29} The conquerors took over vacant properties that had been left behind by the fleeing Greek-speaking population. Initially, the Arabs did not live in any special quarters. Instead, they occupied a number of vacated houses in a variety of locations.³⁰ Transforming the church of St. John into a mosque is considered the most significant event in the Arab transformation. Damascus became the capital of the Islamic state during the Umayyad Dynasty in the year 661 AD (A.H. 40) when it reached the height of its prosperity.

In the beginning of the Abbasid Dynasty in 750 AD (A.H. 129), the capital of the Islamic state moved to Al-Koufah in Iraq and the former capital received less political and economic attention.³¹ By the twelfth century AD, new settlements started to appear outside the city's wall, such as *Al-Salihiya* quarter. The residents of this settlement came from Palestine. The migrated families settled first at the *Abu Salih* mosque outside the eastern gate of Damascus. In 1158AD, they migrated again to monastery at the foot of Qasiyun Mountain (Fig. 1-8).³²

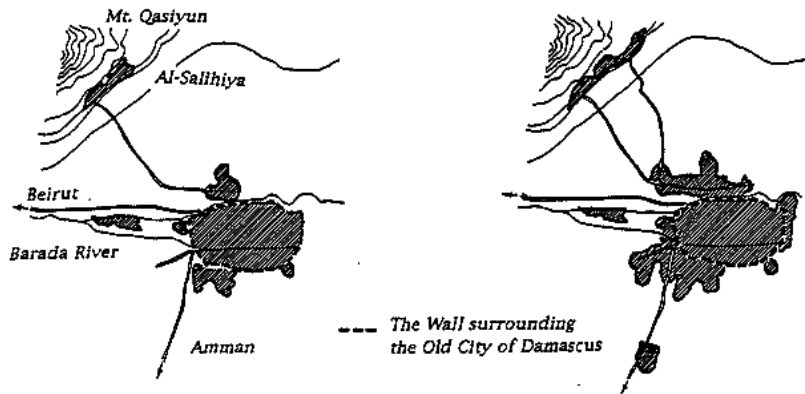
²⁸ *The Islamic Calendar starts in the year 621 AD, when the Prophet migrated from Mecca to al-Madind.*

²⁹ *D.S. Margoliouth, Cairo Jerusalem Damascus (Toronto: The Musson Book Co. Limited, 1907), pp. 407-417.*

³⁰ *Alsayyad, p. 88.*

³¹ *Hitti, pp. 86-89.*

³² *Toru Miura, The structure of the quarter and the role of the outlaw, the proceeding of the international conference on Urbanism in Islam (Tokyo: Research Project, c/o Institute of Oriental Culture, University of Tokyo, 1989), pp. 407-412.*



Mid 13th Century

Early 16th Century

Al-Muhandes Al-Arabi (magazine, issue No. 110, 1993)

Figure 1-8

The Ottoman Turks conquered Damascus in 1517, replacing the exhausted state of the Mamluks, and established an immense Mediterranean empire. This empire created an enormous market place where both individuals and products could circulate freely from Morocco to Iran. This facilitated the travel of caravans of pilgrims and increased commercial activities in the town located along the main routes. It was estimated that 20,000 to 30,000 pilgrims assembled annually in Damascus on their way to Mecca.³³ By the seventh century, trade routes were established from Europe to South and East Asia through the Middle East. The French, the British and the Dutch, realizing the potential of this region as a strategic trade link, established trade outlets under the auspices of the Ottoman Empire.³⁴ This economic prosperity was accompanied by an urban expansion, explained by Andre Raymond in the following saying:

This urban progress is apparent in the extension of built-up areas that, in many cities, took the form of vast suburbs developing along the main commercial routes, outside the town...Damascus, grew from 212 hectares at the beginning of the sixteenth century to 313 hectares around the middle of the nineteenth century...In Damascus the population increased from 52,000 at the end of the sixteenth century to 90,000 at the end of the eighteenth century (Fig.1-9).³⁵

³³ Andre Raymond, *the Great Arab Cities in the 16th-18th Centuries* (New York: New York University Press, 1984), pp. 12-22.

³⁴ Hitti, pp. 61-84.

³⁵ Raymond, pp. 5-7.

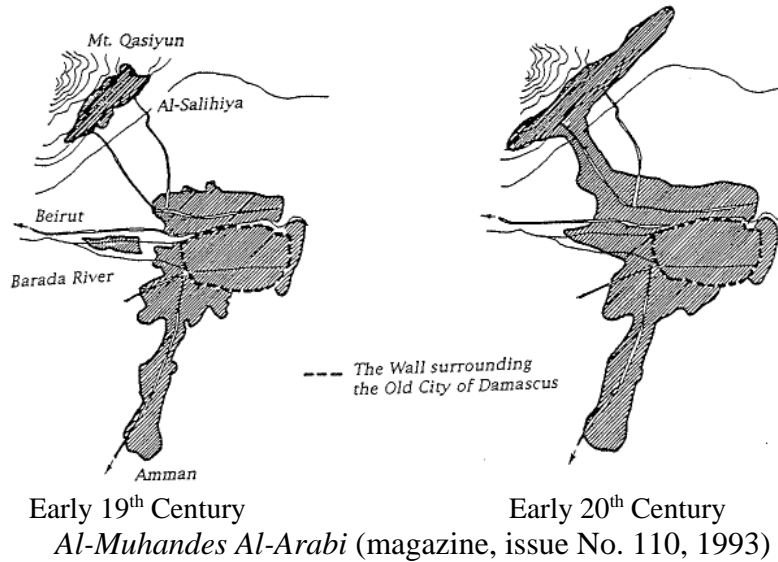


Figure 1-9

According to Stefan Weber, the Ottoman' urban and architectural influence on Damascus built environment was hardly noticed in the first few centuries. But in the second half of the 19th and the early years of the 20th centuries, due to the reformatory intention of the Ottoman, Damascus witnessed a new city-center to the northwest of the old center with new buildings such as; post and telegraph office, railway station, theater and etc. served by wide straight boulevards. In order to reduce the semi-autonomy of the province and centralize the government, the new buildings connected the province to the capital not only by function but also by the forms, free standing buildings, symmetrical elevations, protruded roofs and elongated rectangular, or well-rounded arch, out looking windows. Weber believes that Ottoman had gradually transformed the architecture and urban form of Damascus during the 19th Century up until the French took over. The origin of the modern concepts was Europe but those thoughts were sifted through Ottoman before they were applied in Damascus. The Ottoman interpretation of European architecture was adopted in the layout and decor of some private Damascene houses such as (*Bayt Fahri al-Barudi*, *Haled al-Azm*), the *Konak* (a house with rooms arranged around a central covered space, not courtyard, and opened toward outside). The direct European planning and architecture such as the Parisian apartment building started to appear in the second decade of the 20th century.³⁶

³⁶[http:// www.oidmg.org/weber/Stefan Weber Homepage startseite/ottoman...Ottoman Damascus of the 19th century artistic and urban development as an expression of changing times_ 3/19/2016](http://www.oidmg.org/weber/Stefan_Weber_Homepage_startseite/ottoman...Ottoman_Damascus_of_the_19th_century_artistic_and_urban_development_as_an_expression_of_changing_times_3/19/2016)

- The urban form was divided into two different urban zones:
- A- Public areas for economic activities, in the central zone of the town, which had relatively wide and regular streets.
 - B- Private or residential districts, which surrounded the commercial zone and had an irregular street network. Within a quarter, the street network generally comprised of one Thoroughfare Street and several dead-end streets.

The inhabitants of the quarters used the street networks to travel to and from their work places, as well as to specialized marketplaces located in the center of town. These quarters made up pockets that only opened up towards the roadways linking the interior of the town. The dead-end streets were quite remarkable, as they formed nearly 50% of the total length of street networks in Damascus. A similar proportion was observed in other Islamic towns such as Algiers, Cairo and Aleppo.³⁷ The system of closed quarters and dead-end streets form an ingenious solution to the issues of security, fully realizing the ideas of a society dominated by Islam and ensuring nearly total isolation of family life. An extensive analysis of the street network in the traditional settlement will be conducted in the following chapter.

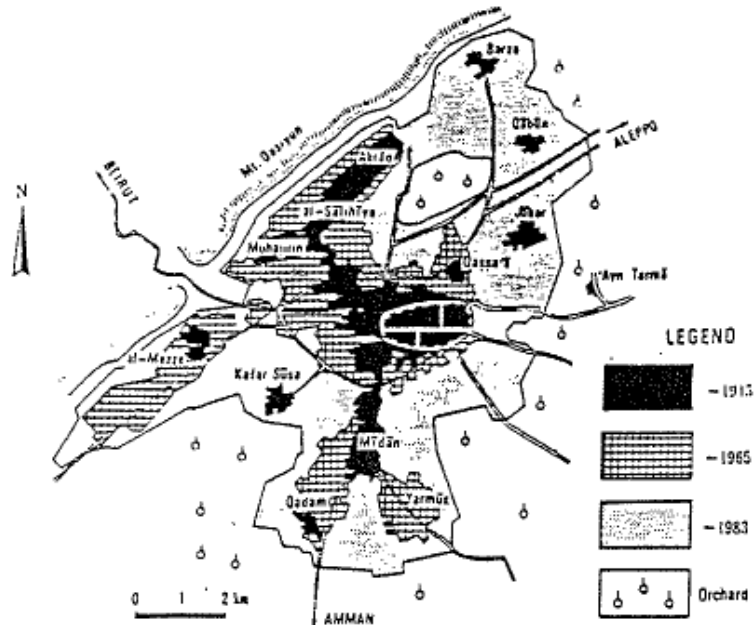
After their victory in World War I, the French and British divided the Middle East, marking the end of four centuries of Ottoman rule in the region. Under French rule, Damascus reclaimed its status as the capital of the Syrian region. In 1946, Syria celebrated its independence.³⁸ By this time, European style buildings and new housing types appeared in the urban fabric of the city.

During the French Occupation 1920-1946, Damascus residential sector was comprised mostly of introverted, mud-brick houses, except for a few new stripes served with wide, straight streets such as Baghdad Street. After a few decades of adopting European architecture and city planning, introducing motorized vehicles and attempting to establish basic industries, a significant number of traditional houses were replaced by low-rise extroverted apartment buildings served by straight streets. The remaining traditional houses were located either in the center, mostly the old city of Damascus, or along the outer perimeter of the city (Fig. 1-10). New public

³⁷ *Raymond, p. 15.*

³⁸ *Hitti, pp. 61-84.*

buildings started to appear without the Ottoman architectural accents such as the National Museum.



Urban development of Damascus
Al-Muhandes Al-Arabi (magazine, issue No. 110, 1993)

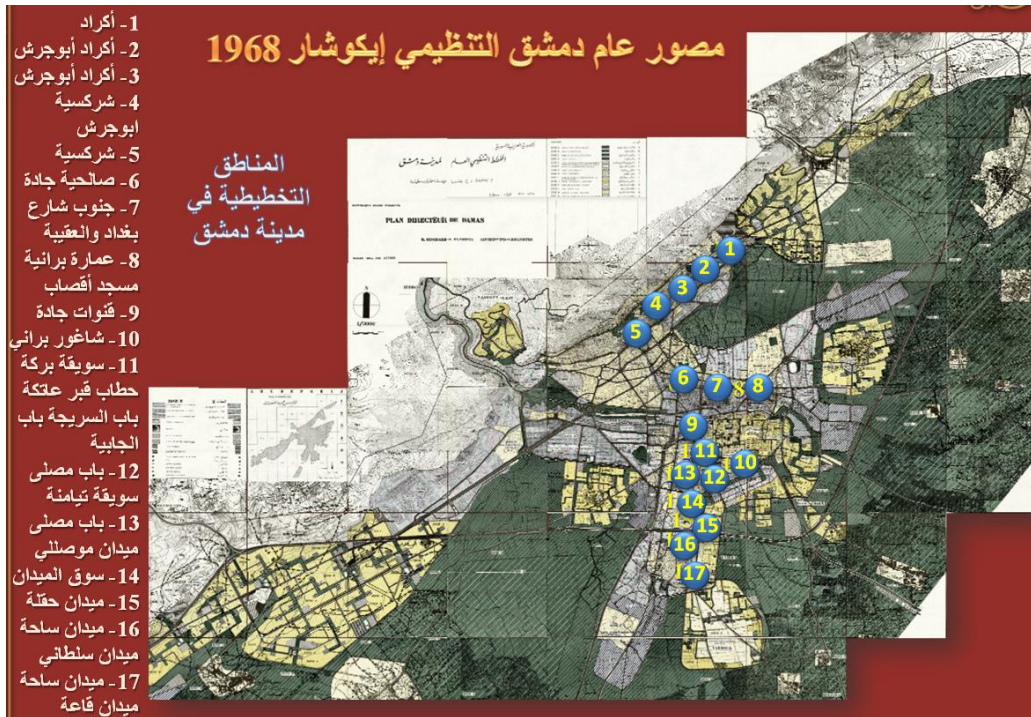
Figure 1-10

The Syrian authority treats the old walled city of Damascus differently, especially after the city was registered in the world Heritages list in the UNESCO. Hence, obtaining a permit to renovate, restore or repair a building in the old city of Damascus bears the usual strict requirements such as using the same building materials, duplicating the dimensions of the old building including the size and location of openings as had existed before. In an attempt from the Municipality to vitalize the old city, it permitted the conversion of residential buildings to restaurants and motels. By the late 1980's, there were more than 100 restaurants and 50 motels. Despite the adherence to the physical stipulations mentioned above, those businesses drastically changed the social fabric of the old city to the point that the Municipality stopped issuing any new permits. Dead-end streets lost their meaning and function by opening a café or a restaurant with entrances from the dead-end streets. Later, more permits were issued due to corruption and favoritism.

In the late 1970's, some attempts were made in the region (mostly in Jordan) to construct houses with traditional building materials like wood and mud. Since the cost of building with these materials far exceeded the cost of constructing with cement bricks and concrete slabs, people were discouraged from re-adopting the old technology. Lack of skilled traditional construction labor added to the high cost of constructing and maintaining structures built in wood and mud. Obviously, environmental factors were not a priority.

Traditional houses, which are located at the outer edge of the city, have been treated differently from those within the old walled city. In 1978, the Authority issued the current Law of Planning. This was intended to replace traditional houses with four-story residential buildings. The main objectives of the law were:

1. Providing wide and straight streets to ease vehicular movement as well as facilitate infrastructure layout.
2. Increasing the investment value of land by increasing the FAR factor.³⁹



Damascus's planning zones according to Ecochard' Plan, 1968
(Damascus Municipality)

On the left margin are the numbers and names of all seventeen quarters subject to planning Law

Figure 1-11

³⁹ FAR stands for floor Area Ratio; calculated as the total built area divided by the site area.

Today, almost all remaining traditional houses are in poor structural condition. Such houses have been neglected for two reasons: First, in the case the house was leased, the Rental Law and its ramifications discourage the owner from investing in his property. Second, the market forces and the implicit assumption that sooner or later such houses would be replaced causing people to halt maintenance of their houses.

Burkhardt Von Rabenau in Collaboration with *Syrian-German Technical Cooperation Program for Sustainable Urban Development Rehabilitation of the Old City of Damascus Project* published a detailed report about the Old City of Damascus; land use map, population, buildings type/condition, residential and work establishments, advantages and disadvantages of living in the Old City, income and percent of household own /rent.⁴⁰

⁴⁰ Burkhardt Von Rabenau in Collaboration with German Technical Cooperation, "*the Old City of Damascus in the Eyes of its Residents*", (Damascus Columbus, 2009, revised, 2011).

II - THE TRADITIONAL SETTLEMENT

2.0- INTRODUCTION

The traditional sectors in most cities of the Middle East have a common urban development pattern and show similarity in urban character.⁴¹ This can be attributed to Islamic principles and building guidelines, which affected both the shape of the built environment and the social life, existed within it. This chapter provides an overview of a residential quarter (*mahalla* or *hay*) established on the outer circle of Damascus. It then discusses one particular cluster in *al-Mazze*h quarter, as it was in the first half of the last century when it functioned on traditional principles.

The time of the establishment of those residential quarters on the periphery of the city varies and the precise dates are unknown, except in a few cases such as *al-Salihiya* quarter which was established in 1158 AD.⁴² There is no doubt that all of the quarters outside the wall were created after Damascus became an Islamic city in 661 AD.

2.1- TRADITIONAL BUILDING GUIDELINES

It is important to understand the socio-cultural framework of the people who created the traditional built environment in Damascus. The basic principles of the building process, both at the individual dwelling and the neighborhood (*mahalla*) levels were derived from the spirit of the Islamic faith. In Islam, there are four *Sunni* schools of thought –*madahub* plural of *madhab*- *Hanafi*, *Maliki*, *Shafi’I* and *Hanbali* and one *Shi’i* school of thought *jaffari*. The schools are named respectively after the scholars who developed their teachings through writings on Islamic law during the first two centuries of Islam.⁴³ The *Hanafi* and *Shafi’I madahub* have been the most influential Islamic school of thoughts in Damascus.

⁴¹ Hugh Roberts, *an Urban Profile of the Middle East* (London: Croom Helm Ltd. 1979), p. 96.

⁴² Miura, *Urbanism in Islam, the Structure of the quarter and the role of the Outlaws*, V. 3, (Tokyo: Hongo, Bunkyo-Ku, 1989), p. 403.

⁴³ Basim Hakim, *Arabic Islamic cities* (London: KPI Limited, 1986), p. 12.

According to all schools of thoughts there are four major sources of Islamic law:

- 1- The *Qur'an* as the main substantive source.
- 2- The *Sunna* –the sayings and acts of the prophet Mohammad (peace be upon him)⁴⁴ as a complementary source to the *Qur'an*.
- 3- *Ijma'*, or the consensus of the entire jurists.
- 4- The *Qiyas* or *Ijtihad* or the use of the human reason in the elaboration of law.⁴⁵ *Shi'i* school of thought did not adopt this source.

Customary law (*Urf*) is one of the supporting sources in Islamic law (at the local level). It is the product of the nature of the people and their culture, inherited by generations until a new custom can overrule it. Legal rulings based on *Urf* change according to changes in circumstance, place and time. It is the common practices (saying and doing) of a given society, consistently used and accepted by the people with wise reason and sound behaviors. In order for *Urf* to constitute a valid base for legal decision, it must be consistent, acceptable and reasonable practice of a group of people. It is worth mentioning that *Urf* or custom is based on the used for large group of people while a habit is to repeat doing things for individual or few.

One should distinguish between *Urf* and *Ijma*. *Urf* necessitates the agreement of the dominant majority of the people and the rules by *Urf* are changeable by time or place, and the act required an element of continuity over a period of time. However the rules by *Urf* are changeable by time and place. *Ijma*, on the other hand, is the consensus of all jurists (professionals), and the verdict prohibits any further discussion of the same issue, creating a precedent that engenders constancy and predictability. Thus, there is no need for re-examination or amendment. In addition, *Ijma* does not require consistency.

In order for *Urf* to be considered a base for judgment it must be:

- 1- Practiced at the time of transaction.
- 2- Must not violate the definitive principle of the law.
- 3- Must not contravene the clear stipulation of an agreement (such as rental law). The rules in the contractual agreement prevail over custom. Resorting to custom is only valid in the absence of

⁴⁴ Peace Be Upon Him, also written as *pbuh* said by Muslims as an indication of respect and continuous prayers for Mohamed.

⁴⁵ *Hakim*, p. 11.

agreement. Custom is invoked when no clear text is found to determine the term of a particular dispute.⁴⁶

Since the physical development of communities is a dynamic and continuous process, rulers and building principles or guidelines were constantly in demand to solve the conflict among neighbors. The settlement of early cases of conflict, which were settled by the Prophet (pbuh), caliphs and other religious leaders, attracted the attention of interested judges and others, and were soon used as precedents (*Ijma*). There were some differences among the different schools of thoughts in the interpretation of the sources and/or in the implementation of the principles.

However, those differences had little effect on the overall framework of the building process and on the development of the urban form.⁴⁷ This framework is illustrated in the following description of the most relevant Islamic principles affecting the physical environment and social life: land use and ownership, access, harm and other related issues.⁴⁸

2.1.1- Land ownership:

The main principle of the land ownership in the early days of Islamic legal system was:

*Everything that is necessary and useful for survival is subject to ownership, and conversely, what is unnecessary or useless cannot be owned.*⁴⁹

And the general mechanisms that governed land ownership in Islam were:⁵⁰

- 1- Appropriating of a property from vacant (dead) land.
- 2- Transferring of a property by sale or gift.
- 3- Continuity through inheritance.

While the last two mechanisms were and still are commonly practiced in many societies including the Islamic, the first principle was common during the early Islamic period. It was based on the Prophet's (pbuh) saying:

“al-nas naso Allah, wa al-ard ardo Allah, man ahyaa ardan mayta fahya lah wa-layssa li-arak ul-zalemi hak” which translate to:

⁴⁶ Shari'i Abdul Azeez Bello III, *Application of Urf in Islamic Law* (International Islamic University, Malaysia), Posted in 2013, (Internet accessed, 3/3/2014).

⁴⁷ Hakim, p. 12.

⁴⁸ See Appendix B for the evolution of Islamic Law and its Philosophy.

⁴⁹ Akbar, p. 26.

⁵⁰ Akbar, p. 27.

“The people are Allah’s people. The land is Allah’s land. He who revives a piece of dead land will own it, and the unjust root has no right.”⁵¹

Muslim jurists recognized the un-owned and unused land (without trace of building, cultivation, or communal use, such as a cemetery) as *mawat* or dead land. Hence, it could be appropriated. According to custom, dead land may be revived and owned by the reviver. Since properties were appropriated on a first come first serve basis, disputes were common between the parties who shared, controlled and used adjacent properties. The parties had to communicate to reach agreements. Some disputes had to be resolved by judges or religious leaders.⁵² In the past, owning land through reviving was applicable on all levels, whether individual, community or state.⁵³ Currently, this principle is obsolete, except in Saudi Arabia where this right is restricted to desert land and the approval of the Emir of the district is required before the land can be registered as privately owned.

Muslims had used one of the following three mechanisms in order to appropriate and establish land ownership:

2.1.1.1- Demarcation

Demarcation was the first step toward reviving a piece of land. Whatever was available of objects such as stones, sticks or walls was used to define the piece of land. Demarcation gave the reviver some security and freedom from harassment for a short period of time. Although this principle gave the demarcator precedence over others, it did not secure ownership of the demarcated land. Hence, demarcated land was not owned and could not be sold unless it was revived. Demarcation had to be followed by an effort to revive the land either through building on it or through cultivation.⁵⁴

2.1.1.2 – Allotment

The act of allotment was the act of bestowing or allotting a piece of dead land, or land owned by the state, to individuals or a group as a gift or compensation. Allotment was of two types: the first type was allotting to

⁵¹ Akbar, p. 23.

⁵² Akbar, Chapter 1.

⁵³ Akbar, pp. 27-29.

⁵⁴ Akbar, Chapter 1.

fiefs through revival. The second was that of allotting land with the right of utilization but not ownership, usufruct.⁵⁵ Allotment was practiced mainly in the development of new towns.

*Al-Baladuri, in his documentary, Futuh al-Buldan, report that when the caliph Ja'far resided (232/847) in Haruni he built many buildings and made allotments to the people in the back of the town of Surrahman ra'a...Then he established the town that he called al-Mutwakkiliyyah.*⁵⁶

2.1.1.3 – Revival

This act used to be taken by the reviver, with no need for permit from the authorities. No constraints were applied regarding the size of the revived property or the activities which could take place on it. The reviver could invest in this land freely as long as the act did not harm the neighbors and their properties. Aside from some jurists from the *Hanafi* school of thought, jurists from all other schools of thought asserted the possibility of reviving dead land abutting urbanized areas. There is sufficient data to conclude that revival of land was a well-known and actively practiced mechanism leading to land ownership until the late period of the Ottoman Empire.⁵⁷

Some schools of thoughts considered reviving land that had been neglected for a “long time” to be converted back to dead land again, and thus it could be re-revived. This “long time” varies in duration from 30-60 years, depending on the school of thought or the customary law (*Urf*). In allotted and demarcated land, all schools of thoughts agreed that the time limit for having an allotment without utilizing it is three years (the second caliph Omar allowed three years)⁵⁸, after which the right of establishing ownership to the land expires. Hence, demarcation, allotment, reviving, and time limitation were all basic mechanisms of establishing landownership in the traditional Islamic built environment.

As time went by, and due to force of necessity, the simple right of land ownership evolved to a bundle of rights in addition to individual landownership, such as owning the land without the structure on it or having

⁵⁵ Akbar, pp. 28-32.

⁵⁶ Akbar, p. 29.

⁵⁷ Akbar, pp. 28-32.

⁵⁸ Akbar, Chapter 2.

the right to use the land without ownership (prescription, usufruct, *waqf*, leasehold, etc).

- **Prescription** (*al taqadum al muksib*) permitted the acquisition of property through 1-peaceful, 2-overt, 3-continuous possession of a property if the owner (state or individual) fails to assert its/his right during a given period of time. In urbanized areas, prescription was used widely in a gradual process of encroachment upon the thoroughfare, by erecting columns, building a bench or flower pots first, then building sidewalls or covering the space with tarp and so on until enclosing the space and adding it to the original property. This mechanism of acquiring land had to do with the *fina* principal, which is discussed later. The above mechanisms justify the high ratio of mass verses void as well as the private verses public domains in the traditional settlements and the variation of the street width.
- **Usufruct** gives the right of use and exploitation of a property to a person other than the owner. An owner who has full ownership right over the property can only grant it. Usufruct tenure was most common in the rural areas. It covered the right of using, improving and inhabiting a plot of land. It can be terminated, transferred or sold and it can lead to ownership by prescription, mostly if it was a state owned land.
- The *waqf* is a type of trust and a form of **charitable endowment**. *Waqf* capital is given to Allah in perpetuity and can never be repossessed, alienated or subdivided. The revenues generated from the *waqf* provide first for the charitable purposes for which it was established; then the balance is distributed among beneficiaries. Though the origin of this practice is unknown, according to Akbar, many cases of *waqf* had taken place in the Ottoman time. Since *waqf* property is removed permanently from the tax base, peasants who could not afford to pay their agricultural land taxes turned their land to *waqf* and kept working and living from that same land.
- A property owner under specified condition and a fixed rental arrangement could grant **Long-term Leasehold**. It gives the lessee broader rights than are normally under usufruct or ordinary tenancy. It was prevalent in medieval times, used by the authority to develop new settlements, channel urban expansion to a desired area and re-use decayed and abandoned older zones.

- Another type of land tenure is **Preemption** (*Shuf'a*), which restricts the right of an individual to dispose of a property by giving joint owners and sometimes abutting landlords the right to preempt the transaction in their favor. It is based on a desire to protect the interests of family members, partners and nearby owners from damage incurred by selling part of the property to outsiders and fragmenting the property to unusable state. Partners have precedence over neighbors in the exercise of preemption right. Since this right has never been recognized in Syria, most of the properties in the traditional quarters were subdivided to unusable parcels in term of both shape and size, where a house could be divided among inheritors and each person owned a room and the courtyard was in joint ownership (*mushaa*). The scenario becomes more complicated when it comes to the kitchen and the bathroom, or if one or more of the owners sold his/her right to a stranger, this would have placed the property in dysfunction status, as illustrated later in common wall cases.
- **Easement** right (*Irtifaq*) is a very important factor in shaping the traditional built environment. Someone whose property is surrounded by abutting properties and has no access to a street or utility services has to buy access to his property, bringing/disposing water and utilities through the neighbor's property. This right can be established by custom or agreement among the parties involved with or without formal deed. It is terminated at the expiration of the agreed upon time or if the property to which it is attached disappears.⁵⁹ (Fig. 2-1)

⁵⁹ All the above tenures, Serageldin, Doebele, El-araby, *Land Tenure Systems and Development Controls in the Arab Counties of the Middle East*, from *Housing: Process and Physical Form*, Conference Proceedings, Aga Khan Award for Architecture, 1980.

Prescription <i>Al Taqadum al muksib</i>	The right to acquire a property due to use over an extended period of time.
Usufruct <i>Haq Intifaa</i>	The right of use and exploitation of a property to a person other than the owner
Charitable Endowment <i>Waqf</i>	Giving ownership of a property to <i>Allah</i> and working to live on that property
Long Term Leasehold	The lessee of a property has broader rights than are normally under usufruct or ordinary tenancy
Preemption <i>Shuf'a</i>	Gives joint owners and sometimes abutting landlords the right to preempt sale transaction in their favor.
Easement <i>Irtifaq</i>	The right to buy access and bring/dispose water and utilities through the neighbor's property.

Table of the property right tenures in the traditional built environment

2.1.2– Access

Streets and means of access in the traditional urban fabric were classified into two types, depending on their physical and functional aspects: open continuous and dead-end streets.

2.1.2.1- Open continuous Street

This type of street is the public right-of-way and is accessible to all. The width of this type of street was established by the Prophet (pbuh): “*Etha iktalaftom fi altarik joueild ar-dohou sab-ata ath-roo,*” which translates as: “If you disagree about the width of a street, make it seven cubits.”⁶⁰ Hakim states that this dimension is wide enough for two fully loaded mature Arabian camels to pass through this kind of access, as dictated by defense and commercial needs. Since the continuous street was open to everyone, passers-by had the right to object to encroachments upon the street. As long as there were no objections for a long period of time, the street could vary in width according to the decisions made by the adjacent residents. *Sahnoun*, a *Maliki* jurist, accepted this type of encroachment as legal when it was older than 60 years. Thus, encroachment on the street could follow three scenarios:

⁶⁰ *Hakim, p. 146. A cubit is from 46 to 50 cm.*

1) Demolition might be required if the street's width became less than seven cubits. Malik narrated a case involving Caliph Omar:

*Omar passed by Abu Sufian while he was building his house in Madina, and he noticed that the foundation of the exterior wall protruded into the street. Omar said, "Abu Sufian, you have exceeded your rights and protruded into the right of others, so remove your wall," Abu Sufian obeyed Omar and began to remove the foundation stones until completed, then asked caliph Omar where he wanted him to place the wall. Omar replied "I want what is right."*⁶¹

2) If a street is wider than 7 cubits was encroached upon and the encroachment did not reduce its width to less than 7 cubits, this encroachment was allowed to stay.

3) If the encroachment existed for a long time without objection, even if the street's width was less than 7 cubits, the encroachment was left undisturbed. An exception, which allowed one to build upon the street's encroachment, was upper floor cantilevers or overpasses, which were high enough so as not to cause any harm to the public.⁶²

*Sahnoun was asked about a man who owns two houses, opposite each other across a street who wanted to join them with a room. He said if he created no harm then he should be allowed, but if he created harm to the street, such as by narrowing it, then he should be prevented.*⁶³

A few other things were not allowed in the continuous street, such as building columns, storing goods (unless for temporary loading and unloading and services to houses when no harm is done). The tying or slaying of animals, and creating a public nuisance to passers-by and neighbors were not permitted regardless of the width of the street. In addition, down spouts were not allowed to discharge their water in streets with width less than 7 cubits in order to avoid harm through splashing the passers-by.⁶⁴

2.1.2.2- Dead-end Street

This type of access had a crucial effect on residential urban form and the social life of the inhabitants of the traditional settlements. The dead-end street emerged over time through the incremental growth of abutting

⁶¹ *Hakim, p. 25.*

⁶² *Hakim, p. 26.*

⁶³ *Hakim, p. 29.*

⁶⁴ *Hakim, p. 29.*

properties with a space necessary for circulation (organic urban growth). It was, and still is, considered to be privately owned by the abutting residents who had access to it. Ibn Abidin says that:

*The situation of usage of a dead-end street is just like that of partners of a house who reside in it; they use it, but no one is allowed to build in it without the consent of the others.*⁶⁵

This type of access was, often, not public and belonged in co-ownership to the residing parties who had access to their properties through it. The dead-end street was treated in a similar way to a private courtyard owned by all residents abutting it. Thus, no individual was allowed to make any change in a dead-end street, such as opening a shop or projecting a cantilever or overpass, without the consent of all the partners.⁶⁶ Typically, the width of the dead-end varied depending on the residents' needs. In extreme cases, the width could be less than one meter.

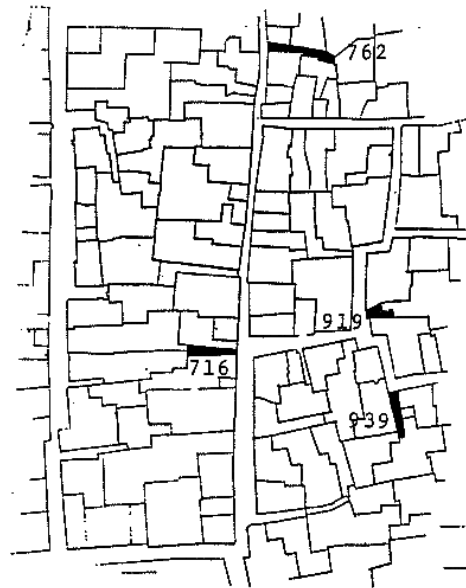
The private claim to ownership of a dead-end street was sustained not only by practicing control over it, deciding on its dimensions, determining the users, but also by a property deed in some cases. (The property deed is either collective on the part of all surrounding property owners, or individual with right of easements for the neighbors.) (Figure 2-2)

Every resident was entitled to use the dead-end street from its beginning to the doorway of the resident's house. Thus, a person whose doorway was at the end could use the full length of the dead-end street. In some cases, the person who lived at the end was allowed to move the door forward if it did not obstruct other doors or harm the neighbors. In contrast, the person whose house was at the entrance of the dead-end street, but had access from the public continuous street, was not allowed to use the dead-end street or to have an entrance to his house from it unless he had the agreement of all the occupants, or if he/she had the agreement of the occupants who always pass by the proposed door. The proposed door could not be located directly opposite or next to the neighbor's door. In some cases, residents used to have gates at the entrance of their dead-end streets and used to shut them down at night, to exercise control over the access to their neighborhood and to have special social activities in this enclosed space.⁶⁷

⁶⁵ Akbar, p. 125.

⁶⁶ For more details refer to Akbar, Chapter 6, and Hakim, Chapter 1.

⁶⁷ Akbar, p. 97.



The private claim to ownership of a dead-end street was sustained by a property deed
Taken from cadastral plan al-Mazzeah no. 63 Section 4, (1995, by the author)

Figure 2-2

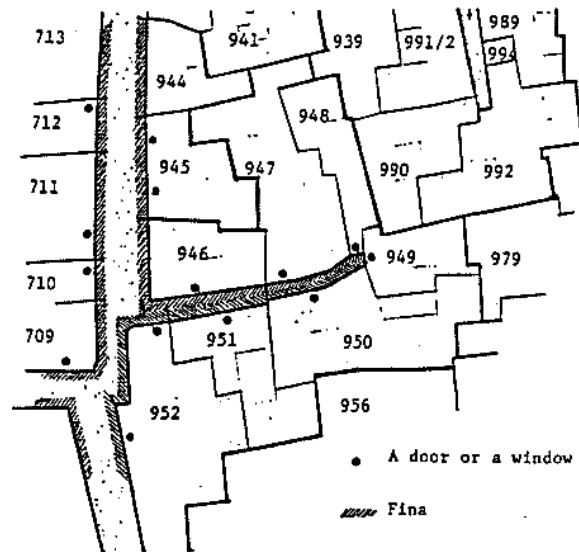
Clustering houses around a dead-end street often creates geometrical challenges, but this was not the case in the traditional settlement. Since privacy was a paramount requirement, narrow entrances were used as vestibules and prevented direct overlook from the main entrance inside the house. The layout of houses, which have the potential of wide direct access from the dead-end, provided architectural elements at the entrance to prevent direct overlook. Some Western scholars, somehow, attributed the indirect access to the mysterious belief of the residents that evil spirits travel in a straight line and cannot enter a house with a crooked entrance.⁶⁸

2.1.2.3- Fina

Fina has two meanings: The private open space within a property, the courtyard, and the space between a private and a public space. Under the second meaning, fina was a crucial street-related element, which extended the right of the property owner or user beyond his building's physical boundaries. It was associated with openings, mainly entrance doors. This right empowered the owner or user of a house to use the exterior space

⁶⁸ Schoenauer, Chapter 5, *the Oriental House*.

immediately adjacent to the exterior walls of the house, and forbade others from using it except for passing by (Figure 2-3).



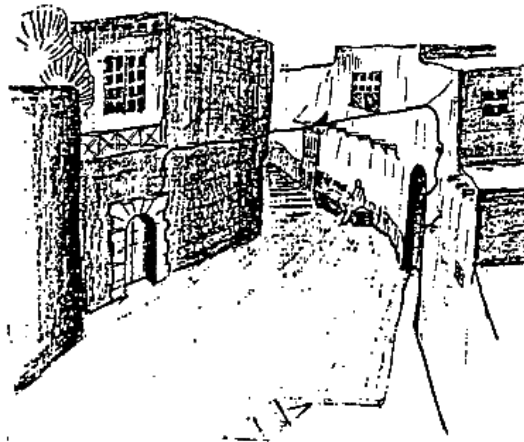
Fina was associated with opening, mainly exterior walls with entrance doors
 Taken from cadastral plan al-Mazzeah no. 63 Section 4, (1995, by the author)

Figure 2-3

Fina was a permanent right without which the property and the entire traditional urban fabric could not function properly. Traditional towns were compact and dominated by private property with little public space. *Fina* was the instrument that gave direct access from the public domain to the private and vice versa and it prohibited people from blocking each other's pathways. People used their *fina* for sitting and for temporary storage. Street vendors, as well, could use *fina* to sell their products if the owner did not object (Figure 2-4).

Fina varied in width depending on the type of street and the activities taking place in it. In general, it was between 4 and 6 *shipers* (finger spans) or about 1 to 1.5 meters (as per customary law, *Urf*).⁶⁹ When private properties were closed to each other, as in a dead-end street, *finas* were shared by respecting the principle that one-man usage must not cause harm to his neighbors. As mentioned earlier in the Prescription mechanism, people encroached on the street/dead-end street by building gradually in their *finas*.

⁶⁹ *Hakim*, p. 29.



People built benches in their *Fina*, (1995, by the author)
Fig. 2-4

2.1.3- Liability or Harm

The main objectives of establishing building principles were to settle disputes, avoid conflicts and prevent disruption of the people's lives and their environments. Acceptance or rejection of any building activity or alteration in the function of space depended upon the effect caused by any action on the well-being of the neighbors. The most frequent used principle in building matters was the Prophet's (pbuh) saying: "*La darar wa la dirar.*" There are many interpretations of this saying such as:

"There should be neither harming nor reciprocating harm"⁷⁰;

"Do not harm others or yourself, and others should not harm you or themselves."⁷¹

This saying was used constantly by Muslim Authorities (judges, jurists, prayer-leaders, and scholars) to evaluate the legality of such actions (new building or opening, changing function, etc.) in the physical environment.

In order to illustrate how the nature and sources of harm were classified and judged, it is important to know first that the age and duration of harm played a major role in judgments. It was ruled that an old action, which later caused harm to another, had the right to exist (the right of precedence), and the parties who acted later had to accept the previous

⁷⁰ Akbar, p. 93.

⁷¹ Hakim, p. 152.

damaging acts as constraints. For example, a person built his house and opened a window such that it did not overlook other houses. Later the neighbor built a house that was overlooked by that window and wanted the first person's window to be sealed. The window was allowed to remain because the first window preceded the second, and therefore, the latter had to adjust in this case. Some judges referred to the Prophet (pbuh) saying that:

“He who possessed a thing over his opponent for ten years is more rightful” (if the opponent does not protest).”⁷²

According to this saying, a period of ten years was considered a sufficient length of time for a harmful action to gain the right of precedence. However, if a person saw his neighbor initiating an action that would damage him or his property and did not protest in time, his reticence was considered consent. The possibility of creating the right of precedence encouraged the people to act quickly if they believed that their rights have been violated. Sources of harm between two properties were classified as either those affecting people or those affecting properties.

Harm and Disturbance Affecting People

2.1.3.1- Noise disturbance

The activities that were frequently mentioned as being aurally offensive were maintaining stables for livestock, garment beating and wheat grinding. The harm caused by wheat grinding was in fact due to the vibrations transmitted to the neighbors' wall rather than the actual noise generated by the mill. The principle of eliminating disturbance was achieved through different solutions. Sometimes, the acting party was asked to displace the millstone to a central room in the house, thus, creating a buffer zone between the source of disturbance and the neighbor's wall.⁷³ In other cases, another wall was built, with deep foundations, in front of the neighbor's wall to absorb and eliminate the transmitted vibrations.

2.1.3.2- Olfactory Disturbance

The sources of this type of disturbance were those functions, which created either smoke or offensive odors. The attitude taken towards smoke varied. For example, the smoke of a kitchen or a baking pit, which was

⁷² Akbar, p. 100.

⁷³ Akbar, p. 97.

necessary for living, was permitted. On the other hand, the transformation of a space from residential to industrial or an increase in the size of a business, such as a public bath or a bakery, which would increase the amount of smoke, was considered harmful and hence was prohibited. The following example will illustrate this aspect:

A man had an oven with one source of fire and constructed another source of fire to increase the heating capacity of his oven and the existing chimney to evacuate the smoke from both fire sources. The neighbors protested on the ground that more smoke was being generated and therefore causing more harm. They complained to the judge (kadi) who agreed with their complaint, and he ordered the man to move his recently constructed additional source of fire.⁷⁴

Ibn Ar-Rami related that no one could establish bath-fires without the consent of the damaged neighbors.⁷⁵

Offensive odor was also considered severe harm among jurists. There were some cases preventing the location of latrines or uncovered canals near the neighbor's home or the mosque. Hence, auditory and olfactory disturbances were among the most common reasons for the location of particular commercial institutions and activities in specific neighborhoods or markets of the Islamic city. Industries such as tanneries were located always on the peripheral edge of the city.

2.1.3.3- Visual Intrusion

The segregation of men and women in Islam will help us comprehend the Muslim perception of the hierarchy of space, its shape and the level of privacy and activity anticipated in each space. In early Islam, women had the right to be educated, to inherit, to divorce, to vote and to involve themselves in public political affairs.⁷⁶ At the same time, Islam applied certain restrictions on the behavior of both men and women, which led to the segregation of male and female member of society. One of many verses in the Quran concerning the seclusion of women is given below:

⁷⁴ Hakim, p. 31.

⁷⁵ Akbar, p. 97.

⁷⁶ Tasneem A. Chowdhury, "Women's Domain in Rural Housing in South Asia", Thesis (McGill University, Montreal, 1992), p. 12.

“Stay quietly in your houses, and make not a dazzling display, like that of the former times of ignorance”, (Surah al-Ahzaab, Verse 33).⁷⁷

The house and neighborhood are very visible products of Islamic thought and custom. Seclusion is an important factor in the use of household space and the orientation of dwellings. The women’s activity center is based on the private life of the family and is hidden from the public eye. The women’s domain is the most private, and the street is the most male-oriented. However, human beings seek privacy regardless of religion, belief, or social background. Muslims consider privacy as a right and a duty. There are many verses from the Quran and sayings from the Prophet (pbuh), that teach the virtues and the importance of privacy, the right to it, and the respect of it. One of such verses says:

“Say to the believer that they should lower their gaze and guard their modesty. That will make for greater purity for them, and God is well acquainted with all that they do.”⁷⁸ (24:30, Ali)

All these verses and sayings were the basis of protecting privacy and avoiding intrusion. Opening a window that facilitated visual overlooking was considered harmful and an offence. Thus, jurists have ruled that this offence must be amended by correction or removal of the source of offense. There have been some differences among the schools of thought in the interpretation and prevention of visual intrusion. In comparing doors and windows on upper floors, one jurist explained that doors are made for movement in and out, and do not invade privacy as much as windows. Windows are more harmful, for they might overlook a neighbor. In case of disputes, he allowed doors, but not windows.⁷⁹ A new window facing the neighbor had to be high enough so as not to look into the neighbor’s home. The acceptable height for a windowsill has determined from the interior space by Caliph Omar:

A bed is to be placed underneath the window, and if a man standing on it does not see through it then the window is allowed to remain, otherwise it should be shut.⁸⁰

⁷⁷ Translated by A.Y. Ali (1983) and quoted in Rghei, 1987, p. 50.

⁷⁸ Hakim, p. 145.

⁷⁹ Akbar, p. 96.

⁸⁰ Hakim, p. 36.

According to Hakim, a bed height was given as 4 to 5 *shibers* – *finger spans* (from 0.80 to 1.25 m). The bed was also interpreted later as any object in a room, which could be used to stand on. Adding 1.6 m to that dimension as an average eye-level height of a man, would make an acceptable height for a window sill approximately 2.50 m.

In case an opening was causing damage to the neighbor and the ruling was to seal that opening, everything related to the opening must be removed such as the frame, threshold and lintel so that there is no trace that will support a future claim of precedence.

Liability Affecting Property

The ownership and integrity of a property was respected and no action was allowed that would decrease its value or usefulness or create a nuisance to its owner. This principle was supported by many verses and sayings. Verse 26:183 in the Quran says:

*“And diminish not the goods of the people, and do not (make) mischief in the earth working corruption.”*⁸¹

The Prophet’s (pbuh) sayings clarify that: *“He who takes from the land without rights will, on the Day of Resurrection, be submerged to the seventh layer of the earth.”*⁸² Thus, property was protected from both direct and indirect sources of damages as explained below.

2.1.3.4- Direct (physical) Damage

The most common structural element that raised dispute was the common wall, since every house shared at least one wall with the surrounding houses. Damaging the neighbor’s wall, burning things near it, or using the neighbor’s wall without permission to support new construction was considered harmful. The Prophet (pbuh) encouraged using the neighbor’s wall only after obtaining permission from the neighbor.

*“A neighbor does not forbid his neighbor to insert wooden beams in his wall”*⁸³

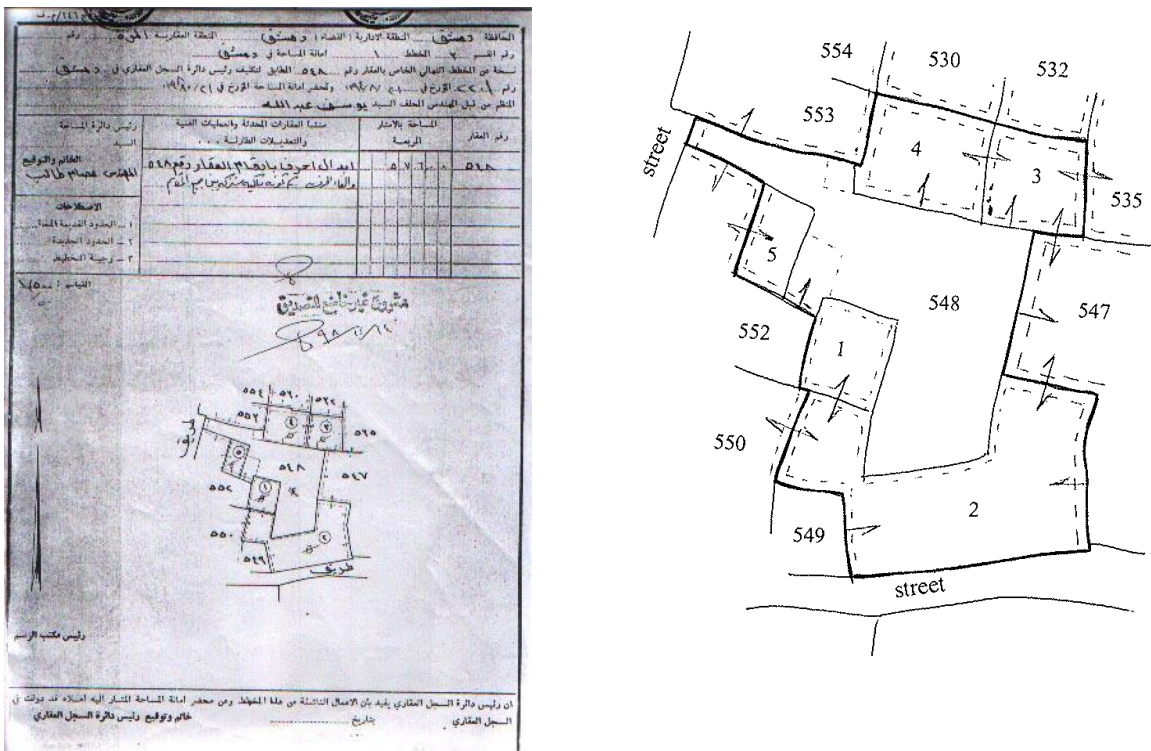
⁸¹ Hakim, p. 144.

⁸² Hakim, p. 148

⁸³ Hakim, p. 154.

Akbar illustrated several cases regarding damages to wall (such as planting a tree, digging a well or cistern, locating a latrine near the common wall, directing water spout toward a wall) regardless if the wall was owned by one party or was evenly owned by both parties.

Now a day, in a Cadastral plan issued by the Authority; a short perpendicular line on a property line with arrow head facing one property means the wall belongs to that property and if the short line extended across the property line with two arrow heads in the opposite directions means the wall is owned and shared equally by both properties (Figure 2-5).



Cadastral plan shows ownership of common wall among adjacent properties
And fragmenting the property to dysfunctional status, (2015, by the author)

Figure 2-5

2.1.3.5- Indirect Liability

This type of harm has to do with speculation and depreciation of the property value. For example, opening a new public bath or bakery would depreciate the value of the houses surrounding it, for it would increase the risk of fire and disturb the privacy of the residents. Both sources of property

damages, direct and indirect, were considered severe, and removal of the action that caused the damage was thereafter required.⁸⁴

2.1.4- Related Building Guidelines

In addition to the above principles, there are several guidelines that should be understood in order to comprehend fully the mechanism that shaped the traditional urban fabric in Damascus, as well as in other Middle Eastern and North African Islamic cities. Each principle is supported with at least one saying of the Prophet (pbuh). These principles are:

Keep things clean, including the interior and exterior *fina*:

“God praised good and He loves goodness, He is clean and He loves cleanness, He is generous and He loves generosity, He is perfect and He loves perfection, so clean your fina...”

Keep appearance humble, without displays of arrogance, as it reflects not only on the house but also on the entire settlement:

“God did not order us to cover stone or clay.”
“God does not look at your appearances or wealth but looks at your hearts and deeds.”

Defects must be announced and not hidden by the owner when selling a property, for example clarifying any easement rights existing upon the property from abutting properties:

“The Muslim is the brother of the Muslim, and a Muslim is not allowed to sell his brother something that has a defect without disclosing it first.”

Trust, respect and peace should prevail among neighbors:

“He whose neighbor is not safe from his harm and dishonesty will not enter Paradise.”⁸⁵

⁸⁴ *Hakim, Chapter 1.*

⁸⁵ *Hakim, all the above quotations are from Chapter 4.*

From the above we can see that each party knew its limits but retained flexibility in his actions. If two parties agreed on some action, the sensitive relationship between them was regulated and ordered with no external intervention. This fostered active community dialogue and discussion. Thus, the Islamic principles governed the morphology of the city as well as social life of its inhabitants. They guided the appropriation, use and tenure of land, oversaw the access, controlled the fenestrations and ensured that differences in class distinctions of the inhabitants did not overtly dictate the external appearance of the dwellings. A close observation of one sector of the traditional settlement provides a better understanding of the reciprocal relations among these principles, the built environment and the social life within it.

2.2- THE MORPHOLOGY OF THE TRADITIONAL SUBQUARTER

According to Ron Lewcock, the layout of the Islamic city was established on separate residential quarters. The creation of quarters resulted from the organization of society itself, which was comprised of many tribes. The tribe was the major recognized institutional unit. Each tribe was assigned a quarter by establishing the boundary of the territory through the ruler's permission on a designated site. The quarter was a recognized property that was not to be violated by others. The size of the quarter depended on the size of the tribe.

A quarter might be subdivided into many sub-quarters, which was most often the case. Families that resided in the sub-quarter intermarried and those marriages formed the basis for economic and political ties. The extended families were large with a clear hierarchy governing them, which made each home a strong, economic unit. The extended family was a part of the large clan, which gave it social and economic security. The clan was in turn, strengthened by being part of a tribe.⁸⁶ A quarter was both a physical and social entity. Each quarter housed a single ethnic or social group and was named accordingly. Residents regarded their quarter as their own semi-private domain.

By the 13th century, Damascus was surrounded by residential quarters such as *al-Qubaybat*, *Maydan al-Hasa* and *al-Shaghur* in the south, and *al-*

⁸⁶Ron Lewcock, "Working with the Past", *Theories and Principles of Design in the Architecture of Islamic Societies*, ed. by Margaret Bentley sevckenko (Cambridge, Mass.; The Aga Khan Publication, 1988), pp. 87-89.

Qabun, al-Akrad, al-Salihiyya, al-Mazeh and *Darayya* a short distance from the city toward the north and the west.⁸⁷ Most of the examples of this research will be from *al-Mazze*h quarter due to the author's personal familiarity with it and because of the availability of research materials on the suggested new layout of this quarter. Property deeds of some sites in this cluster show that this settlement dates back at least to the late 19th Century (Figure 2-6).



- | | | | |
|---------------|---------------|-----------------|-------------|
| 1- Jobar | 2- Barzeh | 3- al-Kaboun | 4- al-Mazze |
| 5- East Dumar | 6- West Dumar | 7- Kafar Souseh | 8- al-Kadam |

Damascus's suburbs according to Ecochard' Plan, 1968
 8 dots indicate quarters in the suburbs to be subject to the Planning Law to be explored in the Building Process Section. (Damascus Municipality)

Figure 2-6

⁸⁷ Ira Lapidus, *Muslim Cities in the Later Middle Age* (Cambridge: Cambridge University Press, 1984), pp. 78-95.

Mass and Void

The courtyard house has been in use for thousands of years. Many old civilizations had adopted this type of housing.⁸⁸ Clustering courtyard houses forced the use of common walls among properties, which led to rising conflicts among neighbors. This, in turn, required the development of legal system to litigate and solve such conflicts. Evidences of proceeding common wall utilization and legal arrangements date back to the Babylonian laws.⁸⁹

The relation of building mass and open spaces in this residential quarter is similar to any traditional residential settlement in other Middle Eastern cities. Kevin Lynch in his description of the Islamic city says:

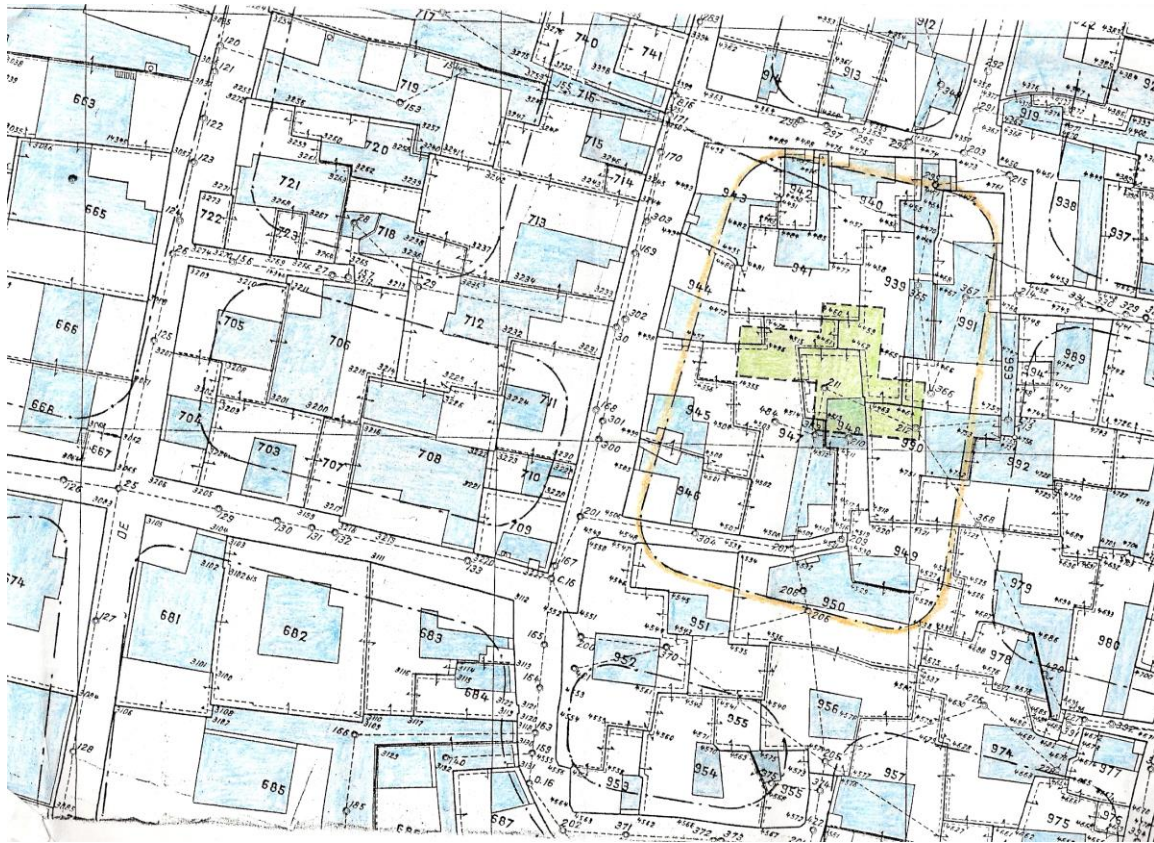
*“The city is a solid built volume, in which hollows and lanes have been excavated in contrast to our picture of a city as a collection of volumes set on open ground.”*⁹⁰

Private open spaces were restricted mainly to courtyards within the houses. In large houses, the courtyard itself would not necessarily be large, because the value of the shade provided by surrounding buildings would otherwise be lost. In a large house where more open space was required, two or more courtyards could be used with rooms clustered around each.

⁸⁸ Schoenauer, *6000 years of Housing* (McGill University, 1995)

⁸⁹ Hakim, *Arabic-Islamic urban structure*, *The Arabian Journal for Science and Engineering*, Volume 7, Number 2 p. 72.

⁹⁰ Kevin Lynch, *Good City Form* (Cambridge, Mass: MIT Press, 1984), pp. 187-204



A new plan superimposed on cadastral plan of al-Mazzeah No.63 Section 4 (1986, Damascus Municipality, General Plan 54/3/A for al-Mazzeah quarter)

Figure 2-7

Public open spaces were streets and the slight enlargements at their intersections. Relative scarcity of public open space was quite natural as the traditional land ownership mechanisms encouraged reviving urban land by building on it. Open spaces in the quarter were created and developed naturally by accretion. Irregular street patterns formed the high-density residential cluster, as nothing was preplanned on a large scale. The width of the street was based upon the Islamic principles and the mutual consensus of the residents. The width was reduced to the minimum dimension acceptable to the users, and the street could be narrow to the extent that walls on the ground floor were within touching distance on either side, while on the first floor, walls often touched each other.

Narrow streets did not affect the air circulation or amount of daylight required for the comfortable and pleasant use of the street as all the buildings shaping the street were one or two stories high. At the same time this height

was enough to shade the open spaces from the sun and to reduce the heat of long summer days. The street was a major element of public open space accounted for 12% of the area of the quarter, while the courtyards and the dead streets as private open space accounted for 10%.⁹¹

Access

Close contact between members of each social group is fundamental to the well being of the residents. Access to the key spaces of the city, such as residence, workplace, school, shrine, market and other amenities is very important to any settlement. The physical proximity and visual link between those spaces are substantial ontological components of urban life.⁹² Traditional residential quarters in Damascus bear the resemblance. The main alley carries the traffic through the quarter but tends not to be integrated into it since houses located along this axis has no direct entrances from it. The commercial activities located along this alley formed a local market or *suk*, which then led to the mosque, public bath and other facilities. Many dead-end streets lead out from the main alley. Each one of these dead-end streets served as the entrance for a handful of houses and as an extension of the private spaces of those houses. The shape, width, and sometimes the gate at the entrance limited the access to pedestrians and their livestock. The main alley was in the center of the quarter and connected residential zones, rather than forming the boundaries of the quarter. Traffic through this access included pedestrians, horse or donkey riders, and carts pulled by animals, wheeled vendors' carts, and more recently, small cars (Figure 2-8).

⁹¹ *The percentage figures were calculated by the author at a large scale. Figure 3-5 shows similar percentage numbers at a small block scale.*

⁹² *Lynch, pp. 205-220.*

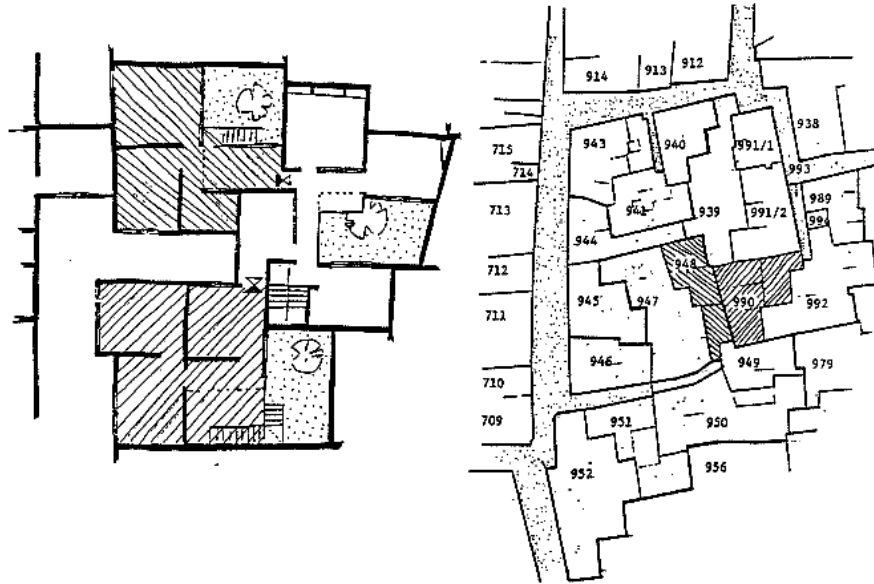


A typical alley in al-Mazzeah traditional quarter (2011, by the author)

Figure 2-8

Both types of accesses mentioned above were on the ground level and open to the sky, which made them clearly evident, even to an outsider. However, there was another type of access located on the first floor, connecting two or more houses together. Primarily, women of different households visited each other using this type of access. This afforded flexibility for the women because they would not have to dress elaborately, which would have been the case if they used the street access. The upper level passage facilitated the women's movement while at the same time provided them protection from the hot summer sun, the rain and the winter cold. Although this kind of access was limited and private, it played a major role in the social life of the women sharing this passage. Another kind of informal access also used in special cases, and again primarily by women, was the rooftop. Since houses clustered back to back, women sometimes went from one house to another using the rooftops and called on their neighbors to put the ladder for them to descend. This path was also advantageous to them, as they did not have to use the more circuitous streets,

as would be the case between site 990 and site 948. (Figure 2-9) Women had used this type of movement at certain times when they knew that their male counterparts were not present in order to prevent inconvenience.



An inter-connecting door between two houses provides private accesses on the first floor, (1995, by the author)

Using the rooftop as a shortcut instead of using the circuitous street between site 990 and 948.

Taken from cadastral plan al-Mazzeah no. 63
Section 4

Figure 2-9

In extreme cases, rebel males eluding the French colonizer soldiers and outlaw thugs running away from the law enforcement personnel used the rooftop to escape. This factor explains the perception of the local Authority as well as the French colonizer of the traditional residential quarter as an out of control ghetto and source of trouble.

Control

The aspect of control can be understood at two different levels. First, it was a physical defensive device against invaders, which was one of the most important factors in an urban settlement. Second, control could also entail protection of one's rights of ownership, or any type of tenure, through rules and regulations.

The defensive factor was considered on two levels; the first was against invasion by military forces and the second was against intrusion by strangers. In general, the Islamic city had two slightly different strategies for defense. The differences depended on the time of the founding of the city or of the settlement. The strategy for defense in old Damascus consisted of a wall with seven gates that surrounded the city. The gate opened onto the main street of the city. These streets led to smaller local streets, which ran through the residential quarters and sub-quarters. Most of these streets had gates at their entrances as a second line of defense. From its entrance, the narrow and crooked alley appeared to be a dead-end path and did not encourage outsider traffic. A stranger would often pass without noticing it. People who did enter it clearly had business there. The inhabitants were well known to each other and strangers with no apparent business in the neighborhood were likely to be questioned. The same defensive form was applied, but to a lesser extent, at the entrances of the extremely narrow dead-end streets. All those defensive elements gave a sense of security and control to the inhabitants of the city.

A similar defensive system was used in the settlement that evolved near the old city. As such, there was no designated defensive wall system that surrounded the settlement. The outer wall of the houses located along the edges of the settlement became the effective defensive walls of the entire community. The residents of the quarters, within their walls, were located close together in a pattern, which afforded mutual protection.

Tenure is a bundle of one's rights over an object or a place. These rights could vary from the right to be in a place, use its facilities, modify its components, draw benefits from it, sell it, and exclude others from all these privileges.⁹³ It could include the right to use the facilities of a place as other do, with some limitations, such as in a specific time, or under some other condition. For example, when going to a movie theater, one has the right to enter and use its facilities during a specific time, but cannot exclude the other from doing so. Neither can anyone smoke. Thus, tenure can take many different forms or claims, such as ownership, co-ownership, lease, easement, etc.

The concept of claims is based on the plurality of owning, controlling or using an object. Ownership is a well-known form of claim, though law

⁹³ Lynch, pp. 205-207

and/or a contract may limit it. Control is defined as the right to manipulate elements without necessarily using or owning them. Use is defined as employing or accessing an object or property without necessarily owning or controlling it. According to Akbar, who developed a comprehensive model illustrating the relationships among these three claims (ownership, control and use), there are five basic forms of relationship, which he calls “*forms of submission of property*” They are Unified, Dispersed, Possessive, Permissive and Trusteeship. He regards the Unified form as the best form of submission with respect to the physical condition of the built environment. In this form, a property is well maintained because it is owned, controlled and used by one party.⁹⁴

Increasing user spatial control leads to an enhancement of the physical condition of a property and improvement of the sense of security, satisfaction and freedom to operate. The primary method of identifying a controlling party is by detecting physical change. The party who changes or manipulates an element controls that element, and the relationship between all parties affects the condition of their properties.⁹⁵

In the traditional Islamic settlement, space was controlled by creating boundaries, increasing one-way visibility into the space of the controlling group to ease surveillance, or by manipulating access with installing gates. Therefore, entry to the settlement was limited. The inhabitants had the motive, commitment and the ability to control their built environment. All these requirements were met by implementing the traditional principles in which people were encouraged to keep their semi-private spaces (*finas*) clean and well maintained. They had the power to exclude intrusion and to object to such an act occurring in their private or public domains, which proved to be harmful to them or their environment. People acted freely in their spaces so long as they did not cause any harm to the other residents. The traditional principles empowered the people to act first and the intervention of the other external authorities came later.

⁹⁴ In the *dispersed* form, a property is owned by one party, controlled by another, and used by a third party. In the *possessive* form, the user and the controller of a property are one party, and the owner is another party. In the *permissive* form, the owner and the controller are one party and the user is another party. In the *trusteeship* form, the owner and the user are one party and the controller is another party. The term party could be an individual, a group; or a company etc. for more details refers to J. Akbar, PP. 8-41.

⁹⁵ Lynch, pp. 205-235.

Social interaction

The physical structure of the traditional neighborhood was the manifestation of a particular way of life that had been prevalent up until the early years of the last century. Observation and comprehension of the socio-cultural framework adapted in this neighborhood will clarify the special cases that occurred within its physical structure.⁹⁶

It was not unusual to see men in their dead-end street (*harah*) wearing pajamas and doing day-to-day activities. Women ate their breakfasts or drank their late coffee together in one of their houses, or in dead-end streets, after they sent their children to school and their husbands to work. Sometimes women brought their foodstuffs with them and prepared almost all their meals in one house while they socialized. When the physical shape of the alley was very closed and secure, door of the dwellings were left open. In the case of a wedding or death, close neighbors offered their houses to host the visitors, and in the summer time, people used the alley itself as guestrooms for male visitors.

Most families lived in one house as an extended family, and most of their relatives lived in the same neighborhood, if not in houses accessed from the same dead-end street. The dead-end street strengthened their unity, increased the social interaction among neighbors, and encouraged a spill over of their daily activities. The type of activities varied depending on the social relationships among neighbors, the number of families sharing a dead-end street, the residents' ages, and the shape of the dead-end street. For example, two or three interrelated families, with young children performed more combined activities in their blind dead-end street than in a large dead-end street with many unrelated families different ages. The deeper the dead-end street was within the neighborhood, the freer the inhabitants felt.

Also, the deeper one went into the settlement, the greater the privacy and freedom granted. Privacy was one of the main aspects that shaped the Islamic settlement, from the form of access through the introverted housing typology to the principles that ruled its opening. Privacy concerns had their effect on the house layout as well. The kitchen, as the women's place, was

⁹⁶ Nawal Nadim, "Family Relationships in a 'harah in Cairo," in *Arab Society*, edited by Nicholas, S.H. and Saad Eddin, I. (Cairo: The American University Press, 1985), pp. 212-222.

located as far as possible from the entrance. The closest space to the front door was designated as a guest room. As long as there was no guest, this room was used for variety of activities, like all other rooms of the house, and it was accessible by both genders. Segregation of this room took place when there was a guest, and depended on how close he or she was to the family. The gender of the guest had determined the priority to use this room. If the guests were both male and female, males would occupy this room and females would go deeper into the house or to a room on the upper floor.

The very private passages that existed in the traditional settlements, the movement from one house to another on the first floor level, or on the roof-top of the houses, made neighbors, especially women, maintain good relations. This ensured that they did not lose their privileges of using accesses going through other people's property. This kind of access, especially the rooftop, made the people aware of security. If a family had to spend a long time away from home, they would inform their neighbors to watch over their house, since it was easier for thieves to break in from the roof than from the front door.

In conclusion, unity among Muslims is a religious imperative. The traditional urban form and social life supported this requirement at every level. The quarter was a tribal settlement and acted as an administrative and political unit. The sub-quarter was inhabited by one group and was served by one alley. One family in one house was the basic unit of the social structure. No individual lived in a separate house, not even a divorcee, a widow, an orphan, or a grandparent. In rare cases, if an older member of the family wanted and could afford to live alone, their house would have to be very close to the family's house to maintain daily contact, and one grandchild could help by sharing that house.

Most of that organic system, the physical built environment, social life, and legal means discussed above have existed up till the second half of the 19th century. Gradual alterations had started in the latter part of the Ottoman Empire. The next chapter will examine the ripple effects of those alterations on that interconnected system.

III - THE DRIVING FORCES BEHIND THE MODERN SETTLEMENT

3.0- INTRODUCTION

In the early 19th century, the Ottoman monarchy underwent a loss of control over some of the remote parts of its empire. At the same time, it also experienced financial difficulties. Certain reform movements were introduced in 1839, which fundamentally reorganized the Ottoman society. Known as *Tanzimat*, the reform changed the structure of the administration and established a new judicial process. The intellectuals of the *Tanzimat* period searched for a synthesis of their political ideas and a new system of government. They utilized, for example, the precepts of Islam to legitimize constitutional monarchy.⁹⁷

The Ottoman Empire regulations were codified and were no longer based on local agreements. The government established the committees that enforced those regulations in 1856.⁹⁸ By 1868, the committees' responsibilities were mainly to maintain public spaces. In 1879, a decree established the Municipalities, gave them the right to organize the Ottoman towns and expropriate private property to help solve problems such as the creation of new streets. Gradually, municipalities became more powerful and began to intervene in the building process. In Damascus, for example, people were asked to use bricks or stones for their buildings.⁹⁹ With British and French colonization, secularization separated divine law from national jurisdiction in most Middle Eastern countries. Although none of the countries completely abandoned *sharia law*, the jurisprudence of the colonizers prevailed.¹⁰⁰

In 1913, the Ottoman Empire issued the Defining and Emancipating Law after the work of Norbert Norence (Head of the Property Deeds

⁹⁷ Akbar, Chapter two.

⁹⁸ Akbar, p. 139.

⁹⁹ Akbar, pp. 141-142.

¹⁰⁰ Pieter Germeaad, "Open Space in Human Settlements, the Lesson from the Islamic Tradition" Ph.D. Dissertation, Agricultural University: Wageningen, Netherlands: UMI, 1989, p. 71.

Department in Australia).¹⁰¹ In 1925, the French delegate in Syria and Lebanon formed a committee to re-study and modify this law in accordance with the French law.¹⁰² In March of 1926, the French passed two decrees: 186 LR and 187 LR.¹⁰³ The objectives of those decrees were to define the boundaries and areas of each site and to provide legal property deeds. Those decrees declared all properties that had no recognition of private use for a long time as public.¹⁰⁴ The French mandate also established a system of taxation that provided the authorities with much needed revenue. Roded states:

*“The peasants believed that registration of land was a prelude to more effective taxation and conscription (and their fears were not groundless). The introduction of tax payment in cash rather in kind increased the indebtedness of the peasants and forced them to borrow from moneylenders at exorbitant rates. As a result of their burden of debts, many peasants became tenants of tax-farmers, usurers of other wealthy notables.”*¹⁰⁵

Syria like many other developing countries in the 20th century has been undergoing a continuous transformation from a predominantly rural, village-based society to a largely urban society, whose economic bases are light industry and agriculture. While only 37% of the Syrian population lived in urban settlements in 1960, this ratio had jumped to 47% by 1981.¹⁰⁶ Damascus and Aleppo are the main cities that have been witnessing the rapid growth in population and territory. Indeed, Damascus’ population exploded as it absorbed two successive waves of migration after the 1948 and the 1967 wars. Most of the displaced population settled in the suburbs.

James Scott, in his book *Seeing Like a State*, presents a clear, comprehensive picture of the environment that produces the new urban planning in developing countries. He believes that there are four factors behind the failure of such a state enterprise:

¹⁰¹ Holo Buzo, *al-Tashreeat al-Akaria wl-Omrania fi Soria*, (Damascus: Damascus University Press, 1985), chapter One.

¹⁰² Buzo, p. 1.

¹⁰³ Buzo, p. 2.

¹⁰⁴ Translated by the author, there was no indication of the duration of the “long time” term.

¹⁰⁵ Ruth M. Roded, “tradition and Change in Syria During the Last Decades of Ottoman Rule, The Urban Elite of Damascus, Aleppo, Homs and Hama, 1976-1918” Ph.D. Dissertation, University of Denver, UMI, 1984. pp. 120-121.

¹⁰⁶ *Al-Kitab al-Margeei fi al-Tarbieah al-Soukaniah* (Damascus: the Ministry of Education in co-operation with UNESCO, 1992), p. 45.

1. For the sake of simplification and aggregation of facts, the state manipulates complex, dynamic, discrete and unique circumstances into simplified, static and standardized data. In the course of action the state ignores local conditions, knowledge and experience (metis).
2. Believing in technology as the solution, the state and its urban planning experts (mostly foreigners) try to master nature, human being, and their social conducts.
3. It has to be an authoritarian regime that has the mean and desire to force its rational schemes on its people.
4. The inhabitants have to be a prostrate civil society that lacks the capacity to resist those plans.

Several Western, and particularly French, researchers have studied the urban form of Islamic cities like Damascus and Aleppo. With the Western urban image in their minds, those scholars could not comprehend the rules or fundamentals that led to the seemingly spontaneous form and maze-like street network of the traditional Islamic city. They attributed the crooked streets and inexplicable urban form to disorder in Islam. Alsayyed states:

The alleged irrationality of streets of Damascus and its spatial organization has been subject of a great debate. The prevailing idea among researchers is that the irregularity of streets was manifestation of some anarchic principles inherent in the Islamic urban system. This view has mainly been espoused by Jean Sauvaget...it was, however, De Planhol...who popularized this idea and stigmatized all Islamic cities as cities lacking any order. De Planhol confused students of urbanism by suggesting that "the religion of Islam leads to negation of urban order." Von Grunebaum later pointed out that the decomposition of the Damascus grid had begun as early as the second century A.D., and that the gradual forsaking of the geometric block structure was consummated under the Arabs. Like Sauvaget, Von Grunebaun attributes the transformation to weakness of government authority.¹⁰⁷

Criticizing the French colonizers, Gwendolyn Wright describes their impression of the cities in the colonized countries as follow:

¹⁰⁷ Alsayyed, pp. 94-96.

These cities seemed exotic and even mysterious settings, “primitive” in comparison to Europe; simultaneously, they represented the epitome of rational western organization.¹⁰⁸

The interest of the French colonizers extended beyond political control and exploitation of local sources. They took the liberty to experiment with their new visions of order regardless of local cultures.

Colonial urban designers and social scientists believed they had formulated general principles of design and social order. They chose not to recognize the particular circumstances under which they worked... They functioned like a magnifying glass, revealing with startling clarity the ambitions and fears, the techniques and policies that pertained at home, here carried out almost without restraints... Colonial architects were also entangled. Eager to assert new approaches to style, urban design, and historic preservation, they touted the benefits of granting exceptional authority to experts like themselves. One can understand how these professionals could see themselves above politics... Yet the circumstances of the colonies made the architects all too dependent on authoritarian regimes that would support their policies.¹⁰⁹

In 1936, the French planners Robert Dangeh and Michael Ecochard prepared the Master plan for Damascus.¹¹⁰ The plan was the first synthesis of the traditional urban fabric of the city and the Western norms of the city planning which were established after the Industrial Revolution in Europe. According to Wright,

“The European city takes form on vast open space... with broad boulevards... squares and gardens, buses and tramways, and also foreseeing future extensions... In addition separate housing types segregate social classes and adopt mandatory building scale, materials and services.”¹¹¹

Later, legislation and guidelines were issued in order to implement that plan. In February 1948, the Damascus Municipality issued the first

¹⁰⁸ Gwendolyn Wright, *the Politics of Design in French Colonial Urbanism* (Chicago: the University of Chicago Press, 1991), p. 303.

¹⁰⁹ Wright, pp. 306-307.

¹¹⁰ Nassan A. Al-Kalaa, “*al-fikr al-Omrani*”, *Almouhandis Alarabi, The Syrian Engineers & Architects*, issue No. 110, 1993, p. 8.

¹¹¹ Wright, pp. 88-105.

building code, namely, Ordinance 97.¹¹² In this code, the Municipality assigned to itself the responsibility for planning subdivisions and issuing of building permits in accordance with the regulations prescribed by the plan. It also took over the responsibility to levy and demolish buildings in cases of no-compliance.¹¹³

The implementation process was faced with many technical and administrative hurdles such as unsettled cases of property ownership, especially trusteeship or *Waqf* property. Disengaging and separating properties after centuries of transitions among neighbors left houses interwoven. Often, the property border on the first floor did not match the property border on the second floor, as is the case in the first figure in this research. In addition, this dismantled and mitigated several property rights such as servitude, easement and prescription.

The land code was modified in 1949 by the Civil Law, which was influenced by the Western civil code. Dr. As-Sanhuri, assisted by the French jurist E. Lambert, prepared it.¹¹⁴ In 1959, the Municipality asked the Belgian expert Joseph Vitmer to re-evaluate the Master Plan.¹¹⁵ Later, the Bulgarian planner Morozov was hired to study the Master Plan and prepare detailed plans for some crucial civic spaces. In 1963, Ecochard was again invited to work, this time with Gaygi Banshoya, a Japanese planner, on a Master Plan of the city. The second plan was to consider the anticipated growth of the

¹¹² *Al-Kalaa*, p. 10.

¹¹³ *Neighboring countries share some similarity when it comes to creating dysfunctional new built environment. Saudi Arabia, blessed by being rich in oil, witnessed an unrepresented urbanization. The magnitude of development has paced a great strain on housing and infrastructure of the municipalities. Inexperienced municipal staff turned to western planners. The Authority commissioned Doxiadis Associates, a Greek consulting firm, to prepare the development master plan for the city, after it had moved the government institutions from Jeddah to Riyadh in 1950s. The plan was approved by the Council of Ministries in 1973. In contrast to the traditional compact Arabic Islamic city built form, the plan mandated 2 X 2 kilometer lots and 100, 80, and 60 meter-wide streets, asserting the triumph of automobile in the modern metropolis. Low-cost auto transportation promotes people to live far from their work places. Hence, Riyadh shared characters with some cities in the USA such as leapfrog development, commercial strip and large expanses of scattered, low-density residence development. In 1989, the Authority tried to curtail the unsustainable, frenzy expansion of scattered subdivisions in the 70s and 80s by delineating three phases of growth. The provision of infrastructure services was the mechanism to prevent costly and inefficient leapfrog developments. Time shows that this endeavor was unsuccessful due to lack of commitment and favoritism. Housing provision is still dictated by, Western style, either developing a large housing project or buying a parcel of subdivided lot with villa or extroverted type conditions. *Habitat International*, 28 (2004) P. 567-591. . Iraq followed the footsteps by hiring the Polish firm PolServices to prepare the master plan of Baghdad.*

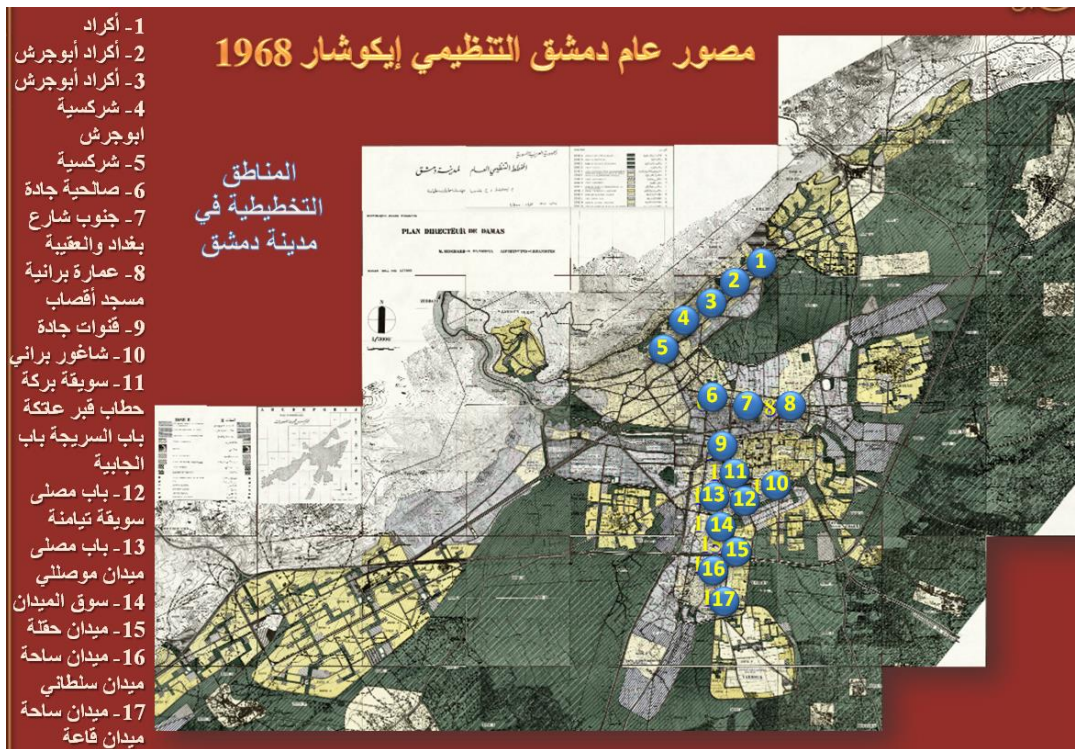
¹¹⁴ Akbar, p. 50.

¹¹⁵ *Al-Kalaa*, p. 11.

city up till 1984. The Master Plan was completed in 1968, and the Building Code was brought into accord with the new Master Plan in 1978.¹¹⁶

The Master Plan designated seventeen quarters surrounding the old walled city of Damascus and along the foot of the Qasioun Mountain as subject to the Planning Law, Figure 3-1, as well as eight suburb-quarters in the outer circle, Figure 3-2 & 3-3.

The Municipality has a designated office for preparing the Planning and Organizing studies. The pace of producing such studies, in other words, providing comprehensive new urban plans and subsequently new residential lots or renewing the old quarters was very slow and did not catch up with the fast growth in population and the need for housing. This was due to many factors, among them ill prepared cadre, complicated case studies, and political trends.



Damascus's planning zones according to Ecochard' Plan, 1968
(17) Dots indicate quarters in the city to be subject to the Planning Law, to be explored in the Building Process Section. (Damascus Municipality)

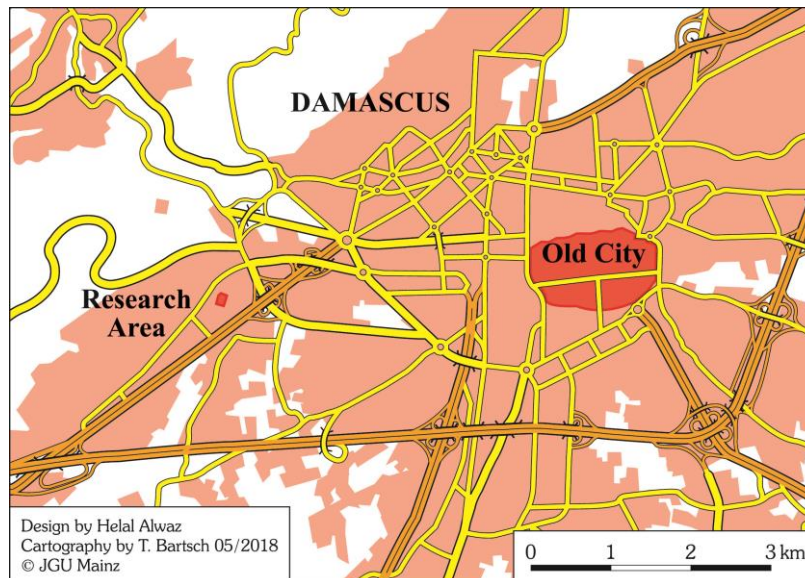
Figure 3-1

¹¹⁶ Al-Kalaa, p. 12.



Damascus's suburbs according to Ecochard' Plan, 1968
The (8) dots indicate quarters in the suburbs of Damascus to be subject to the Planning Law, to be explored in the Building Process Section. (Damascus Municipality)

Figure 3-2



Damascus Map
Old Damascus on the right side and the research area on the left
(2018, JGU Mainz)

Figure 3-3

It is very crucial to illustrate the elements that the policy makers and planners had used to implement the new Master Plan and replace the traditional quarters with new settlements.

3.1 BUILDING PERMIT PROCEDURE IN DAMASCUS

Damascus and other Middle Eastern cities have witnessed rapid multi-faceted changes. The effects of these changes have been profound.¹¹⁷ The re-emergence of rapid growth in towns, the concentration of economic activity in urban communities, and the deep changes, which had developed in town layout, were all factors destined to become serious political, economic and social issues.¹¹⁸ The sudden growth of Damascus led to increasing urban sprawl. A high percentage of those settlements were considered illegal for one or more of the following reasons: The land has no legal registration; the land was subject to the law of acquisition; the building did not meet the Building Code requirements and etc. With the objective of maintaining some order, the Authority's interventions, which began with merely keeping public spaces clean in the late 19th century, now involved the creation and enforcement of detailed standards for each residential unit.

Both the new Master Plan and the Building Code had introduced new patterns of residential development, such as villas, walk-ups and town houses where the building was surrounded by a garden and supplemented by a garage or a driveway (extroverted). Moreover, they segregated the social structure to strata, new social order, by allocating a certain area for villas, another for first class residential houses, another for second class and so on. The lower class was in the Old Neighborhoods. The allocations included different lot sizes, street widths, and number of units on each lot. Those new styles, supposedly, allowed efficiency in the laying of services but required a high percentage of (public property) for wide streets and parking facilities. Several pieces of legislation had to be introduced in order to implement the Master Plan and facilitate urban planning in Damascus as well as in other Syrian cities.

¹¹⁷ *The French mandate focused on the administrative, legal and economic pillars during the time of occupation, 1918-1946.* Philip S. Khoury, *Syria and the French mandate* (N. J.: Princeton University Press, 1987), pp. 83-120.

¹¹⁸ Pieter W. Germeaad, "Open Space in Human Settlements, The lesson From the Islamic Tradition" Ph.D. Dissertation, Agricultural University: Wageningen, Netherlands: UMI, 1989, p. 135.

Six main divisions of law have had a large effect on the housing process and the urban fabric of the city: Acquisition, Reorganization, Planning, Building Code, The Rental Law, and the Civil Law. They are the leading factors in dealing with the housing issue in Syria. This research will illustrate the effect of those legislations on the city layout in general. The focus will be on the Planning Law where the Authority uses directly to replace the traditional housing quarters (Old Neighborhoods) with the new residential neighborhoods in Damascus, outside the old walled city.¹¹⁹

The Law of Acquisition is the expropriation legislation, which the owners' dread as compensation is very low compared to market value. This law is enacted primarily for the creation of official buildings, parks, streets and public housing. As time goes on several Acquisition decrees were applied to implement the Master Plan requirements. Those decrees targeted specific areas for definite objectives. In the late fifties and early sixties of the last century, the Authority used this law extensively and at a large scale to provide public housing, similar to many social political systems in other countries. The latest Acquisition decree (60) was issued in 30/6/1979, and was modified in (26) 6/12/2000 after it had a devastating effect on the land market especially in urban areas. The latest decree in this regard was (23) 8/12/2015 which abolished the previous two decrees.¹²⁰ In summary, the aim of decree (60) was putting hold on land speculation. Thus, it made any piece of land in Damascus with area more than 200 square meters subject to acquisition in order to discourage land developers from buying and selling relatively big lots. Despite the fact that the Authority pays very low price for acquired land, the Authority could not buy all properties that were subject to this law. This decree left the land market with very expensive small lots, and neglected, for a short time, large lots. The owners of those large lots soon started selling their lots, unlawfully, in small pieces, to be built upon illegally, creating illegal settlements. The objective of Decree 23 is organizing illegal settlements by providing straight wide streets and allocating sites for administrative building and parks at the expense of the private sector. In case of illegal settlement in the city, this decree allows up to 50% of a private lot to be transferred to public space without compensation. In case outside the city the percentage drops down to 40%.

¹¹⁹ *The Authority has special legislations for the Old Walled City.*

¹²⁰ *A translation of the articles that form the backbone of Decree (60) and the original Arabic version <http://www.parliament.gov.sy/arabic/> (downloaded from the Syrian Parliament's website, 4/5/2018) are in appendix C.*

The Law of Organization has been in use since the late 1950s. The Municipality applies this law in important and expensive areas like the city center or near large official buildings in order to develop modern housing settlements. The process of implementing this law can be summarized as follows: A committee from the Municipality estimates the value of everything on the land which is subject to the reorganization law (buildings, trees & etc.) and exchange the estimated cash value for stocks. The planners of the Municipality develop a new plan with consideration for archaeological preservation and trustee-properties. Existing houses, trees and streets are ignored, however, each new plan is supposed to have, in addition to private properties and streets servicing them, public properties for education, worship, administrative and other utilities.

Another committee estimates the value of the newly created private sites. Many factors are considered in the estimate (allowable built-up area, the distance from the site to the main road, proximity to amenities, etc.). The total value of the new private sites must be equal to the total stocks of the first committee assessment. The second committee distributes the stocks of those new private sites. Each stockholder is supposed to possess a new property equal in value to the original property. This process is called the **Initial Distribution**. The Municipality announces the initial distribution and allows 30 days for objections from the owners who may prefer their stocks to be distributed in some other way or if they believe there was miscalculation of their property value. Finally, the Municipality announces the **Final Distribution** after it attempted to respond to each objection. Thereafter, every owner(s) supposedly has a new property, site, or part of a site; with a value equal to his/her original property value. Decree –9, 31/12/1973 spells out in details the above process.¹²¹

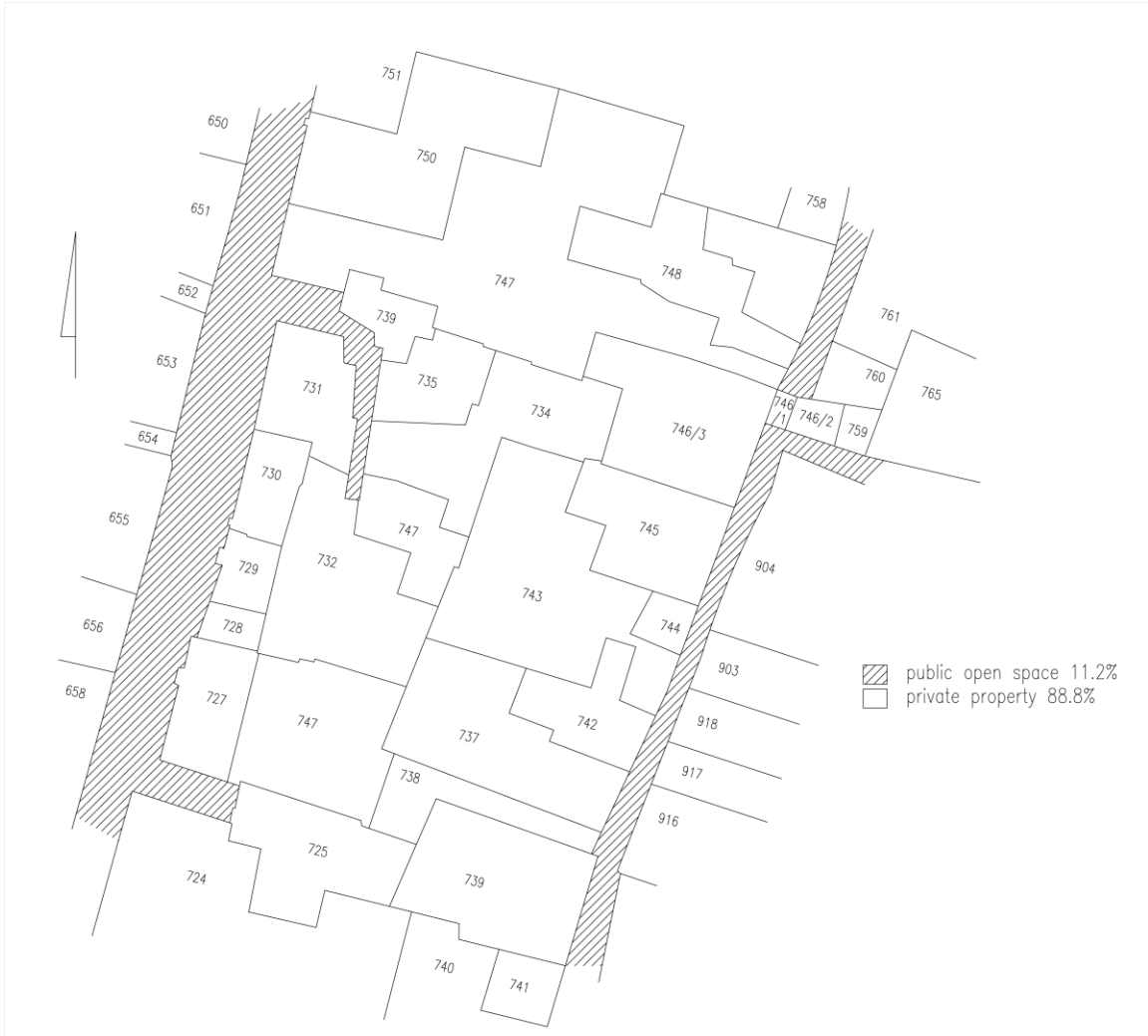
The Law of Planning is the tool that the Authority uses to replace the traditional built area outside the walled old city of Damascus, with the objective of straightening and widening the streets to accommodate vehicular traffic and facilitate the laying of new infrastructure. This law (Decree –5, 23/1, 1982), supposedly, increases the density in this area by

¹²¹ A translation of the articles that form the backbone of Decree (9) and the original Arabic version <http://www.parliament.gov.sy/arabic/> (downloaded from the Syrian Parliament's website, 4/5/2018) are in appendix D.

increasing the maximum number of floors, from the pre-1948 two-floor high to four floors.¹²²

The Municipality's planners develop a master plan for a designated traditional neighborhood. After ratifying the Master Plan, from the Municipality's Executive Office and the Ministry of Housing, the plan is divided into separate blocks; each block is surrounded by streets and called Island (*Jazeera*) see Figure 3-4. An extensive study is conducted on each site within the block to disengage it from the surrounding sites. Most of the time, sites share walls. Rooms on the second floor belong to the neighboring site. One has the right of access from the neighbor's site or has the right of passing the services lines through the neighbor's site and etc. (preemptive and servitude rights). The Municipality's personnel conduct this task and keep in minds the stipulations of the other pieces of legislations such as the law of Acquisition, the Civil Law and the Rental Law.

¹²² A translation of the articles that form the backbone of Decree (5) and the original Arabic version <http://www.parliament.gov.sy/arabic/> (downloaded from the Syrian Parliament's website, 4/5/2018) are in appendix E.



A small portion of al-Mazzeah Quarter before 1986
 (2015, redrawn by the author from the original plan. Public area is calculated by taking a
 half of the area of streets adjacent to private lots since each street serves lots on both
 sides)

Figure 3-4



Block (*Jazeera*) 1581/3 in al-Mazzeah Quarter. Notice the access network in the traditional plan included totally in the new public open space in the new plan. The ratio jumped from 11.2 % to 36.5 %. (2016, by the author, the areas are calculated within a quadrilateral shape formed by the central lines of the streets surrounding the block) According to the municipality developed plan of al- Mazzeah Quarter 54/3/A, May 1986

Figure 3-5

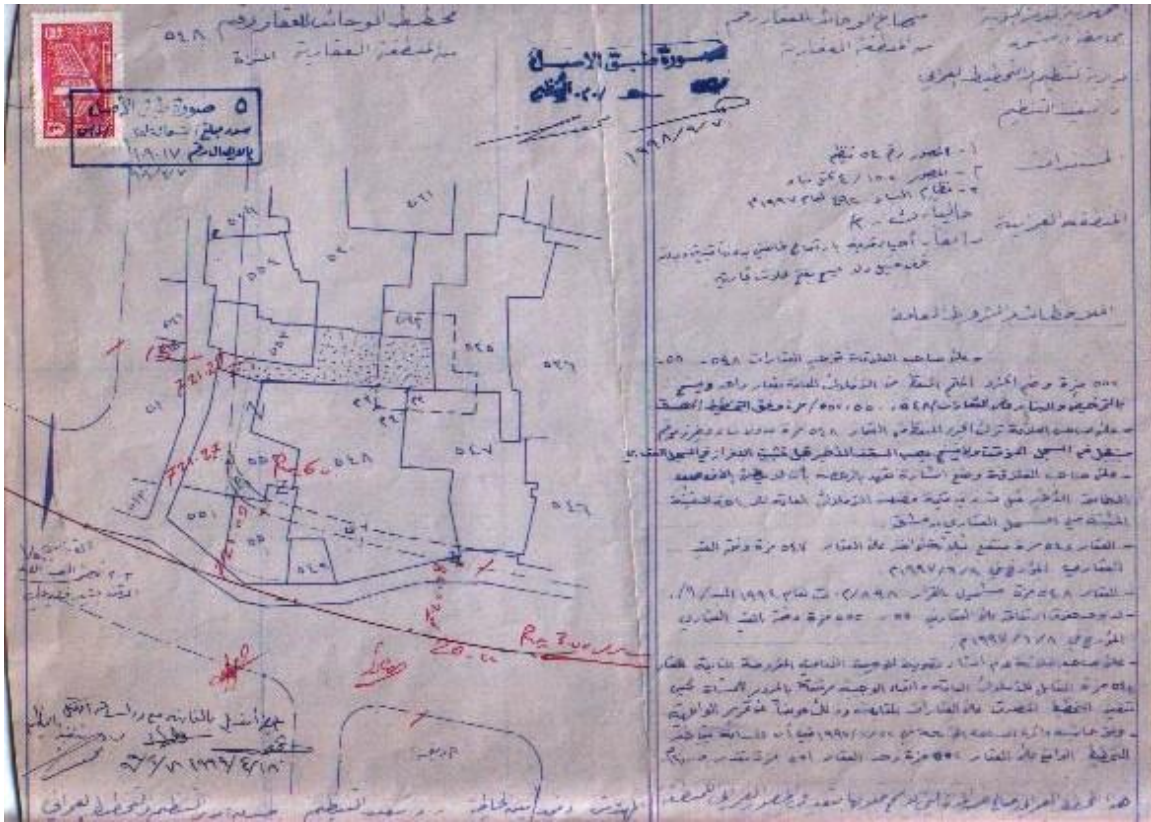
Few decrees and pieces of legislations had guided the planners in developing the plan and like it was mentioned earlier (James Scott, *Seeing Like a State*) in the process of simplification the organic fabric of the traditional quarter became dysfunctional. Among those regulations are:

- Decree 4671/A 22/06/1967 giving up the right of ownership and any other property rights of private dead-end street.
- Widening the dead-end street to 4.5m in case the dead end street' length is less than 20m, and 6m if the length is more than 20m.

- Street widths in the new plan must be 6, 8 and 10m, later became only 8 and 10m.
- To ease of the cars movement, lots on the intersection of two streets must be trimmed at corners (3m). Later, this was changed to rounded corners with a 6m radius. Rounding the corner was implemented not only on the first floor but the whole floors above it, affecting the space configuration, especially when the unit area was very small. It is worth mentioning that due to poor execution all rounded corners are far from perfect shape.
- Eliminating servitude and easement rights, Decrees 1363 /M.T., 1993 & 898 /M.T., 1994 & 1731 /M.T., 2002¹²³
- Section 149 from Building Code 492/1997. Minimum lot area 100 m² and a 7 X 7 m square or 6 X 8 m rectangle fits in the lot (This stipulation forced the process of selling or buying property part(s) among adjacent lots).

In both cases, the Law of Organizing and the Law of Planning, the Municipality produces for every new lot a **Requirements Plan** (*mukatat wagaeeb*). The R.P. is the product of the Municipality's urban planning procedure, be it organizing or planning. The R.P. spells the special instructions and guidelines applied to the site and its owner(s) such as set back, allowable cantilevers, number of floors, height, adding or giving a parcel of the lot to another lot(s) or the public, etc. Figure 3-6.

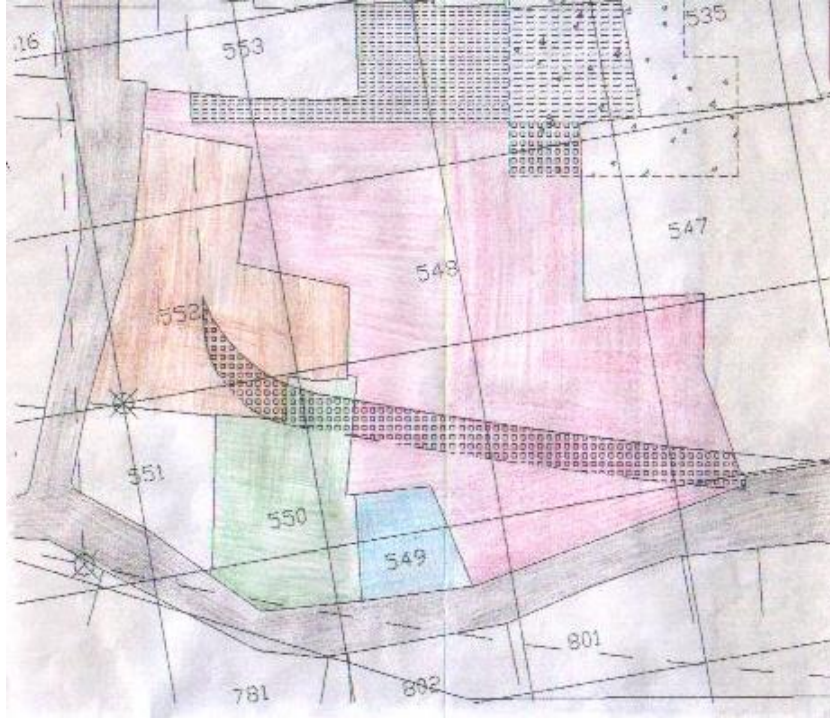
¹²³ M.T. indicates that the Decree is issued by the Executive Council of the Municipality.



An original **Requirements Plan** (*mukatāt wagaʿeb*) for site 548 in al-Mazzeah Quarter. It shows, in red, the proposed width of the new street and the radius of the curve. On the right side, it states all the instructions about unification and giving up portions of land to the public or selling a portion to adjacent sites. (1999, Damascus Municipality)

Figure 3-6

Every year a revised study is conducted on all blocks after verifying the newly built lots, and new restrictions or requirements might be added on un-built lots. Figure 3-7 shows the new set back that is required on site (548) al-Mazzeah in revision number 4.



Redrawing of site (548) al-Mazzeah. The bottom line of the hatched sector is the original proposed new street line and the line to the north shows the revised street line, widening the street on the expense of site 548 (increasing externality). (2015, by the author)

Figure 3-7

The Building Code covers all the general instructions and the interior details such as minimum and maximum dimensions. The instructions in R.P. overwrite the Building Code's instructions that deal with the same subject, such as the width of cantilevers, etc.

The Building Code is the crux set of instructions that govern the building process. 97/1948 was the first building code Damascus had. Several additions, amendments and explanations led to the modified Building Code 386/1959, to be replaced later by 350 M.T/1978. The newest Building Code in Damascus is 492 M.T/ 1997.

In addition to providing the usual minimum and maximum areas, dimensions of certain details, such as lights well, stairs, kitchens etc. the modified versions of the Building Code tried to take into account several factors such as the Civil Law's requisites to block the road on people who violate the Building Code and minimize litigation. In addition, the building code fostered and promoted the Authority's policies such as water rational

distribution, preparation against external aggression (war), etc. by requesting the central water tank, shelter in the basement and central dish.

Ordinance 111/1952 established **The Rental Law**.¹²⁴ Damascus underwent various changes in the early part of the last century. As a result of these changes, rental housing, which had been rare, was popularized. To protect the poor (tenants) from the rich (owners), the Authority, through this ordinance, gave the tenant the right to rent a house or an apartment at a very low rate regardless of the owner's objections and the contract between the tenant and the owner. In addition, it empowered the tenant against eviction. The law was applied to every tenant who was employed by the government; and the government is the major employer in Syria.¹²⁵ Thus, the law was applied to individuals, unlike in many other countries where rental laws are applied to specific properties, or granted to needy families with vouchers. As a result, rental property suffered and is still suffering negligence from both the owner and the tenant because of a lack of interest.¹²⁶ This law led not only to the deterioration of the physical environment but also contributed to distrust amongst people, breaking age-old social ties. (Please refer to footnote 84 at page 44, dispersed form.)

By the year 2000, the Authority recognized the negative effect of the Rental Law on the supply for the housing rental market. Hence, the Authority issued new rental law, 6/2001, letting the market, owner / tenant, to decide on the rent compensation but limited the duration of the renting contract to no more than six months (Tourist Rent). Eventually, the Authority abandoned the time stipulation. This law has no retroactive effect. Thus, all rented houses before 2000 are still suffering from neglect and the relation between owners and tenants is dreadful if not hustle.

The Civil Law is the source that the court would look at in case conflicts were raised in implementing one or more than one piece of legislation. The Municipality of Damascus, as well as all the Authority's apparatuses, tailors its ordinances, through a trial and error process, so it protects itself from litigations as much as possible. This study will shed light

¹²⁴ *Yosr Balnco, Opening paper presented at "The International Year of the Family" Conference, Damascus: Syrian Woman General Union Press, 1993, p. 17.*

¹²⁵ *"The average landlord is no more exploitative than the average tenant is scoundrel", Alan Gilbert and Ann Valery, Landlord and Tenant-Housing the Poor in Urban Mexico (New York: Rutledge, 1991), p. 178.*

¹²⁶ *Gilbert and Valery, 1991, have summarized studies done in various Third World cities and concluded that, though significant, rent control measures are only one of the many reasons for the reduction and deterioration of rental housing stock.*

on some of the practices that the Municipality of Damascus uses to advance its plans without being litigated (142/M.T, 21/6/1972, communal ownership of the roof).

In summary, to obtain a building permit, the owner(s) of the site must first obtain a **Requirements Plan** (*mukatat wagaeeb*, Article –3-1 of the Building Code) from the Municipality. Hence, the site must not be in a designated acquisition zone. The owner(s) has to meet all the requirements stipulated in the R.P. such as giving up some rights to the public, selling or buying a parcel of land to/from the neighbor(s), etc. After that, the site takes its final shape, and architectural plans are developed to meet the Building Code's, as well as the R.P. requirements.

From personal experience, the process is over-regulated to the point that the architect is very limited. The architect is squeezed between the Authority's overwhelming stipulations on one hand and the owner's anticipations on the other. The size,¹²⁷ shape and orientation of the site are fixed; the overall height, number of floors and each floor's height are fixed, too, in addition to many other requirements. In fact, most of the successful people in getting Building Permit are not architects. They are the people who know how to run paper-work. Corruption has a big role in moving a street line or property border a few centimeters in one direction or the other, or changing the elevation of the street abutting a specified site.

Hence, the Authority, through its planners, implements its housing and urbanizing policy at the macro level by preparing the master plan and zoning processes. On the other hand, through the Building Code, the Authority enforces its housing policy at the micro level. There is a great deal of dialogue between the Building Code and the planning and zoning processes.

According to sections 1 and 8 of the Building code (492 M.T. 1997); any old building may be demolished unless it has been considered to have archeological and /or historical value. The owner(s) has to meet several requirements before the Demolishing Permit has to be issued, among them:

- The consent of more than $\frac{3}{4}$ of the shareholders of the building.
- Informing the users, if they are tenants, that acquiring a Building Permit does not give the owner(s) the right to evict them from the building. Thus, the owner(s) has to convince and compensate the

¹²⁷ The Building Code stipulates the site area not be less than 100 sm.

tenants before demolishing the old building. Later we will see that this stipulation put many developments on indefinite hold.

- The owner(s) has to give up his/her tenure rights and the right of any building overpass if there was any.

Before going into details about the new settlement morphology, it is important to first shed light first on the changes of the social structure in Syria in general and the life within the old quarters in Damascus, and second the environment that produced the official planners and their yield plans.

3.2 SOCIAL CHANGES

The Authority' housing policy at both the macro and micro levels was just one of many changes occurring in Damascus. Western influence and the general process of modern technological and social changes affected the family as well as other aspect of life. New economic reforms disrupted the foundations of old family self-sufficiency; government institutions replaced some of the functions, which in the past belonged solely to the family. Family no longer constituted the basic framework within which the life of the individual organized. New industries and the expansion of trades created many new specialized jobs, which in turn dismantled the old basic unit of work and discipline-the household. Since people preferred to settle close to their work place, while; some of the younger family members had to separate from their extended family.¹²⁸ Pursuing job opportunities accelerated the transformation of the family structure from extended to nuclear. To settle close to their workplaces, people moved out of their customary neighborhoods. This relocation decreased familiarity among residents within a settlement, which in turn reduced self-policing and societal pressure to maintain a congenial environment. These new, as well as migrant, families boosted the demand for rental housing and increased the demand of building new houses.

Other changes in the social structure also affected living environments. In the past, intermarriage was preferred in order to keep the family property intact by uniting individuals who were already bound by collateral family ties. Intermarriage had become less favored among extended family members. A survey conducted in the early seventies of the

¹²⁸ Donald N. Wilber *United Arab Republic* (New Haven. Conn.: Hart Press, 1969), pp. 87-93.

last century indicated that 42% of Damascus families had at least one member of the family from outside Damascus.¹²⁹

The migration of a significant portion of the labor force into large-scale urban industry placed new demands on land use, transportation and communication. The breakdown of the old road pattern in many Islamic towns was one of the most profound elements of change in the layout of the urban areas.

Improving services such as water supply, sanitation, electricity and telecommunications, within traditional quarters created serious problems for engineers. When those problems were combined with the developing preference for European housing styles, a new pattern of residential development, such as villas and town houses where the building is surrounded by a garden and supplemented by a garage or a driveway, was introduced to the region. These new styles allowed efficiency in the laying of services but required significantly more land for wide streets and parking facilities.

3.3 PLANING AND POLITICS

Planning is conceived as a rational professional activity. Organized field of human activities emerged out of the unacceptable and inhumane living conditions prevalent in the rapidly expanding industrial city to stop the ills of the unconstrained capitalism. The quest of an ordered and rational urban form claimed to offer universal solutions to the problems and perceived chaos of the industrial city. To achieve the same goal, planners have seen traditional built environment as a form of anarchy and disorder, and it has been replaced, except for a few cases where there were some monumental buildings and archeological sites with potential tourist value.

Planners seek utopian futures through the pursuit of knowledge and objective science. Berman says:

*“Modernists...celebrate and identify with the triumphs of modern science, art, technology, economics, politics: with all the activities that enable mankind to do what the bible said only God could do”.*¹³⁰

¹²⁹ Safouh M. Al-akrass, *Tarkib al-Aaila al-Arabieh wa Wazaefoha, Case of the Syrian Family* (Damascus: ministry of Culture Publication, 1976), p. 185.

¹³⁰ Marshall Berman, *All that is Solid Melts into Air*, (New York: Penguin Group, 1982) p. 33.

Modernists promote their belief using reasoning banners such as linear progress, absolute truths, the rational planning of an ideal social order, and the standardization of knowledge and production.

Planning is the implementation of spatial public policies. It is a tool to advance the state's goals and agendas, be it efficient economic growth, state identity, residential amenity, service provision, environmental sustainability. It is a useful tool in exercising power and control; in fact, it was stated in the Athena's Charter manifesto, "*The ruthless violence of private interest provokes a disastrous upset between the thrust of economic forces and the powerlessness of social solidarity*" (Principle 73). Thus, private interest will be subordinate to the collective interest.¹³¹

Planning is primarily concerned with protecting the public from wild private interest; Justifying state intervention in land and property market. However, defining the public interest is a problematic and controversial issue, since it is perceived differently among the involved groups.

Public hearings (the author attended several public hearings in Boston) in which the authority invites and consults immediate neighbors at an early stage of a new planning application in order to ensure that the public is aware of how plans are developing, and every individual weighs his/her advantages and disadvantages in the new plan. It is worth mentioning that most officials believe the public cannot see things comprehensively and the expert role is to weigh all interests, consider actions and make decisions accordingly, thus taking back the helm of decision-making. Even in public hearings, a narrow personal interest or a biased attitude could hinder the benefit of a larger group or community.

It is not an easy task to take the raw data and convert it into explicit planning concepts, such as blueprints and policy paper, which involves making minor decisions, restraining biases and evaluating ideas. Furthermore, abstract notions of beauty and equality, together with concrete concepts, such as lots allocation, services and accessibility, all have the potential to countless interpretations, confusion and controversy. Hence, all public hearings ended by accepting the proposed plans or rejecting them

¹³¹ *Charter of Athens (1933)* Getty.edu, *Congress Internationaux d'Architecture Modern (CIAM) Paris, France* (Internet accessed, 1/17/2016).

with recommendations left to the planners to interpret them into policies, lines, rights, or values.

In Damascus, the concept of public participation in the planning process is far remote. As mentioned earlier, in both the planning and organizing processes, an individual can only object or complain that his/her property' share is miscalculated, and the onus is on the individual to prove it. A powerless individual is frustrated and hopeless with the system to the point that he/she will be either very passive or defiant and will use any way to challenge the system either by bribing to get his/her way or using all means to violate the law and code requirements. Committing building violation is not a hard task since corruption is well spread. The over regulated system is one of the main factors of mushrooming illegal settlements surrounding Damascus and other major Syrian cities.

Building violations in Damascus are classified into two types; the first type could remain after the payment of a fine as a settlement. These fines are the main source of income for the Municipality. The other type of violations has to be demolished. In 1978 there were about 70,000 cases of that type.¹³² The amount of work required to demolish these violations, the volume of waste, destruction of people properties and the loss of resources had stopped the Municipality from demolishing the violated building parts. However, those violations are reported on the Property Deed Records and affect the property value when the owners want to sell their properties. People believe that in the future they will be able to pay fines and settle their building violations since the Municipality always needs additional income. The latest decree facilitating settlement was issued in 2003.

This Chapter stated chronically the names and nationalities of the planners who worked on the Master Plan of Damascus. The next generations of planners, in the sixties and seventies, were all Syrian with French education background. Those planners were also the educators at the schools of architecture and planning in Syrian Universities. The educational upbringing combined with the political system produced new breeds of planners obsessed with state power, control, superiority and the assumption to know what the public needs. One must understand the shortcoming of the existing planning practice in order to come up with a new paradigm for future planning.

¹³² Philip S. Khoury, *Syria and the French Mandate*, (N. J.: Princeton University Press, 1987), p. 597

IV- THE MODERN SETTLEMENT

This chapter will focus first on the Municipality's policy in terms of land ownership, access and use of access. Then it will consider the harmful aspects created by implementing the Planning Law, Organizing Law and the new Building Code.

4.1 ACCESS AND OPEN SPACE

The authorities did not appreciate their lack of control over access networks of residential quarters. That was one of the main factors that made the Ottoman and French authorities force people to remove the doors of their dead-end streets.¹³³ In the colonial French era, dead-end streets were considered contaminated social spots in the city, and the only way to purify those spots was to remove the gates from the entrances and make the dead-end a through access, where any person could pass and which the authorities could easily control.¹³⁴ As mentioned earlier, after independent, the Authority carried the same policy across all traditional quarters in Syria.

Early, the negative effects of the Rental Law on both the physical environment and relationships among people were discussed. Furthermore, other social changes, which took place in the first half of last century, were illustrated, such as change in the family structure from extended to nuclear. The social factors mentioned in the earlier section, together with functional and physical factors such as the introduction of vehicles and layout of utilities networks in the city, changed the perception of the dead-end street of a semi-private open space that was an extension of the house and generated many social activities, to an unpleasant spot that bred trouble. The Municipality has eliminated almost all dead-end streets in its new plan and

¹³³ Akbar, pp. 171-172

¹³⁴ Please see Oscar Newman, *Defensible Space, Crime Prevention through Urban Design*, (Macmillan, 1972). Where he advocated planning gated housing developments and implemented his thoughts in several urban locations in the United States and succeeded in reducing the crime rate in those settlements.

widened what ever left to either 4.5 m or 6 m depending on the length of the dead-end street. In addition, it has straitened and widened the thoroughfares to 6, 8 or 10 m and has rounded the corner at the intersections, (Figure 2-7). In the new settlements, access to all houses became direct, from open through-streets, as compared with the traditional condition in which 85% of the houses were accessed from dead-end streets.

Widening the thoroughfare from seven arm-spans (in average) in the traditional quarter, to 6, 8 or 10 meters, in the new settlement, for facilitating traffic movement and furnishing infrastructure, has some justification. But forcing people to give up their ownership and/or servitude rights of dead-end streets and in most cases eliminating dead-end streets altogether has no rationalization; except for expressing the authority' desire to be in control and enlarge the public property domain.¹³⁵ This policy explains the jump in ratio of public property to private property from 12% in the traditional quarter to more than 35% in the new neighborhoods. (Figure 3-6).¹³⁶

Where the Organizing Law is applied, the ratio of public to private property jumps higher. There, one can see some allies the abutters have no right to access their properties from them. Some alley designated as an access to school, so it can be used only twice a day during the school year. Ironically, the Authority eliminated dead-end street in the traditional quarter for alleged security reason, and planned new allies in organized settlements where no one dares to walk in the afternoon or when there is no school, Figure (4-1 & 2). Those horrible spaces were the perfect place for criminal and illegal incidents.

¹³⁵ Stated earlier in p. 57, Decree 4671/A 22/06/1967 & Decrees 1363 /MT, 1993 & 898 /MT, 1994 & 1731 /MT, 2002

¹³⁶ Dead-end streets comprised more than 50% of the total length of the quarter's circulation network.



The school is on the right side with only one entrance along a more than 100 m alley (2011, by the author)

Figure 4-1

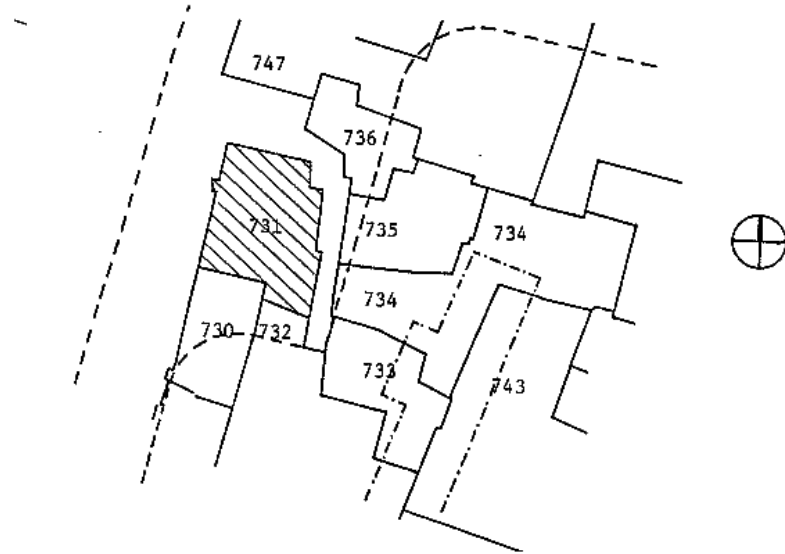


Another example of a wasted and dreadful space in an organized settlement (2011, by the author)

Figure 4-2

In areas subjected to Planning, it is very rare to see a parcel of land dedicated to Public use such as parks, schools, health centers or administrative buildings. This is because providing such a space requires acquisition of the old building and providing the inhabitants, mostly tenants, with alternative housing. As mentioned earlier, the acquisition compensation is minimal but resettling the occupants is the burden that the Municipality tries to avoid. Hence, wherever the Municipality applies the Planning law, it applies the Organizing law on an adjacent quarter in order to provide all the required amenities to both quarters. Given that the Municipality, in the Organizing law, can allocate whatever it wants of land for public without compensation. When it comes to providing alternative housing, the Municipality excuses itself from any obligation and put on hold the execution of the plan unless there is an urgent need or a benefit for well connected people. This behavior reflected very badly on the new built environment and caused many social and physical problems, as will be discussed later.

In the process of providing parking space for no more than eight cars in a block that has more than 40 units and 20 stores, site 731 (General Plan 54/3/A for al-Mazzeah quarter) falls entirely in the new street area (Figure 4-3). The Municipality must implement the Acquisition Law in this case. The Municipality cannot afford to build enough houses for all the qualified tenants, especially when there is more than one nuclear family in each old house. The Municipality sells its new housing units through subsidized loans. Due to high inflation rates, the Municipality loses in the relocation process; the more it builds, the more it loses. Later, in the annual revising process, the municipal planners have begun to deliberately draw new street through sites avoiding the inclusion of a whole site in the proposed street area as well as eliminating spaces, which are subject to acquisition. This enables them to bypass compensating owners and resettle the tenants who inhabit the acquired properties.



Site 731 is to be acquired by the Municipality since it is totally in the new street plan
(2016, by the author)

Figure 4-3

By not implementing the acquisition law, the Municipality created a problem for the residents of the site itself since it is two stories high, and the new surrounding buildings are four stories high. Several new buildings that overlook site 731 were built between 1989 and 1991. Until now, after more than two decades, the residents of site 731 have lived uncomfortably in their house deprived of their right of privacy.



Site 731 in the front is overlooked by several new buildings to the South and West. The residents of site 734 (behind site 731) cover their courtyard with a blue tarp to prevent being overlooked. (2010, by the author)

Figure 4-4

In the new settlement, all street regardless of their width (6, 8, 10m) have no designated space for sidewalks. Instead cars are parked along the street. Owners, to protect their property' access (especially open shop's owners) from being blocked by parking cars, provide sporadic segments of sidewalk adjacent to their property. Those segments have no uniformity in terms of width, height and materials and do not serve as a safe space to walk since do not form one continuous entity. In some cases the height also varies, with height up to 50 cm, posing challenges for children and the elderly. Figure 4-5.



Site 726 with caged windows on the first floor and closed shutters on the first and second floors. Sidewalks about 40 cm above the street level on the right side of the photo. A young student walking among cars (2010, by the author)

Figure 4-5

4.2 LAND USE

The Planning Law and the Building Code gave the owner the choice of using the first floor as commercial or residential and stipulated that in the case of the first floor was used as commercial the level of the floor must be 25 cm above the given street elevation and in the case of the first floor was used as residential the floor level must be 125 cm above the given street elevation (Damascus Building Code 492/M.T. 3/5/1997, Article 149-4).

In the first few years after announcing the plan there was significant speculation and anticipation of high demand for commercial space. As such, all new building had designated the first floor for commercial use. That assumption turned out to be incorrect and resulted in many closed stores.

The owners of those stores could neither sell or rent their stores nor convert them to residential use due to the Authority stipulation. This gridlock case locked out a substantial portion of space from the market.



Site 739 has residential use for the first floor (white stone) and site 740 with close shops on the first floor, the arbitration of designating sidewalks. (2010, by the author)

Figure 4-6

In the last decade, the Authority eased the law of importing cars, and the problem of lack of parking space became clearly noticeable in those settlements where traffic congestion became the norm. Parking is sometimes worked out at the expense of other factors. As a temporary solution, car owners may park along the street, since most of the shops are closed. However, if the situation changes and business booms, this will not be possible. In conclusion, some of the main objectives of the new plan such as facilitating car movement through the settlement, parking and pedestrian safety are hardly accomplished.



Cars are parked along closed stores. The area is saturated with commercial spaces and many stores remain closed because of the lack of potential investment. (2010, by the author)

Figure 4-7

Due to the lack of parking space, the Municipality added a requirement to its newest Building Code (492 M.T. / 1997) that permits another basement floor dedicated for parking space in all sites that are 500 square-meter or larger, which is seldom to find such a large site in the traditional quarters, not to mention the extra expenses for excavation and providing ramps to two floors underground.

4.3 SECURITY

The new plan left many people with small share of property and no option but to sell their share and relocate to a less expensive neighborhood, often illegal settlement. People with better financial status moved in to the new settlement. This led to drastic change in the demography of the quarter. In addition to the following factors;

- Removing gates from dead-end streets and the entrances of quarters and later removing the dead-end streets on the ground that there is an authority in charge of defending and providing safety to its people, their properties and possession.
- The transformation from private to public,¹³⁷ as well as
- Increasing diversity of residents in the new settlement, gave rise to a feeling of insecurity, which in turn encouraged people to use steel doors at the main entrance of their building, supported by the use of a buzzer system. Here children are the most affected by the lack of private or semi-private open space: their parents did not let them play in unsafe street, and no closed public park is provided as an alternate area to play in. Further, children are most often restricted from playing in their houses, as indoor play is a source of disturbance and noise not only for the family itself, but the neighbors as well.¹³⁸ Another form of displaying insecurity is illustrated where the first floor of a building is residential; all the windows are caged by moderately ornamented steel bars for safety reason, as shown in all the previous photos.

4.4 PRIVACY

In different societies, the number of spatial elements or the hierarchy of relationships among those elements varies, but societies throughout the world have some analogue of such a system, one that modulates climate, income levels and cultural patterns of that given society. As a part of social practice, concepts and definitions of privacy vary from one culture to another. There are also sub-cultural differences that relate to privacy. Privacy requirements may vary according to socio-economic conditions, lifestyle, family background and values. The concept of privacy can vary among the individual members of a community.

“Westin identified four major functions or goals that privacy serves. These include protection and maintenance of personal autonomy, opportunities for release of emotions, the function of self-evaluation

¹³⁷ Changes in the type and form of street (from cul-de-sac to open-ended, and from short and narrow to long and wide) were associated with changes in the character and significance of social relationships among residents. It was found that residents in cul-de-sacs, compared with through streets, enjoyed greater social tie, intimacy and neighborhood cohesion. Newman, p. 104.

¹³⁸ 70% of the families in Damascus do not have space inside the houses for children to play, and 66% do not have nearby park for the children to play, Al-akrass, p. 80.

and limitation and protection of communication. Many psychologists support Westin's analysis and hold the same view. Moreover, it is held that privacy functions to promote self-expression, and serves to maintain and develop a sense of identity."¹³⁹

In traditional houses, the courtyard was the major source of light, fresh air and social activities. Minimal exterior openings, mostly on the upper floor level, were common and acceptable as a secondary source. Most often, those openings were covered by oriental wooden lattice to prevent visual intrusion. Privacy was maintained at all time while the users, especially female, moved freely in her house. But in the new apartment buildings, houses are extroverted, and most of the time, have openings from one direction. Ventilation is impossible and, for the sake of privacy, users scarify their natural source of light by adding shutters and curtains on their windows and awnings or tarps to their balconies.

Privacy is diminished not only in the visual form but also in the auditory realm, where thin walls separate the units and windows are very close to each other. Raised voices or a crying baby could easily be heard. The olfactory is another form of compromised privacy. Preparing a big meal, as is the norm of the oriental kitchen, in ill ventilated units will definitely spread the smell throughout the unit, the stairwell and the light well. Loss of the privacy factor in terms of visual, sound and olfactory can be seen as a harm factor depend on the parties that cause the loss of privacy and the parties that experience it.

4.5 HARM

Preventing harm, which was the main factor of shaping the traditional built environment, became obsolete in the new settlement. In the past, harm was judged on a case-by-case basis. Nowadays, harm has a code definition; people are free to harm others and the environment as long as the harm does not fit the code definition.

The following figure illustrates one scenario of harm action and reaction. The fourth floor unit in the back building had a window that overlooked, and harmed, the adjacent site. According to the Building Code

¹³⁹ Vasiritabar, S. "Design and Privacy in Moder and Traditional Housing in Iran" Ph.D. Diss. Oxford: Oxford Polytechnic, UMI, 1990, p. 108.

this was illegal, but due to the fact that there are several other legal openings that overlooked the adjacent site, no objection from the harmed party was initiated. In addition, the Authority was indifferent to the situation, since it did not affected public property; thus, the window remained open for more than a decade. Eventually, the harmed party acquired a permit to demolish the old house and another permit to build a new building that blocked a part of the window. Those unfinished walls will remain as such unless a third party construct a new building and complete the puzzle. One does not know when or if that will take place.



Precedence factor is no longer in use (2012, by the author)

Figure 4-8

The case of site 722 (see Figure 2-7 for the site location) could be looked at under several categories, among them: ill-conceived planning by the authority, externality and as a source of different forms of harm. Originally, site 722 was a small shop. In the new plan, it is a part of the new street. Just like the case of site 731, the Municipality did not acquire this site. The store has been abandoned for several years. Eventually the roof crumbled

while the walls are still standing up because the owner keeps restoring them to maintain his case visible to the municipality. The store blocks a big section of the street, causing bottleneck for both cars and pedestrians. In addition, it blocks two stores of a, relatively, new building (built in 1989) as shown in Figure 4-9, 10, 11.

Since there is no roof, the store became a dump, a source of disease and an eye sore. Speaking with the owner of site 722 and the harmed stores owners, it is unclear when this case will be settled.



Site 722 blocking a large section of the street, causing different forms of harm
(2010, by the author)

Figure 4-9



The abandoned store (site 722) badly affecting the neighboring business (2010, by the author)

Figure 4-10



Having no roof, the abandoned store became a source of health hazard. (2010, by the author)

Figure 4-11

As mentioned earlier, the Damascus Municipality developed the General Plan 54/3/A for al-Mazzeq quarter in May of 1986, (Figure 2-7). Shortly after a detailed plan for every block and a detailed plan for every individual site a **Requirements Plan** (*Mukatat Wajaeab*) is developed. In implementing the plan, naturally, those sites, which have one or few owners who are willing to work together and their sites have no/or only few:

- Physical challenges such as buying and unifying part(s) from adjacent site(s).
- Legal issues such as buying or giving up some property's rights as well as evicting or compensating tenants.
- Tenant(s) to be compensated before being evicted and demolishing the old building.

Those are the first sites to be built in the new settlement. From observing the development of several traditional quarters in Damascus, one can see that less than fifty percent of the new planned sites are built and the rest are in grid lock status for a variety of reasons as this chapter will illustrate.

Surveying the development in the block, sites 746/3 and 742 were built in 1992, site 732 was built in 1993 and site 747 was built in 2005. The owners of all those sites had to join with adjacent sites and give up some portion of their sites to public use with no compensations in addition to giving up some property rights (Figures 4-14, 17, 18). However, the owners did not have to purchase some parcel(s) from the neighbors. The rest of the sites in this block are to be built in four buildings and in each case there are some stipulations and obstacles that prevent the development from taking place.

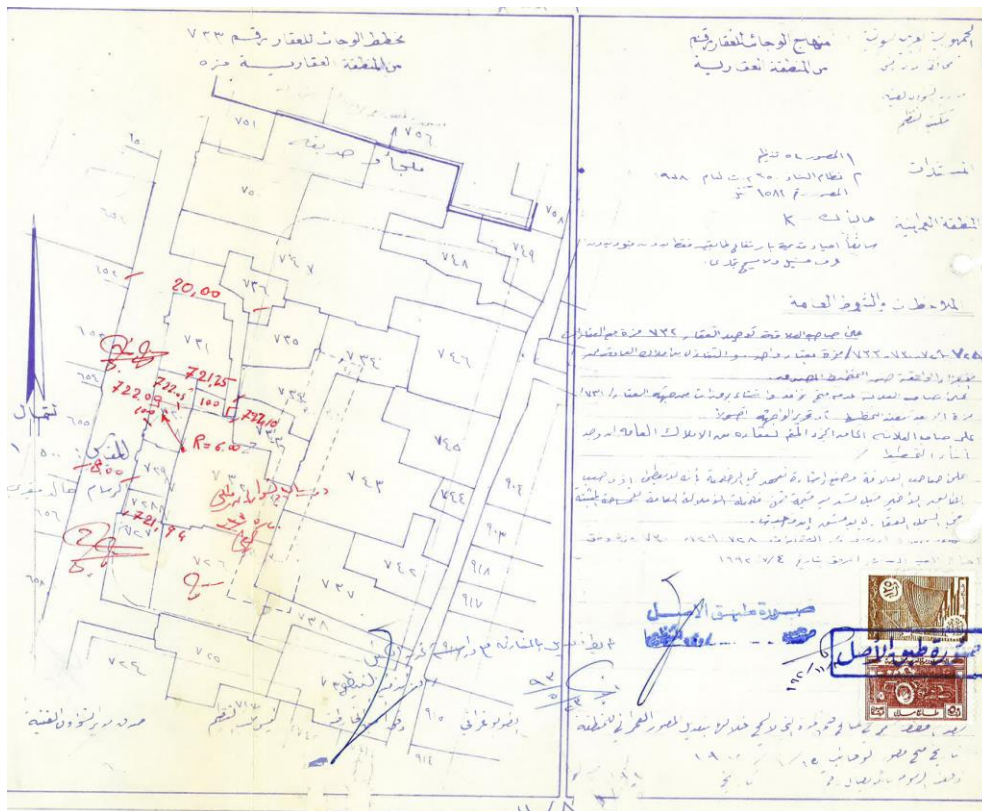


The ground floor of the block by early 2012 put together by the author according to the individual building permit of the sites (746/3), (737 & 742), (727 & 747) and (728 & 729, 730 & 732) starting from the North clockwise. (2016, by the author)

Figure 4-12



Figure 3-5 inserted again to facilitate the comparison with Figure 4-12



An original **Requirements Plan** (*mukatat wagaeeb*) for site 732 in al-Mazzeah Quarter that dictates how the new building would replace the old houses.

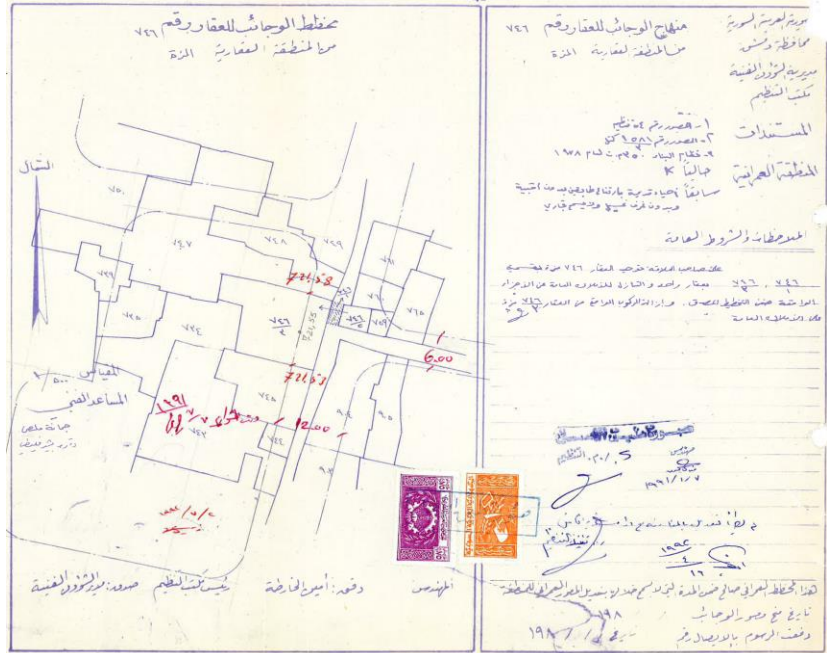
(1993, Damascus Municipality)

Figure 4-13



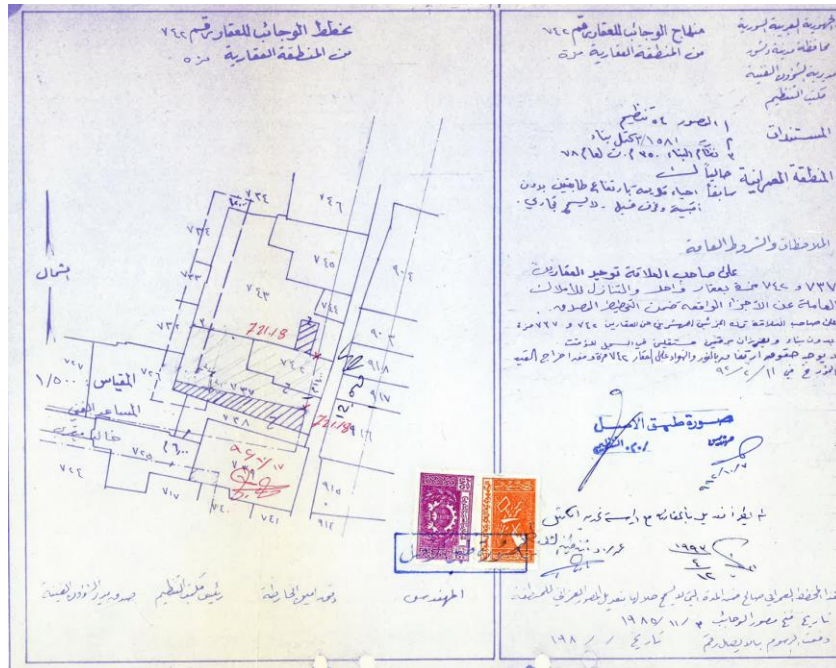
A zoom in of the original **Requirements Plan** (*mukatat wagaab*) for sites 733, 732, 730, 728 & 727 in al-Mazzeah Quarter. (1993, Damascus Municipality)

Figure 4-14



An original **Requirements Plan** (*mukatat wagaeeb*) for sites 746/1, 746/2 & 746/3 in al-Mazzeh Quarter that dictates how the new building would replace the old houses. (1992, Damascus Municipality)

Figure 4-15



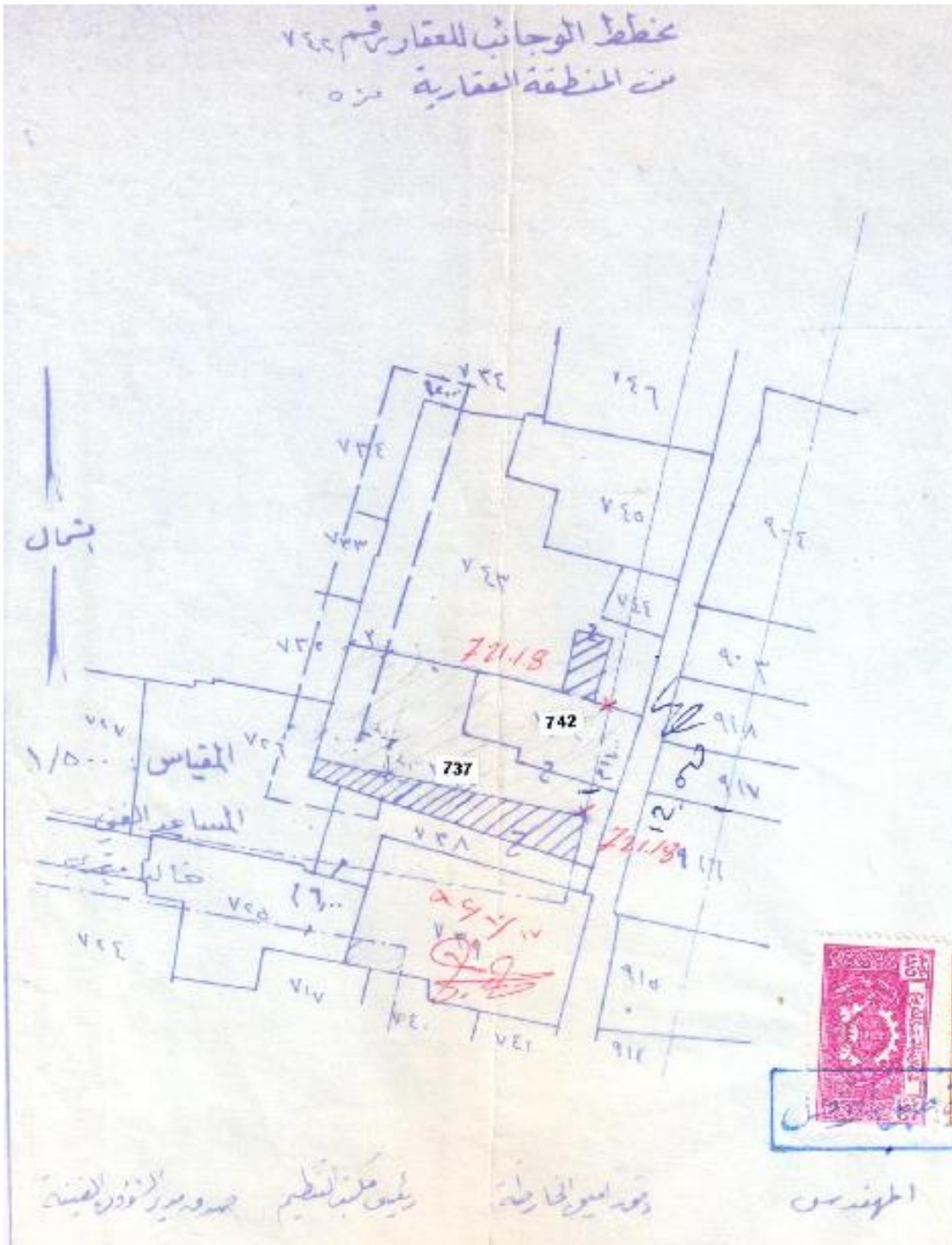
An original **Requirements Plan** (*mukatat wagaeeb*) for sites 742 & 737 in al-Mazzeh Quarter that dictates how the new building would replace the old houses. (1993, Damascus Municipality)

Figure 4-16



A zoom in of the original **Requirements Plan** (*mukatat wagaeeb*) for site 746/1, 746/2 & 746/3 in al-Mazzeah Quarter. (1992, Damascus Municipality)

Figure 4-17



A zoom in of the original **Requirements Plan** (*mukatat wagaab*) for site 742 & 737 in al-Mazzeah Quarter. (1993, Damascus Municipality)

Figure 4-18

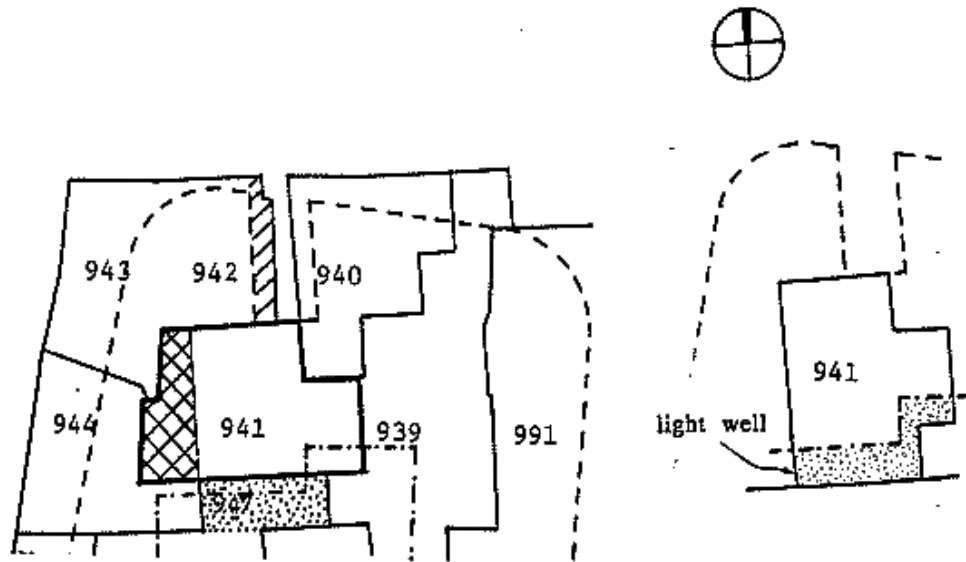
In the instance of sites 743, 744 and 745 (Figure 4-18), the Requirements Plan stipulates that the owners unify these sites into one site. It also demands set back to the new street line and combining a part of the adjacent site 742 with the new site, making the site dimensions and shape acceptable to the Building Code¹⁴⁰. Though the objectives of those requirements may seem valid, in reality the process of achieving it is unjust since the owners give up unequal parts from their sites to the public property. Secondly, the process of adding a part of an adjacent site is a long and complicated task. Quite often it involves much more time, money and work than the anticipated benefits warrant. This becomes more complicated when there is more than one owner for each site (the site which the part is taken from and the site which the part is added to), which is often the case. The owner(s) of a site cannot obtain a permit to build on the site without buying the shared space from his neighbors, no matter how many, how old or where they live. There is a significant amount of manipulation, extortion and disagreement among multiple owners, particularly when some wish to sell and other do not. The more time that passes, the more difficult it will become due to factors such as death, inheritance and increasing number of owners and thus fragmentation of the property.

The situation is increasingly difficult if some of the owners are foreigners. Often they are Turkish. By the end of WW1, the French and British forced the Turks to pull out of Syria. Turkish property owners had returned to Turkey and left behind properties, which were most often appropriated by military orders from the Turkish governor *al-hakim*. The Turkish owners did not inquire further about their properties and by now they are very likely deceased. To buy a property owned by a foreigner, one has to go through an arduous process at the Turkish embassy, and if nobody claims ownership of a certain piece of a property after a certain period of time, one must have the purchase processed by the Central bank and then approved by the court.




Site 941 was accessed through a dead-end street (Figure 4-19). In the new plan, the site is within the new block such that the owner(s) does not have to give up any part of his property to the public. But in order to provide the interior spaces with natural light a large light well has to be inserted in

¹⁴⁰ Article 149-1 of the Building Code (492 M. T.1997) stipulates that a square of 7 X 7m or a rectangle of 6 X 8 m should fit in the new site. In addition, Section 146 stipulates that the area of the site must not be less than 75 m². These requirements are supposed to make all sites receptive to livable spatial configurations.

the design. This cannot, however, replace the courtyard, a vital element in the traditional house, because it cannot be considered livable space, as a result of its poor physical proportions and location overlooked by at least three neighbors.



Site 941 after unifying, dividing, and set-back

-  A sector which may be bought from site 942 then given to public property for free in order to make the entrance to site 941 two meters or wider
-  A sector which must be sold and unified with sites 943 & 944
-  A sector which must be bought from site 947 and unified with site 941

A light well providing the site with natural light could not be considered a courtyard (1995, Redrawn by the author) Taken from the original requirements plan of site 941 Al-Mazzeah

Figure 4-19

The owner of site 941 has to meet another requirement before obtaining a Building Permit. The Requirements Plan and the Building Code require at least a two-meter wide entrance to the site from the public property. The owner(s) has a few difficult choices to make in order to be in compliance. He can buy the hatched part of site 942 and demolish the building on it in order to have a wide entrance¹⁴¹, but this option may make him a subject of extortion from the owner of site 942, like in the previous case. Or he could wait until the building on site 942 is to be demolished for new construction, since the new building on this site has to be set back, and

¹⁴¹ Most often, it is not a doable option, because you cannot buy a part of a room and demolish it.

in this case the entrance to site 941 would be wide enough. In the latter option, the owner(s) of site 941 has to wait for an undetermined amount of time, especially if there is a tenant in site 942 who could extort the owners of both sites.

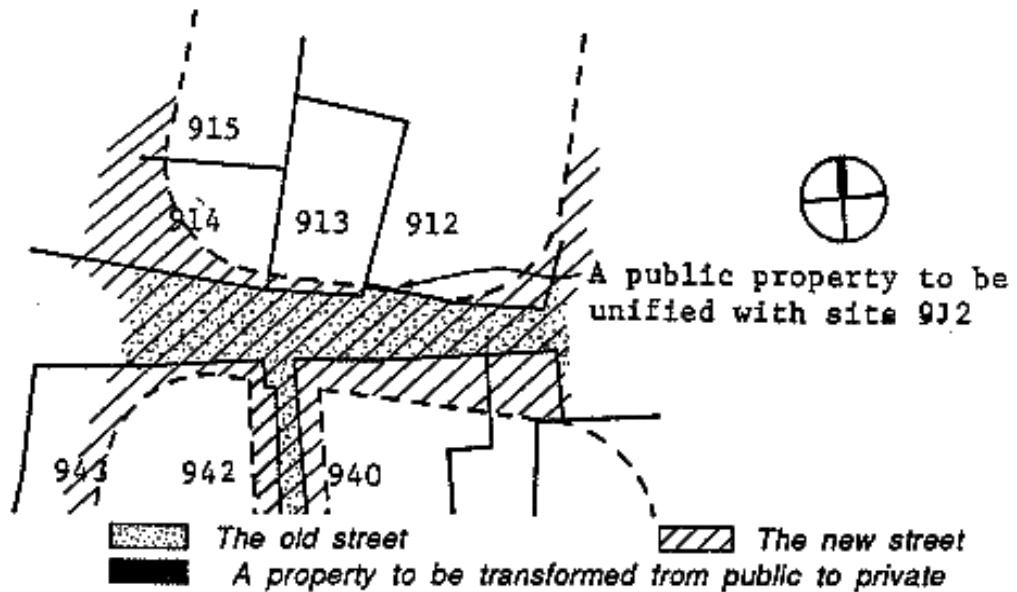
In other cases, the Civil Law requires a minimum of two meter between the two openings facing each other, such as site 734. To meet the two-meter requirement and since most of the buildings in the traditional quarter are two stories high, the new buildings cannot have any openings or cantilevers on the first two floors on the western elevation facing site 731. A space without openings cannot be used for residential or commercial activities except, maybe, for storage. If not postponing all development, owner(s) would at least have to postpone construction of any cantilever on the elevation-facing site 731. Yet, it would be very difficult and expensive to add a cantilever to an existing building. Again, this situation could last for a long period of time. Figure 4-20



Owners of the first two floors facing the old building cannot open their windows until the old building is demolished. (2011, by the author)

Figure 4-20

Despite the intention of the municipal planners to contain the old street network within the new one, sometimes a part of the old network cannot be accommodated, for geometrical reasons, as is the case in site 912 Figure 3-21. The owner of the site is required to buy this small portion of public property and combine it with his own site. A committee from the Municipality estimates the market value of this section of public property, and the owner of the site is required to buy the property at this price, regardless of the fact that he may have to give away a much larger portion of his site to the public for free.



A piece of public property to be bought by the owner of site 912 (1995, Redrawn by the author)
 Taken from the original requirements plan of site 912 Al-Mazzeah

Figure 4-21

As mentioned earlier, the planners did not stop with laying down straight wide streets, but also proceeded to curve all corners at the intersections in order to ease car movement within the new settlement.¹⁴² This process was implemented not only on the first floor level, but also on all four floors as seen in previous photos and plans, according to Decree 630 M. T. 1994. This negatively affected the special configuration in all of the units located on the corner of a site.

¹⁴² *Trimming the corner is an old treatment used only on the first floor level to increase vision and to reduce sudden or surprise appearance at intersections.*

From the previous examples, one can see these compulsory requirements reflect the Authority's top-down policy and the aim of the Authority to enlarge public property. In doing so, it adopted an unfair strategy:

1. People are forced to transfer unequal parts of their private property to public.
2. The Municipality charges people for the transferring property from public to private but not vice-versa.
3. The estimated price for an acquired property by the Municipality is very low in comparison to market value.
4. Two shareholders of two different adjacent sites have to reach an agreement when they attempt to meet the imposed plans of the Municipality.
5. The Municipality empowers the tenants, if there is any, by stripping the owner of the right to evict them with no cap on the tenant's demands whether that is cash compensation or a share in the new building. In many cases, the greed of the tenant(s) was a big factor in halting the development of such a site.

Often a delay in the site acquisition process leads to costly delays in occupancy or development of neighboring sites. Hence, these constraints have provoked sour relations amongst neighbors instead of providing solutions to improve the built environment while maintaining harmonious social relationships.

V- RECOMMENDATIONS

The ripple effect of global economic changes that took place in the first half of the last century brought drastic changes to the economic and social structure of Middle Eastern societies. The Syrian Authority, among other newly established states in the Middle East, tried to implement its vision of a new political system and new social order. The Authority's housing policy at both the macro and micro levels was just one of many changes occurring in Damascus. Chapter Three illustrated the devastating effects of the Rental Law on both the traditional quarter's physical built environment and the social life present within it.

The traditional quarter lost its delicate natural mechanism by disturbing the access network and introducing new housing typology. One new building was enough to break down the harmonious relationships among neighbors. The new typology promotes extortion, insecurity, and different forms of harm, and limits the use of open space for circulation. The remaining old houses are now in major decay due to one or more than one of the following reasons:

- In the case a house is used by tenants, the owner has no motive to renovate the building and the tenants do as little as possible to keep the house habitable.
- No official renovation permit will be issued for that type of building now that the plan is finalized and published. As a result, owners/users of a house renovate or expand the building illegally using new building materials (concrete, cement modeler units, aluminum, plastic etc.). This explains the unharmonious appearance of the traditional buildings currently, Figure 5-1.



Unharmonious appearance of the traditional buildings
(2009, by the author)

Figure 5-1

- Some people have not renovate their home because they are planning to demolish it and build a new building but there is/are some requirements they have not met such as adding a parcel from a neighbor, a small lot has to partner with the adjacent site and the neighbor(s) is not ready to do so or practicing some form of extortion.
- Too many partners own the house to the point that their respective share is insignificant. Needy partners sell but the well-to-do partners play the waiting game.

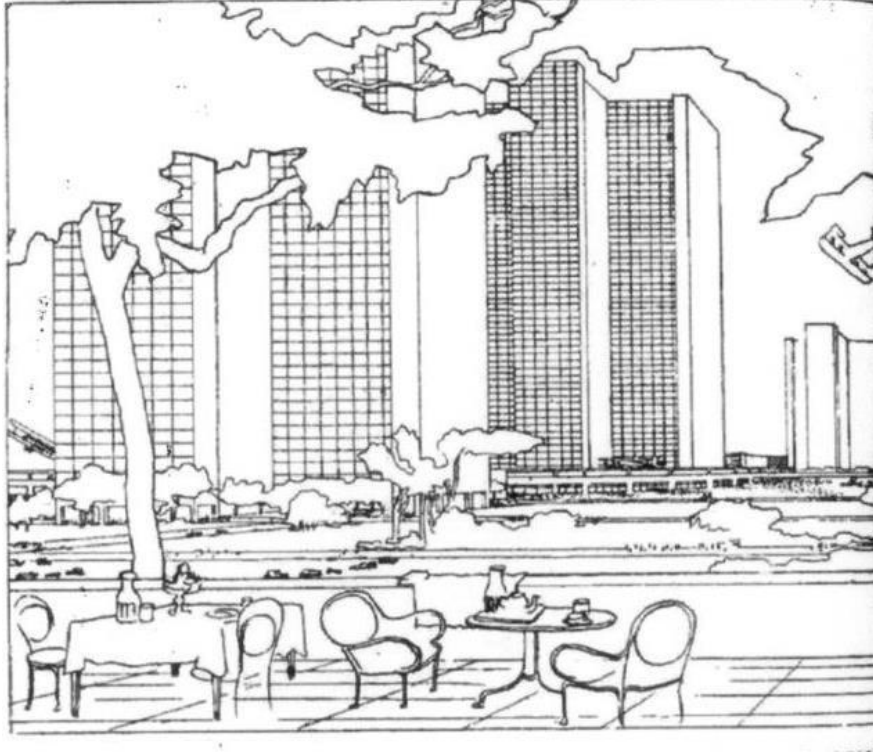
The traditional built environment grew organically. The complementary effects of the physical built environment, social life and building guidelines were the main factors behind the creation of such a complicated system. The Authority's interventions were a top-down policy that introduced legislative decrees to modify the social order. The new plans had to be supplemented by many legally bond requirements in order to simplify and detangle the physical and legal engagements among properties themselves as well as among the users involved. Now a day, all the

undeveloped sites are in gridlock status waiting for another intervention from the Authority's end to force its vision (solution). One or more parties will likely feel that the case was treated unfairly.

In some cases, the last resort for people to mitigate their problems is forcing property transactions through the court by Public Bidding (auction). This is also a long and complicated process and eventually, it forces the less fortunate out of his own neighborhood. Auction might solve the property-right conflicts but the physical output of the Planning Law is far from satisfying since social factors are not taken into consideration. The user's dissatisfaction is illustrated on the elevation of their buildings.

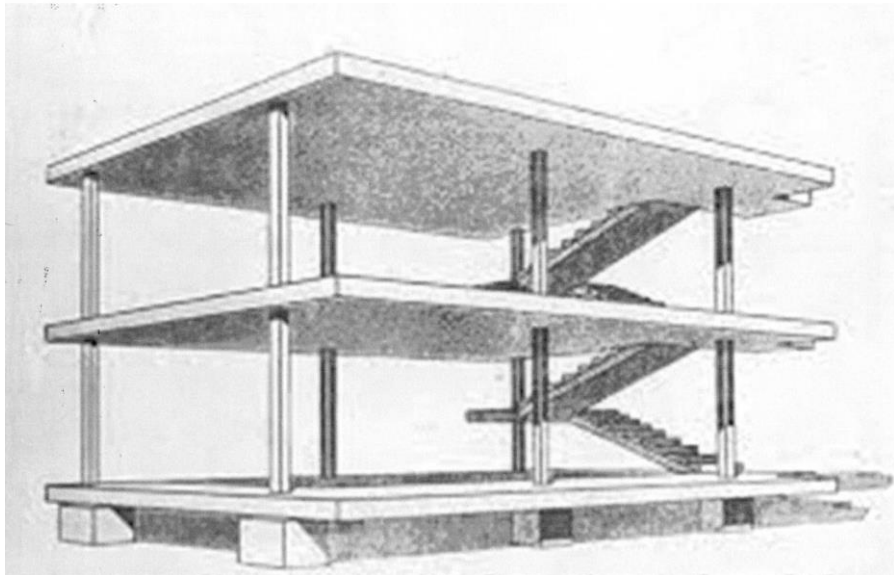
A technical solution to those conflicts may be attempted by moving the street line one way or the other or adding extra floors thus demanding little to no change in human values or interactions with neighbors. In Damascus today, technical solutions are welcome, because of the dysfunctional state of the social structure. By law entitled right out weighs co-operation, responsibility, and no harm principals. It takes courage to assert that a desired technical solution is not possible. A human problem can be called a no technical solution to a problem.

Prominent architect and urban planner, Le Corbusier had mastered the use of new building material, at that time *reinforced concrete*. The concepts of his architectural and urban planning works rooted in using this material. Replacing the load bearing walls by columns, Le Corbusier developed a set of architectural principles that dictated his technique, called "*the Five Point of a New Architecture*." They were: 1- Pilots 2- Free design of the ground floor 3- Free design of the façade 4- Horizontal window and 5- Flat roof garden. His urban planning vision extended his idea of taking advantage of reinforced concrete by suggesting high-rise building surrounded by a vast open space, such as in Brasilia City, Figure 5-2. Similarly, he extended his use of reinforced concrete, producing mass housing by building skeletons of this material, Figure 5-3. This skeleton can be considered the basic support system. His solutions were purely technical with no regard to social factors.



Le Corbusier' vision of urban planning (within-timelesshistory.blogspot.com)

Figure 5-2

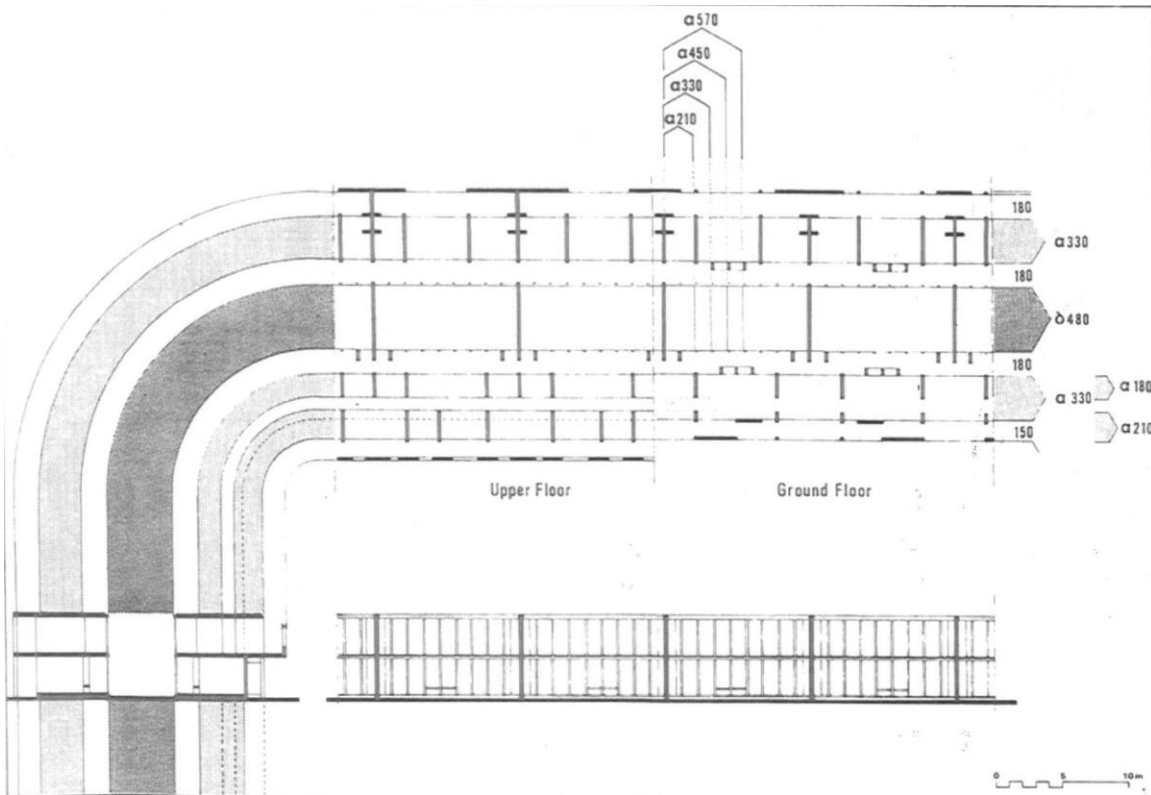


Le Corbusier' idea of producing mass housing-domino (within-timelesshistory.blogspot.com)

Figure 5-3

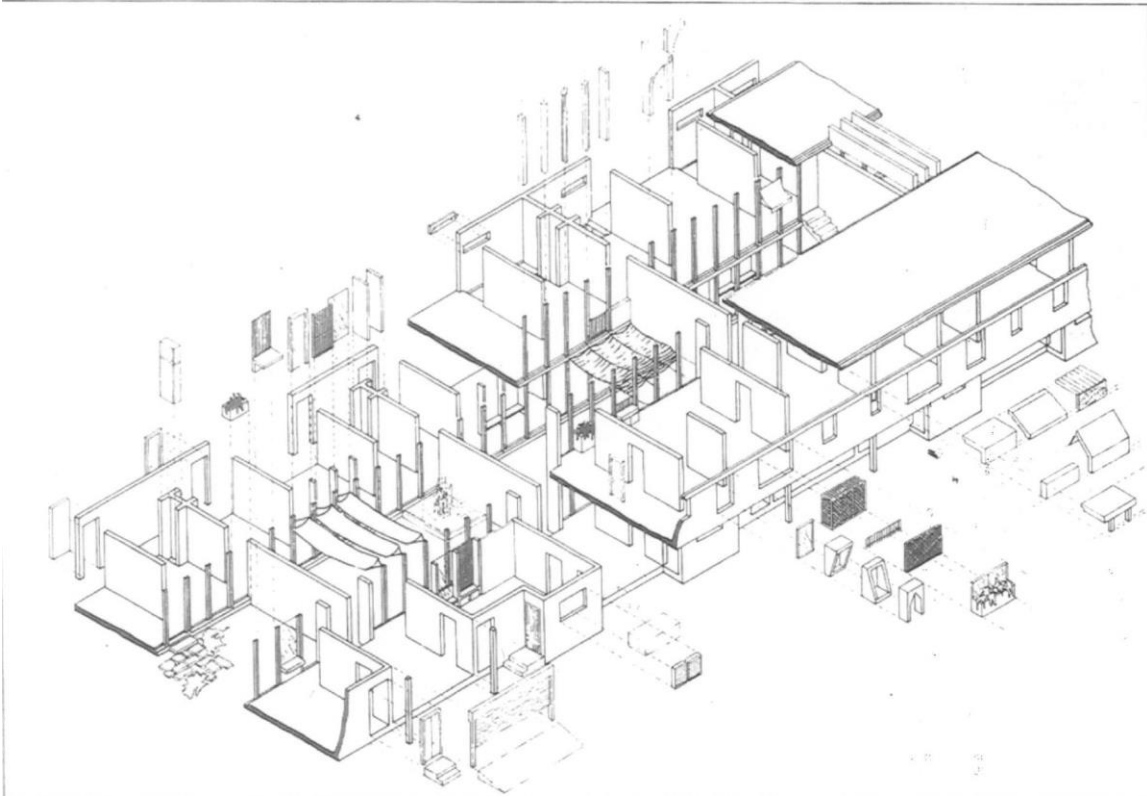
Meanwhile, John Habraken, in his *Support* theory, gives social factors a top priority in a big scale design process. Akbar, in his Master Degree project under the supervision of Habraken, adapted the Support theory in designing for Saudi society, Figure 5-4, 5. One will notice that the theoretical design (technical solution) took into account the social factors within the unit itself, providing a courtyard and separation of the garage and guest room from the rest of the house among other adaptations. Having a site to build upon was not a problem, no relationship among neighbors except for, artificial, direct connection in the middle sector of the scheme. In addition, access control was not in the scope of the design.

Adapting simplification “*Seeing Like a State*” produces laws that are poorly suited to govern a complex, crowded, changeable society. Since it is impossible to spell out all the conditions and special cases most of the time, committees and sub-committees are formed to provide details and interpretation of new laws. All of us are familiar with the term “*The devil is in the details*”



Section and plan of the Support System (1981, Akbar's master Degree Project)

Figure 5-4



Axonometric view of variations in units' assembly (1981, Akbar's master Degree Project)

Figure 5-5

The biggest ever housing project to be built as a one development is Dummar Project. By the blessing of the Authority, it was conceptualized in the 1970s by the Professional Syndicates Union. The European style was adapted in the master plan as well as in the design of the units. Wide streets and building set back are applied all over. Four-story free standing buildings make up the back bones of the project in addition to several twelve-story towers and a quite few villas with terraces on the western side of the project. Later, the development befitted in the jurisdiction of the Municipality of Damascus.¹⁴³ The Municipality took advantage of the project' existing infrastructure and expanded the development (externality) to reach in total around 11,000 units by late 2011. The author worked in the project in the summer of 1980 and used to own a unit in the expansion part.

¹⁴³ *Al-Sham al-Jadideh: Damascus, Complex of Co-operative Housing for the Professional Syndicates in Damascus Press, 1996.*

As we've seen in the new settlements replacing the traditional quarters in Damascus, there is rarely a totally built block. On average one half of each block remains un-built. Chapters 3 & 4 illustrated the conditions of both parts in the block, the traditional and the newly built. The living circumstances in the traditional part became unacceptable as a result of new buildings. Users who have other options have moved out of the quarter. Of course, all tenants have kept their leases active, even those who physically moved out, so that they do not lose their share in the new buildings.

The old house type cannot coexist with the new walk-up building. In addition, due to the deteriorated physical shape resulting from long periods of neglect, the old houses must be replaced with new buildings. Though it requires few steps in order to enhance the living conditions in the new neighborhood and eliminate the sources of disruption to social cohesion.

Nearly half way built quarters imposes some limitations and challenges. Working with already laid down street lines and existing new buildings adds more constraints and hurdles to the corrective planning process. Hence, my proposed planning guidelines to the Authority in order to promote a harmonious built environment which will stimulate a good social life¹⁴⁴ falls into two categories; the first category recommends planning guidelines to mitigate the unmerited practice by the authority such as Rental Law and its ramifications, externality, extortion by mandatory sale or purchase of a parcel from an adjacent site, forced open balcony and etc. The objectives of those recommendations is rehabilitating existing defects in the new built environment, explicitly for Damascus' case. The second category consists of general recommendations not limited to Damascus traditional quarters.

The first category:

- Each block is a unique case and has to be treated as such. Though in every case one must take advantage of the surrounding amenities, for example, the excessive availability of commercial space (shops) in the new adjacent buildings.

¹⁴⁴ *Where social life is not limited within one's unit and neighbors (male, female, old and young) can interact and engage in social activities outside their units without concern of compromising their privacy, safety and convenience. Rabenau talked about the pleasant community life in the Old City of Damascus as intimate, calm, peaceful and quiet .p. 7.*

- Design each block as one entity with controlled access. Doing so increases the sense of security and promotes community cohesion within the block. In addition, it might reduce redundancy in the number of staircases. Oscar Newman in his book *Defensible Space*¹⁴⁵ illustrates the benefit of having a gated neighborhood.
- The existing Building Code imposes on any lot with area more than 500 square meters a parking floor (below the basement, stated earlier in Chapter 4 page 78). It is a very rare case that there is a lot with huge space especially after illustrating all the factors that have led to such a property fragmentation in the traditional quarter. In addition, it is a very costly to have a second basement let alone the immense wasted area for the ramp serving the second basement. Considering the block as one lot with parking on the first floor and in the basement, if the users choose to, would ease the parking problem in the new settlement. The authority will encourage the user to adapt this option by not including the parking space in the building permit's allowed space in addition to making the construction of such space less expensive than going to a second basement.

Keeping in mind that each block is served by at least two streets, the design must designate the widest of those streets for car movement in and out the building as well as circulation, while the other street must be dedicated, if possible, for pedestrians' movement and social interactions. The Authority must be involved at this stage to facilitate the decision of dedicating streets for car or pedestrian movements, or allowing car movement in some streets at certain times. It is worth mentioning that this neighborhood is served with public/private transportation system.

- A limit must be set to cap tenant compensation or share. This would reduce tension among owners and tenants. It is a highly controversial issue that has to be tackled and the Authority must bear the burden of such ramifications resulting from its bad policies.
- Use the principle of Law of Organization (P. 55 & Appendix B) to calculate the shares of all parties involved in the block and reduce, if

¹⁴⁵ Oscar Newman, *Defensible Space, Crime Prevention through Urban Design*, (Macmillan, 1972). In his numerous experiments in the USA, he suggested that the number of units sharing the same-gated street must not exceed 16 units.

not eliminate, the externality factor. In this case, the converted property from private to public domain is calculated according to every party's share. In addition, this principle will eradicate the chance of extortion among parties when it comes to selling or buying a parcel of land as was illustrated in the previous cases.

- Adhere to the principle of “*no harm and no reciprocal harm*” in all its aspects, visual, auditory and olfactory. This principle will be applicable not only to the new building but also toward the surrounding neighbors. As we have seen in Chapter 2, the form of the traditional buildings and quarters evolved not through the direct implementation of design and planning code and instructions, as to what and how they must be, but through rules prohibiting what and how they could not be. This approach will leave the door open for creativity and unlimited options of single unit design, be it introverted or extroverted, as well as grouping or clustering units in a way that could provide other crucial amenities such as private open space, semi-private safe space for children and women, parking space, etc.
- Except for the health and safety conditions, dismiss the Building Code and Requirement Plan constraints, such as the number of stories, height, overhangs, open/closed balcony, rounding corners at intersection at all levels, etc.

The second category:

- Create a sequence of unique gateways or staircases and spheres to reduce disorientation and give sense of going deeper and more seclusion, like it was felt in the traditional circulation network.¹⁴⁶
- Get the owners involve in the design process, especially in deciding the housing typology that suits their way of life. It is challenging but not impossible to design a small complex with more than one type of housing that serves the users with their respective amenities, such as a social activity hall, children playing place, parking space or other utilities.

¹⁴⁶ Christopher Alexander, *A Pattern Language*, (Oxford University Press, New York, 1977).

- Allow certain commercial use such as clinic, dentistry, medical lab, law offices, architectural and engineering firms, so that the neighborhood is live day and night.
- Encourage the use of privately owned roof garden, or terrace garden like it was practiced in the traditional houses, which would increase the building insulation, soften the concrete and gray feeling, uplift the livable feeling of the space and provide an open space especially for women and children.
- Use the same *Floor Area Ratio* in addition to the parking space for the sake of fairness with the already existed new buildings and prevent overbuilding and greed.
- Minimize public property by reclaiming, if possible, some of the newly designated public streets.
- Provide, whenever possible, private and semi-private open space, be it outside the block or within the block, at the ground floor level or at upper level(s).

The Authority must depart from its top-down policy to a more cooperative and engaging strategy where the Authority role is merely facilitating the development, not superimposing its vision and political agenda. Adapting this approach will produce a cohesive built environment guided by the user's needs, realistic dreams, belief and affordability. In the past, people arranged their neighborhood and environment according to their means of life. People are still capable of looking after their own interests, and can likewise bring the variable new live conditions as long as the Authority allows positive interaction among people on the one hand and ensure equitable enforcement of property laws, on the other.

The traditional sectors in most cities of the Middle East have a, surprisingly, unpredictable and spontaneous forms. The freedom to act as long as you do not harm the others or the environment is the main mechanism that created the traditional built environment. Using the same mechanism, today, with our new concept of housing, social life, economy, mean of transportation and communication, building materials and

technologies definitely will produce surprising built environment on one hand but not similar to the traditional built environment that we knew.

The traditional quarter evolved over time and became a complicated organic body. Christopher Alexander spoke about the impossibility of designing a complicated complex, especially if you do not have all the users contributing to the planning and designing process. One has to provide the skeleton at the macro and micro levels (planning and designing)¹⁴⁷ and give room to the individuals and community to improvise within the condition of no harm to others and the environment. The proposed scheme considers the built environment as a dynamic entity able to grow and be modified according to its unexpected user's needs. For the sake of illustration and testing the model one can take a part of the complex (block) and proposes a few scenarios (there could be many) and sketch a schematic design for each scenario, especially, if the design allows interchanging space among adjacent units.

Exploring the block that was the focus of Chapter 4, the schematic design shows that part of the basement is used as parking space and the other part is used for utilities, Figure 5-6. The first floor has one easy to control entrance (gated community) and plenty of semi private and well-protected spaces for social activity and playgrounds. Some more parking spaces are provided; those spaces could be used for commercial use if needed, Figure 5-7.

¹⁴⁷ *Support System of John Habraken can be used as tool of providing this skeleton at both the macro and micro levels. **Supports: an Alternative to Mass Housing**, (Urban International Press, UK, Edited by Jonathan Teicher, 1999). Edited reprint of the 1972 English edition.*



A schematic design of the Basement as a parking and utility space
Sites 746/3, 732, 747 and 737 are already built. (2016, by the author)

Figure 5-6



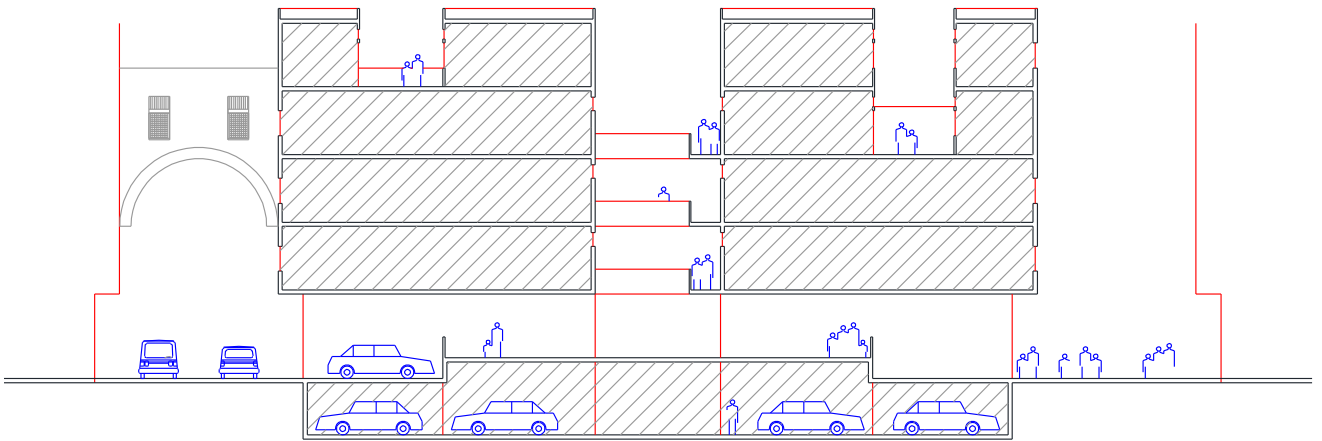
A schematic design of the First Floor with one controlled entrance, parking/commercial options and semi-private social space as well as children play ground.

(2016, by the author)

Figure 5-7

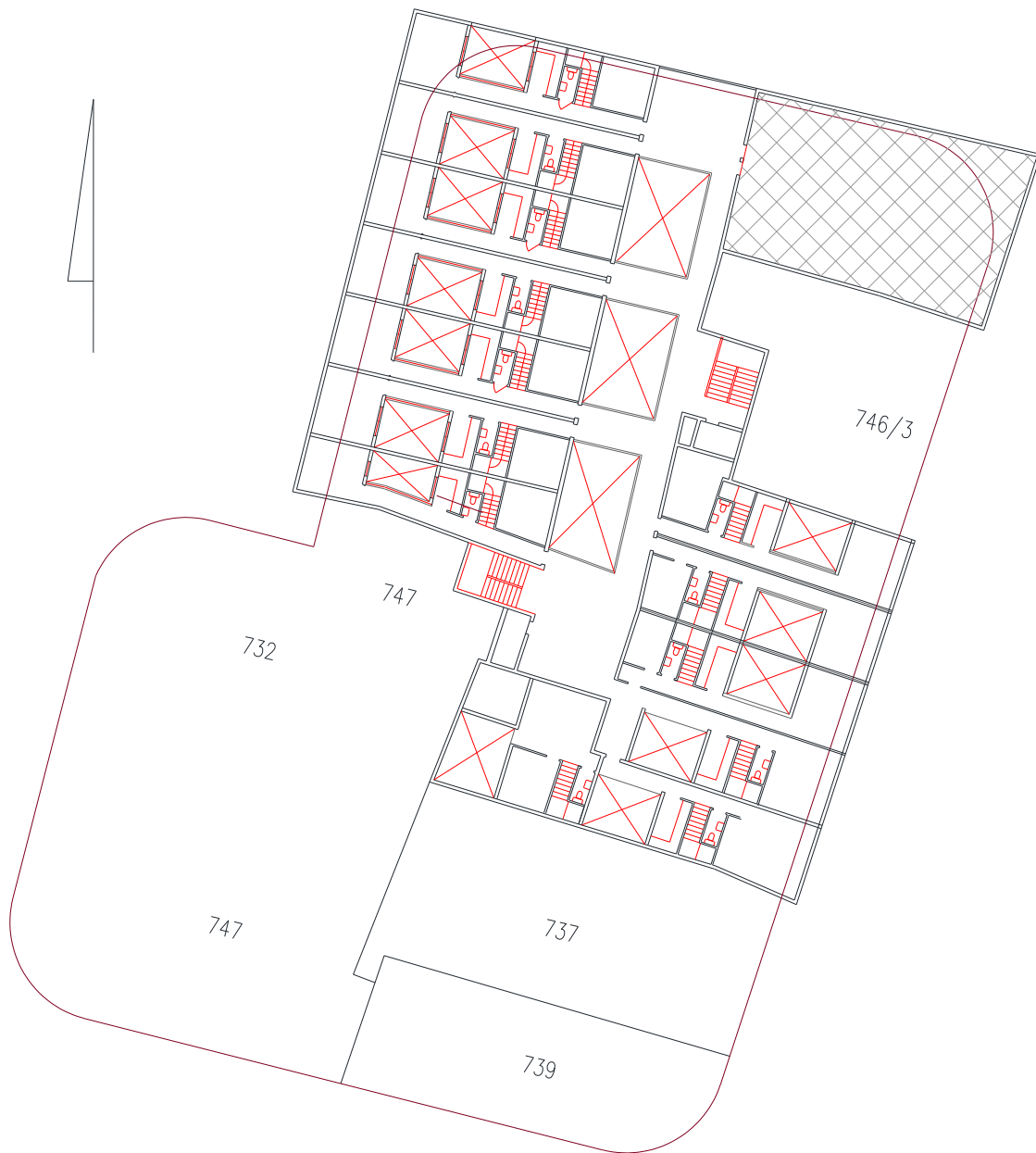
The upper two floors of the complex have the potential of having extroverted or introverted housing typologies. Since it is open to the sky, the common space serving those houses could be looked at as a lane, dead-end alley, air-well and a social space (semi-private space). The width and

configuration of this space are to be decided by the users, through their designer(s). Far from traffic and street noise, this open space has the seclusion the dead-end street had in the traditional quarter, Figure 5-8. Through the design one can enhance the exclusive/intrusive factor among the users. Addressing both ends of this space, North and South ends, will enhance the social interaction among the users.



A section in the schematic design showing the parking in the Basement and First Floor, semi-private open space on the first Floor level, the potential of using introverted housing typology on the upper two floors as well as the circulation open space that can be a modified version of the dead-end street. Another floor is added to make up for the space that is taken at the first floor to provide semi-private open space for social and children activities. (2016, by the author)

Figure 5-8



A schematic design of the upper floor
 The Northeastern part (hatched) of the lot is left to be explored with several options in the following figure. Crossed spaces indicate open space or courtyard. (2016, by the author)

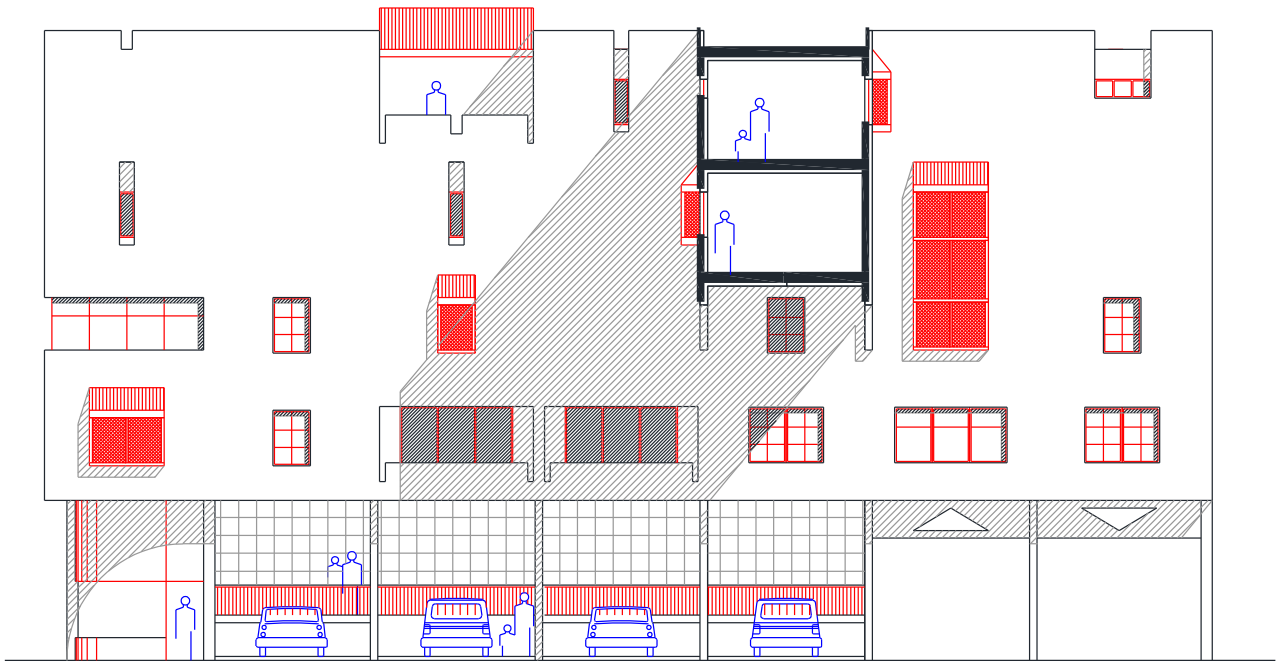
Figure 5-9

The users have the options to open windows towards the main streets as well as the “alley or dead-end street” in addition to opening towards their courtyards with one stipulation, not overlooking, harming, the neighbors. Outreach to another block at high floors level like the case of site 746/3, Figure 3-4, should be a considerable option. This will increase the built up area, provide a unique correlation with the surrounding houses and give an identities to the neighborhood, in Figure 5-11 shown as section.



Exploring several scenarios such as an extended family using the space as one unit, or subdividing the space to two, three or four units with the option of moving one room from one unit to another. (2016, by the author)

Figure 5-10



A schematic elevation of the complex showing a variety of opening such as high and narrow horizontal or vertical on the upper floors were a courtyard is the primary source of light and ventilation and different means of opening at lower levels supplemented by lattice (Mashrabiah system) or an open balcony, which ever suits the user and does not harm the neighbors. In addition, an over pass that does not hinder the traffic beneath and also does not visually harm the neighbors. (2016, by the author)

Figure 5-11

VI- CONCLUSION

The main objective of reforming the planning and building guidelines is to provide a socially sensible and coherently built environment, a responsive built environment to new needs due to a new socio-economic structure. As well as to arrange for planning and building guidelines that respect the social structure and promote positive social interaction.

In the last century, the world has undergone huge changes in its socio-economic structure. The Middle East and Syria, in particular, was no exception. Colonization, wars, adaptation of new political system and the introduction of light industries to supplement the agricultural economy, among other global and local factors, fashioned a new socio-economic structure in Syria.

On the social side, the demography of cities went through a drastic change due to the proliferation of the nuclear family at the expense of the extended family, improving the public health and education systems, the rise of birth rate and receiving successive waves of refugees and local migration. On the economic side, the Authority became the main employer after confiscating a vast area of agricultural lands and small factories which were family business based. The service sector and army had absorbed the majority of the newly educated work-force from both sexes.

Gender is a factor that, along with other factors, such as race and ethnicity defines our identities.¹⁴⁸ Gender identity developed through the process of socialization in the family and other social institutions. Social molding and socialization explain how men and women acquire their gender identities and how they must behave relevant to their sex.¹⁴⁹ The gender/space relationship had made reference to spatial manifestation on private/public separation of spaces in the traditionally built environment.

¹⁴⁸ Linda McDowell, *Gender, Identity & Place, Understanding feminist Geographies*, (Minneapolis: University of Minnesota Press, 1999).

¹⁴⁹ Raewyn Connell, *Gender and Power*, (Stanford: Stanford University Press, 1987).

Chapter II illustrated that the separation at the urban built environment level was gradual with buffer zone in between, such as dead-end streets. At the house level, on the other hand, the sex of the guest determined the use of the room closest to the entrance. Having a house with two sections (*Haramlek & Saramlek*), one for women and the other for men, was a special case in the past, only for rich families who can afford to have two housing sections in one house. Though there were very few cases of this type of houses, academic writing, especially by orientalists, made it look like the norm. The motive could be adding a layer of mystery.¹⁵⁰ For example, the case of using a bent vestibule to enter the house and prevent direct overlook from the main entrance, which was attributed to a mysterious belief that evil spirits travel in a straight line and cannot enter a house with a crooked entrance. (Chapter II, P. 34)

Introverted architecture was in use much earlier than Islam. Its use is well documented in the Indian and Chinese civilizations as well as, to a lesser degree, in the Greek and Roman civilizations. In the old walled city of Damascus, like all Islamic cities, there are quarters or sections that are settled by Christians and Jews. One cannot tell from the residential fabric of the city where those quarters are. Muslims, Christians and Jews used the same housing typology because it was the answer for their social and climatic needs. Furthermore, those quarters are served by the circulation network of narrow crooked alleys and dead-end streets. Thus, it is inaccurate to associate introverted houses with a religion. Using the introverted house was, mainly, not separating female from male but creating a buffer zone between the private and the public.

Despite the fact that woman is fully integrated in Syria's public life, education and workplace, women generally tend to ask for their own gender designated space in the workplace. From the author observation, female co-workers in Damascus' Municipality, as well as in many other work establishments, such as schools, universities, private or public business, female employees request or assign themselves their own female rooms if that option is available space wise. The need for a gender designated space is requested by both conservative (with Islamic outfit) females, as well as by western adapted-style females. To a large extent, religion was not an issue in this phenomenon. Again, that does not mean a total separation between male and female. Still a man can enter such a space to take care of his business.

¹⁵⁰ Edward W. Said, *Orientalism*, (New York: Vintage, 1979).

Western oriented urban planning eliminated the buffer zone that acted as a transitional medium of space. It reduced the space to private verses public. It promoted the extroverted typology, the international style of Modern Architecture, and eradicated private open space. Assuming that there is a view of the outside world, Building guidelines forced not only opening toward outside but stage exposing platforms by mandating balconies and terraces in special cases. Having a yard around the house did not reduce the discomfort of being exposed, and raising the height of the fence did not stop visual intrusion from higher floors.

In extroverted architecture, it is unavoidable to express status and social condition through dwellings façades. In a Western historic city, the social status of citizens can easily be expressed by the style, materials and good execution; it goes without saying dividing the city to rich and poor quarters. While in the Oriental urban space, socio-economic classification does not appear on the exterior form of buildings, socio-economic status and self-identification are expressed on the internal facades. Rich and poor people live in the same quarter.

Chapters III and IV demonstrated the ramification of the new urban order. The Authority adapted policies that have broken the traditional agreements (*urfs*) and the delicate social bonds:

- It encouraged extortions by forcing the purchasing/selling part of property.
- Empowered the tenants against the property owners by disregarding the custom understanding of rent as well as the written contracts among both parties.
- Made entitled right by-law outweighs co-operation as well as responsibility and no harm principals.
- Reduced the sense of security due to the demographic change of the neighborhood as well as eliminated the dead-end street and gates, which in turn reduced self-policing and societal pressure to maintain a congenial environment.

The new physical space arrangement together with the new housing policies made residents, both genders, withdrew back and eradicated any chance of positive interactions among neighbors.

If the exterior façade is the manifestation of social status, then one can see that the new buildings replacing the traditional houses leads to a shutting

and/or caging of windows, blocking of balconies, installing of steel doors with buzzers, adding a tarp or a curtain wall, low quality (material and labor) stone work, sporadic laundry lines, air conditioners, television dishes, many closed stores for miss anticipated commercial need, cars parked and blocked those stores due to the lack of parking space and improvised discontinued side-walk, which makes moving in the street an adventure for cars as well as pedestrians. It is a flopped, distorted and confused picture.

Hijab literally means cover; a name for something which covers something or someone with, it is that thing which stands between two things. In a traditional quarter, at the introverted house, the exterior wall of the house acts as hijab as well as the vestibule and the minimal opening toward outside, especially at the first floor. The courtyard provides the alternative for light, ventilation and open space. Gated dead-end streets acted as a second form of hijab at community level. In the new settlement, people had to improvise and respond to their needs for privacy by adapting different means to achieve that crucial goal sacrificing their need for light and ventilation. Those means acted as hijab in a hyper way that was not predicted by the Authority and its shortsighted planners. The dissatisfaction exhibited at the new buildings did not reflect the image that the politicians had in their minds of the new social order. Neither the residents nor the Authority are happy with the output.

Despite the fact that:

- Women's participation in all levels of education and most avenues of market space has increased vastly.
- Women are spending more time in the public realm than they used to do few decades ago.
- The Authority pushed to create a new social order by eliminating the segregation in the public schools between girls and boys. By the late 80s, the Authority started at the elementary school level then moved to the middle and high school levels. Recruiting women in the army and police force.

The action taken by the residents at the house level, not only in the designated research area, shows that society still cherishes privacy and a gradual transition from public to private and vice versa.

In Leila Hessini's paper "*Wearing the Hijab in Contemporary Morocco*"¹⁵¹ she illustrated how many young educated Moroccan women deliberately choose to wear the veil out of regard for their identity in tune with their Islamic traditional heritage. Wearing hijab did not stop those young women from being outspoken and articulate in the class room, nor hinder them pursuing work opportunities, especially when one income is not enough to support a family. It was out of conviction not the result of illiteracy, poverty, ignorance and unemployment. This contradicts widespread belief that wearing veil associates female with subservience. Orientalists, such as Bernard Lewis, blamed Islam and Muslim women in hijab for the lack of progress in the Middle East.¹⁵² In their view Muslim women lack the capacity to know what is good for them.

Among the changes in the socio-economic structure is gender space division, where the male role as a provider (public space) and the female role as nurturer of children (private space), this line became dim. Females have entered the market and have been spending more time in public space though during this time they are always in motion, they do not hang around, on the other hand males have participated in doing the house chores and quite often have been helping in the, traditionally, most private female space, the kitchen.

The sketch in Chapter V stimulated both options introverted and extroverted architecture where an introverted house is a means of promoting privacy and security needs but does not mean seclusion or secrecy. The sketch supported the belief that the users are capable of and have the options to choose what fits their needs. It provided a small common open space to encourage good interaction among limited numbers of neighbors. In addition, it provided other ammunition of good social life, such as a social center and a children playing place.

In many parts of the world, were nations with two parties, or with more than two empowered parties (i.e. coalition-forming governments). The political systems have changed so frequently that identifying relationships

¹⁵¹ Hessini Leila, *Wearing the Hijab in contemporary Morocco*, Chapter Three from Book *Reconstructing Gender in the Middle East*, (New York :Columbia University Press, 1994).

¹⁵² Katherine Bullock, *Rethinking Muslim Women and the Veil*, under colonial and distorted secular modernity, a woman wearing the Hijab was not a sign of piety but the epitome of backwardness and symbol of irrationality. The veil was a barrier to the project promoted by the Orientalist vision of the Orient: namely the inherent inferiority of the Orient and the need for the West to civilize it. (The International Institute of Islamic Thought, IIIT), 2010. <http://www.iiit.org> 4/5/2016.

between the political system and the built environment form may be very difficult if not impossible. Cities are built by countless different people making numerous different individual decisions. The political, social, religious and economic background all play an important part in each of those small decisions, so inevitably all players will affect how a city evolves physically.

The political/built environment form association is stronger in a nation with a single person or single party in control for a long period of time (dictatorial nations, Communist nations). Compare Russia, China and North Korea to West Europe and North America in terms of planning. It is a very easy task to recognize an Eastern European city because the foot print of the political system is all over the city planning and building forms.

Human beings' tendency toward privacy and protecting his/her physical as well as social space is unwavering. The relationship among these three factors; planning and building guidelines, the built environment and the social structure is the parameter that shows if there is a reciprocal healthy relation among those factors or a top down relation where the Authority imposes its policy by molding the built environment that dictates a negative social interaction among the residents. In theory, the recommendations concerning the physical built environment in Chapter V are still applicable regardless of the outcome of the Syrian humanist catastrophe, while the socially related recommendations are heavily dependent on the prevailing side in the conflict, especially when we see the Authority attempting to change the demography of certain cities and towns on top of the huge number of death and migration.

Appendix – A -

Chronological sequence of civilization in Damascus¹⁵³

BC

Paleolithic-Neolithic 8 th -4 th Millennium	Evidences of long-lasting human occupation in this region, Huts built from reeds on top of platforms constructed from hand-made mud-bricks.
3 rd Millennium	Damascus mentioned in the tables from <i>Tell Mardih/Ebla</i> .
Early first half of 2nd Mill	Babylonian Civilization.
Late first half of 2nd Mill.	Hurrian Civilization.
1595	Hittite Civilization.
Late Bronze Age	(<i>Timasku</i> or <i>Damasku</i>) listed among the conquered towns by the Egyptian and pharaoh Tuthmosis III.
Late 2 nd Millennium kingdom.	Become the capital of an Aramean
Early 1 st Millennium	Falls to the Assyrian Empire.
333	Conquered by Alexander the Great.
The 1 st Century	Comes under Roman control.

¹⁵³ Wayne, T. Pitard, *Ancient Damascus* (Winona Lake, Indiana: Eisenbrauns, 1986), PP. 1-58, and P. Hitti Koury, *Capital Cities of Arab Islam* (Minneapolis, University of Minnesota Press, 1973), PP. 61-84.

AD

395	Becomes a part of the Byzantine Empire and capital of the region.
Late 5 th and early 6 th	Gassanid Arabs and Sassanid Persians alternate control over Damascus.
634, (13 A.H.) ¹⁵⁴	Becomes a Muslim city.
661, (40 A.H.)	Capital of the Islamic State during the Umayyad Dynasty.
750, (129 A.H.) the	The capital moved to al-Kufah, Iraq in the Abbasid Dynasty.
Late 10 th Century capital.	Hamadanid State with Aleppo the capital.
11 th Century region.	Turks (Saljuqs) invade the Syrian region.
1174	Saladin occupies Damascus and makes it a joint capital with Cairo of his Syrian-Egyptian realm.
Mid-13 th Century	Mamelukes era.
1517	Ottoman Empire, Damascus serves as a station center in the Pilgrim Seasons.
1921	Damascus reclaims its status as the capital of the Syrian region under the French rule.

¹⁵⁴ *The Islamic Calendar which stated in year 621 AD, when the Prophet (pbuh) migrated from Makkah to al-Medina.*

1946

Damascus the capital of the
independent Syria.

Appendix –B-

Islamic philosophy of law

Religions played major roles in establishing rules, especially moral rules, where they define the good and evil. Subsequent rules had to be added for several reasons such as settle a conflict, protect public interest from greedy individuals or protect the interest of affluent people. Today, despite the fact that the West developed a sophisticated legal system and separated the church from the government, no legal system can be properly understood without investigating its religious roots. These roots are often both deep and everlasting. I believe that the influence of religion is manifested the most in the case of Islamic legal systems. Islamic rituals and doctrines do not stop at the relationship of the divine to the human but they proceed to establish the framework for all life aspects social, economic, political as well as environmental. History demonstrates that law cannot be divorced from its social context. That is why customary law was and still is accepted and incorporated in state law.

Islamic philosophy of law

One of the principles of Islam which precedes juristic discussion proper is that Allah, the creator and lord of the world, has commissioned humanity to believe, confess and act in particular ways. Thus, the ultimate

source of authority is Allah alone. Everyone including all the prophets and the ruling authorities are subordinate to Divine law, which derive from Divine revelation. Islamic law gives guidance of all walk of life; religious, moral, social, economic and political aspects of human life. The details of this commission were handed down through a sequence of prophets, culminating in Muhammad, and were then embedded in two literary structures which together constitute revelation: the *Qur'an* which is the word of Allah, and the *Sunnah*, short narrative of the prophet's life and sayings which give expression to his (and his community's) ideal practice. The totality of beliefs and rules that can be derived from those sources constitutes Allah's law or *Shari'a*. Law in this term include Moral law as well as Legal enactments. While moral law was revealed in the specific context of *Qur'an* and *Sunnah* as the will of God, the Muslim' duty is to embody it in legal enactments in their own context.

Juristic literature has generated two major literary categories. One, known as roots of jurisprudence, deals with hermeneutical principles that can be used for deriving rules from revelation. The other, dominant category branches of jurisprudence, is as elaboration of rules which govern ritual and social activities. The latter category became the dialectic subject of the overall philosophy of law in Islam.

Qur'an made obedience to the prophet obligatory. Hence, *Sunnah* became a source of law, the decisions taken by the prophet were elevated and declared to be a fundamental of the faith. *What comes from the prophet comes from God.*¹⁵⁵ Differences among early scholars were mainly due to differences in the interpretation and application of a particular *hadith* to a

¹⁵⁵ *Al-Shafi'i, Kitab al-Umm, ed. Cit., Vol. VII, p. 7*

particular case. Hence, the authenticity of a *hadith*, through a chain of reliable narrators, was the key piece to validate such an interpretation.

The Muslims had the *Qur'an*, the *Sunnah* left by the prophet and the practice of the companions, where there was no precedent or clear instructions, they exercised their personal opinion and reasoning. All those raw materials, practiced and produced by the early Muslims, developed into a systematic law. Due to continuous activity and diverse school of thought and interpretation, Islamic law underwent a long process of evolution.

Qur'an is estimated to contain no more than 500 verses of legal import or about 8% of its volume. By reading *Qur'an* one cannot find detailed law and by-laws relating to most social life, culture and political problems, except for marriage and inheritance. *Qur'an*, for example, emphasizes on paying *zakah*, (obligatory charity/tax) but does not define or quantify it, same goes for prayer. *Qur'an* is a book of spiritual and moral guidance not a code of law. The presentation of the details legal rules does not fall under the basic objectives of this divine book. On the other hand, the body of the *hadith* (sayings of the prophet) is immensely larger, around 5000 authenticated hadiths. The false hadiths (which are not to be considered as a base for legal rulings) are more than three times the authenticated. The moral law was revealed in the specific context of the *Qur'an* and the *Sunnah* as the will of Allah. The Muslim duty is to embody it in legal enactments in their own context, permissible or forbidden.

Before Islam the word *Shari'ah* was used by Arab for a path leading to a watering-place, which was permanent and clearly marked. In religious term the word *Shari'ah* was used as the clear-out path of God for man. Hence, *shari'ah* always remind us of revelation. On the other hand, the

original meaning of word *fiqh* is the deep understanding and knowledge of something. *Faqih* was used by Arab for a camel expert who distinguishes the female-camels that are lusting from those that are pregnant.¹⁵⁶ Al-Hassan Al-Basri (d 110 A.H.) stated that a real *faqih* despises the world, interested in the hereafter, possesses a deep knowledge in religion, regular in his prayers, pious in his dealings, refrain from disparaging Muslims and well-wisher of the community, to sum it up an ascetic (*zاهد*).¹⁵⁷

Thus, *fiqh* involved the exercise of one's intelligent and personal thinking and a *faqih* is a person who is distinguished for using his reason and intelligence in solving a legal and administrative problems. The term *fiqh* was gradually narrowed down and came to be applied to the legal problems. *Fiqh* is the term used for the law as a science while *Shari'ah* as a divine law. The path of *Shari'ah* is laid down by Allah and his prophet while the structure of *fiqh* is established by human undertakings.

Islamic jurists in the early days of Islam, after the death of the prophet, categorize the injunctions into five categories; imperative or obligatory (*fard*), recommended (*wajib*), forbidden (*haram*), disapproved (*makrouh*) and insignificance or permissible (*mubah*). According to the jurists, every act must fall under one of those categories.

The freedom of interpreting the *Qur'an* and *Sunnah* led to several schools of thought, giving sometimes diverse opinions about the same issue. The most notable schools were two in Hijaz (the Arabian Peninsula) Makkah and Medina, two in Iraq Kufa and Basra and one in Syria. Rational thinking, *ijtihad*, is about freedom of thought and quest for truth through

¹⁵⁶ *Islamic Jurisprudence, Da'wah Academy, International Islamic University, Islamabad, Pakistan, IRI Press, 1996.*

¹⁵⁷ *Al-Ghazali, Ihya' Ulum al-Din, Cairo, 1939, V. 1, p. 38.*

epistemology. It may take a variety of forms such as general consensus (*ijma*), analogical reasoning (*qiyas*), juristic preference (*istihsan*) and consideration of public interest (*istislah*). The first two forms, general consensus and analogical reasoning, have been recognized by the vast majority of schoolers with varied degrees of acceptance.

Qur'an, Sunnah, qiyas and *ijma* are interlinked, *Qur'an* and *Sunnah*'s authorities are unchanged in all times and circumstances while *qiyas* and *ijma* are instruments for agencies for legislation on new problems for whose solutions a direct guidance from the *Qur'an* and the *Sunnah* are not available. Had it been laid down a specific and rigid rules for each problem once and for all, the coming generations would have been deprived of exercising reason and framing laws according to the requirements of time. *Qiyas* and *ijma* are considered to be an autoreactive source of law being subservient to the *Qur'an* and *Sunnah*. The authenticity of these auxiliary sources shall be determined only by their degree of their consonance with the other two original and unchallenged sources of law.

For someone to give a ruling he/she must be very knowledgeable in *Quran, Sunnah*, Arabic language and the history and culture surrounded any precedent ruling. In one incident, after the prophet death, one hundred and twenty of his companions refused to give a verdict about a specific matter out of concern that they might be wrong or unqualified.¹⁵⁸

It took more than two centuries to have identifiable jurisprudence systems recognized by manageable number of school of thoughts. The differences among those schools was in the *fiqh sub-categories*, especially *qiyas*. Later on, all Suni School of thoughts (*Hanafi, Maliki, Shafi'i* and

¹⁵⁸ Muhammad Hisham Kabbani, *Understanding Islamic Law. Legal Ruling*

Hanbali) adopted *qiyas*, while the Shi'it continued to reject it. During that period, the Islamic state expanded to Asia in the east, North Africa and Spain in the west. The trend toward personal alliance with one of the above school of thoughts started roughly toward the second half of the second century in the Islamic calendar (early ninth century). Prominent scholar *Malik* advised the leader (*Khalifa*) at that time *Abu Ja'far al-Mansour* (d. 158 AH) against adapting one version of interpretation as the sole authority in law on the ground that people in various localities had already developed different opinions basing themselves on diverse traditions.¹⁵⁹

One of the benefits came along due to the expansion of the Islamic state was exposing some of Islamic thinkers to the Greek Philosophy. Though the initial reception was suspicious and dismissive by conservative Islamic theologians. Gradually, Greek Philosophy's effect could be seen in the work of Muslim philosophers such as al-Farabi (872-951), al-Ghaazali (1058-1111), Ibn Rushed (Averroes, 1126-1198), Ibn Hazm (994-1064), al-Kindi, al-Razi and others¹⁶⁰

Islamic philosophy covered a wide range of subjects. Al-Ghaazali. In his book *al-Munqidh Min al-Dalal*, or Deliverance from Error, divided philosophy into mathematics, logic, physics, theology or metaphysics, politics, and ethics.¹⁶¹ While there were many disputes between philosophers on one hand and theologians on the other, as a philosopher and a theologian al-Ghaazali, on the contrary, saw philosophy and religion complement each

¹⁵⁹ *Islamic Jurisprudence*, Da'wah Academy, International Islamic University, Islamabad, Pakistan, IRI Press, 1996. p. 30.

¹⁶⁰ *Routledge Encyclopedia of Philosophy*, Version: VI published on line: 1998

¹⁶¹ See the translation by W. Montgomery Watt in *The Faith and Practice of al-Ghazālī*, London, 1953, pp. 33-38. See also al-Faraat's divisions of philosophy as presented in his *Ih. s. 'a' al-'Ulūm*, edited by 'Uthmān Amīn, Cairo, 1949.

other. Ibn Rushed asserted that since philosophy is true and the revealed scriptures are true there can be no disharmony between them.

In the philosophy of metaphysics or theology, one of theoretical philosophy which dealt with non-material things.¹⁶² To prove the existence of the First Cause, Muslim philosophers reasoned that god as a necessary existence, which does not need a cause nor does need assistance for its existence. As well as the impossibility of the existence of other god, which otherwise would involve a logical contradiction. Some Muslim philosophers went further to reason the need for a religion in order for a society to function and prosper.

Ibn Sina, in fact, even argues that prophecy and revelation are necessary for the proper functioning of society. He says, in his book Kitab al-Najah, a man cannot live in isolation from his fellow men, but must, for his own welfare and happiness, live in a society in which he cooperates with others. A society cannot function properly unless it is regulated by a code of laws, and it is therefore necessary that there be a lawgiver to communicate these laws to society. And this lawgiver must be a human being, since only a human being can communicate with other humans. On the other hand, this lawgiver cannot himself formulate these laws, because, since men differ in their opinions, there would be no reason why people should accept his laws rather than the laws of some other lawgiver. Therefore, the lawgiver must be divinely inspired, that is, he must be a prophet, and in addition, he must have some distinguishing feature so that people will know for

¹⁶²Nicholas Heer, *Papers on Islamic Philosophy, Theology and Mysticism*, Seattle, Washington, 2009.

sure that he is, in fact, divinely inspired. This distinguishing feature is his power to perform miracles.

Then, in order to get people to obey this divinely inspired law, the prophet must present the law in conjunction with a simple religious system. He must, for example, establish a belief in one God, who is the creator of the universe, as well as a belief in an afterlife in which human beings will be rewarded or punished by God depending on whether or not they have obeyed or broken the law which the prophet has given them.¹⁶³

Customary law (*Urf*) is one of the supporting sources in Islamic law (at the local level). It is the product of the nature of the people and their culture, inherited by generations until a new custom can overrule it. Legal rulings based on *Urf* change according to change in circumstances, place and time. It is the common practices (saying and doing) of a given society, consistently used and accepted by the people with wise reason and sound behaviors. In order for *Urf* to constitute a valid base for legal decision –It must be consistent, acceptable and reasonable practice of a group of people. It is worth mentioning that a habit is to repeat doing things for individual or few, while custom is used for large group of people.

One should distinguish between *Urf* and *Ijma*. While *Urf* needs the agreement of the dominant majority of the people and the rules by *Urf* are changeable by time or place, and the act required an element of continuity over a period of time. *Ijma*, on the other hand, is the consensus of all jurists (professionals), and the verdict prohibits any further discussion of the same issue, creating a precedent that it engenders constancy and predictability.

¹⁶³ *Ibid.* p. 15.

Thus, there is no need for re-examination or amendment. In addition, *ijma* does not require the act to be consistent.

In order for *Urf* to be considered a base for judgment it must be:

- 1- Practice at the time of transaction.
- 2- Must not violate the fundamental principles of Islam.
- 3- Must not contravene the clear stipulation of an agreement. The rules in the contractual agreement prevail over custom. Resorting to custom is only valid in the absence of agreement. Custom is invoked when no clear text to be found to determine the term of a particular dispute.¹⁶⁴

In the early 19th century, the Ottoman monarchy underwent a lack of control over some of the remote parts of its empire. At the same time, it also experienced financial difficulties. Certain reform movements were introduced in 1839, which fundamentally reorganized the Ottoman society. Known as Tanzimat, the reform changed the structure of administration and established a new judicial process. The intellectuals of the Tanzimat period searched for a synthesis of their political ideas and a new system of government. They utilized, for example, the precepts of Islam to legitimize constitutional monarchy.¹⁶⁵

The Ottoman Empire regulations were codified and were no longer based on local agreements. The government established the committees that enforced those regulations in 1856.¹⁶⁶ After WW1 the Ottoman Empire disintegrated and the French and British subdivided the Middle East between

¹⁶⁴ Shafi'I Abdul Azeez Bello, *Application of Urf in Islamic Law* (International Islamic University, Malaysia),

¹⁶⁵ Y. Uavuz, and S. Ozkan, *Modern Turkish Architecture, the Final Years of the Ottoman Empire* (Pennsylvania: University of Pennsylvania Press, 1984), p. 34.

¹⁶⁶ Akbar, *Crisis in The Built Environment*, (Singapore: concept Media, 1988), p. 139.

themselves. In 1925 the French delegate in Syria and Lebanon formed a committee to re-study and modify existing law in accordance with the French law.¹⁶⁷ The French mandate, also, established a system of taxation that provided the authorities with much needed revenue.¹⁶⁸ Those successive development in legislations led to the establishment of *Shari'ah* court which was limited to marriage, divorce and inheritance. House of Parliament, on the other hand, assumed the responsibility of making law.

Legal reformers have developed a number of theoretical props which took them away from the traditional modes of juristic expression. They have first abandoned school of thought loyalties and later limited *Shari'ah* jurisdiction to certain family affairs. Eventually, they have adopted law-drafting techniques, borrowed legal and social principles from varieties of sources, mostly former colonizer or the country where they received their higher education. The adopted political system of the state became the driving force of such a law and in turn each decree must embody the political system spirit. Since religion is deeply rooted in Islamic societies, people more often see the new legal system is simply the bare exercise of state coercion. Especially, when the legal system (constitution and the election of the legislative body) lacks certain procedural standards such as valid election and real representation.

It is inconceivable to have a society without law. Society inclined to look to the law to resolve problems, protect rights, impose duties, and establish a framework for the conduct of almost every social, political, and economic activity. And the law's failure to provide a remedy may provoke,

¹⁶⁷ Akbar, pp. 141-142.

¹⁶⁸ Germeraad, "Open Space in Human Settlements, the Lesson from the Islamic Tradition" Ph.D. Dissertation, Agricultural University: Wageningen, Netherlands: UMI, 1989, p. 71

at least, a sense of frustration and anger, or would incite people to break that law or even revolt.

Appendix – C -

Law – 26 Acquisition Law

The president, the Constitution, the People Assembly 6/12/2000

Article -1

Modifies Article -1 from Law – 60 / 1979 as follow: Areas of Urban Expansion.

- A- Areas of Residential Expansion and its Necessities:
Designated public properties and buildings, Law – 9 / 1974, which will be marked on the General Organizing Plan Law - 5 / 1982.
- B- Residential Areas which falls in the verified Organizing Planned in the date when this law becomes applicable, regardless, if those areas have already detailed organizing plan or not. The following procedures will be applied on those areas:
 - 1- Within six months from verifying the Detailed Organizing Plan or the date this Law becomes applicable, which ever gives more time, the Administrative body is permitted to apply Chapter Two of Law – 9 / 1974 on these areas. In case the AB did not act, the owners have the right to divide their properties according to Chapter One of Law – 9 /1974 within three years starting after the six months period given to the AB.
 - 2- In case neither the AB nor the owners act within the given periods, Article – 2 of this law will be applicable on the Areas of Urban Expansion.
 - 3- Areas of Residential Expansion which falls within the General Organizing Plans are considered belong to the Municipality of Damascus even if those areas were not in the Municipality’s jurisdiction.

Article -2

Modifies Article -2 from Law – 60 / 1979 as follow:
Acquisition and organizing of Areas of Residential Expansion in Damascus and the center cities of the provinces, exclusively, by the

Administrative Bodies, for their needs and the other public entities needs.....for the common benefits (Law – 20, Article - 2, 1983). It is permissible to treat this matter urgently. It is not permissible for any other public entity to acquire a property directly. This law is not applicable on worship properties of any faith.

Article -3

Modifies sub-Article – B, Article -4 from Law – 60 / 1979 as follow:
It is prohibited for the buyers of new lot (except for individuals and bodies whose properties were acquired, in accordance with Law – 3 / 1976) to sell it before finishing the construction and making the building ready for use. In case the lot was put for auction, the AB retake the lot and pay back the reimbursed the buyer.

Article -4

Modifies Category One, Article -5 from Law – 60 / 1979 as follow:
Category One: Residential lots will be treated as follow:

- A- Lots with value equals to 60% of the total lots assessed value will be sold exclusively to co-operative housing societies.
- B- The rest of the lots will be sold to individuals that their properties were acquired with respect to the value of the acquired property.

Article -5

Modifies Article -7 from Law – 60 / 1979 as follow:
A- The AB can collect deposits from the lots buyers according to their lots' values. The collection will be exclusively for the topographic, survey, committee compensations and utilities expenses.
B- The AB can borrow money from specialized public bodies to fund the previously mentioned works.

Article -6

Modifies Article -11 from Law – 60 / 1979 as follow:
Compensation...

Article -7

If there were in the Areas of Urban Expansion or within the verified plans illegal settlements (squatters), the Municipalities of center cities of the provinces can:
1-Apply the First and Second chapters of Law – 9 / 1974.

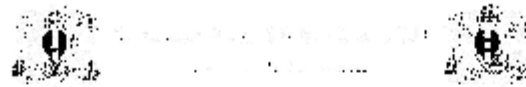
2-Acquired whatever necessary for streets, squares, parks, public building and residential lots according to Law – 20 / 1983, or applying this law if the settlement is considered an expansion area according to Article -1

Article -8

This law is to be published in an official newspaper.

Damascus 11/12/2000

The president



www.parliament.gov.jo

قانون رقم /26/ لعام 2000
التاريخ-ميلادي: 2000-12-11 التاريخ-هجري: 1399-08-27
نشر بتاريخ: 2000-12-11
القسم: قانون

معلومات عن هذا القانون:

غير ناصد

1 على القانون 23 لعام 2016

القانون 26 لعام 2000

تعديل لقانون التوسع العمراني 60 لعام 1979

رئيس الجمهورية

بناء على أحكام الدستور

وعلى ما أقره مجلس الشعب في جلسته المنعقدة بتاريخ 10-9-1421 هـ و6-12-2000م
بصدر ما يلي:

المادة - 1

تعدل المادة (1) من القانون 60 لعام 1979 على النحو التالي:

يقصد بمناطق التوسع العمراني في معرض تطبيق أحكام هذا القانون :

1. مناطق التوسع السكني ومستلزماته من العفارات الملحوظة الاملاك العامة والمشيدات العامة الوارد ذكرها في المادة الاولى من القانون 29 لعام 1974 والبنية التحتية شاملة الأسواق والمحلات والمكاتب التجارية والمهن الحرة والتي سلتحد وتلحق بالمخطط التنظيمي العام بعد تفاد هذا القانون وفق احكام «الرسوم التشريعي رقم 727 الصادر في 1982».
2. المناطق السكنية الواقعة ضمن المخططات التنظيمية المصنفة بتاريخ نفاذ هذا القانون والتي لها مخطط تنظيمي تفصيلي

مصدق أو التي سيتم وضع مخطط تنظيمي تعصيمي لها حيث تطبق عليها الإجراءات التالية:

- 1- بحق للجهة تدرية خلال ستة أشهر من تاريخ تصديق المخطط التنظيمي التعصيمي أو من تاريخ نفاذ هذا القانون أيهما أبعد أن تقرر تطبيق أحكام الباب الثاني من القانون /9/ لعام 1974 على هذه المناطق وإذا لم تقرر الجهة الإدارية تطبيق أحكام الباب الثاني من القانون المذكور خلال مهلة ثلاث سنوات من تاريخ انقضاء مهنة ستة الأشهر المبينة أعلاه.
- 2- في حال انقضاء المهلة المذكورة في الحالة (ب-1) أعلاه فإن العقارات التي لم تبادر الإدارة إلى تقسيمها وتعتبر مناطق توسع عمراني خاضعة لأحكام المادة الثانية من هذا القانون.
- 3- تعتبر تابعة لمحافظة دمشق في معرض تطبيق هذا القانون مناطق التوسع السكني الواقعة داخل مخططات التنظيم العام المصدق ولو كانت خارج حدودها الإدارية.

المادة - 2

تعدل المادة (2) من القانون /60/ لعام 1979 وتصبح على النحو التالي:

يتم استملاك وتنظيم وتقسيم مناطق التوسع العمراني في مدينة دمشق ومدن مراكز المحافظات من قبل الجهة الإدارية حصراً وذلك لمصلحتها ومصنحة الجهات العامة الأخرى التي عدتها المادة الثانية من قانون الاستملاك الصادر بتاريخ 1963م. ويعتبر هذا الاستملاك من المشاريع ذات النفع العام ويجوز إعطاؤه صفة الاستملاك ولا يجوز لأي من الجهات المذكورة في المادة الثانية من المرسوم التشريعي /20/ لعام 1983 الاستملاك لمصلحتها بشكل مباشر. لا تخضع العقارات الوقفية العائدة لمختلف الطوائف للاستملاك وفق أحكام هذا القانون.

المادة - 3

تعديل الفقرة (ب) من المادة /4/ من القانون /60/ لعام 1979 على النحو التالي:

يتمتع على من يشتري مقسماً من المقاسم المبيعة تنفيذاً لأحكام هذا القانون (باستثناء الأفراد والجهات الذين استملاك عقاراتهم) وبما لا يتعارض مع أحكام القانون /3/ لعام 1976 أن يبيعه أو أن يتصرف به إلا بعد إنجاز بناء كامل المساحة الطابقية المسموح بإنائها على المقسم بموجب نظام المنطقة جاهز للسكن أو لاستعمالها فيما عدت له. وثبتت جاهزية البناء بموجب شهادة تصدرها الجهة المستملكة ولا يعنى بأي تصرف يجري خلافاً لأحكام هذه المادة، ويعتبر باطلاً بطلاناً مطلقاً، وذلك مع عدم الإخلال بتطبيق أحكام المادة /143/ من القانون المدني. وإذا تقرر بيع أحد هذه المقاسم بالميزاد العلني المنصوص عليه في القوانين والأنظمة النافذة لدى دوائر التنفيذ أو الدوائر المالية أو أي جهة أخرى فيستعاض عن هذا البيع بإعادة المقسم إلى الجهة الإدارية وفي هذه الحالة ترد إلى المشتري مدفوعاته.

المادة - 4

تعديل الفقرة الأولى من المادة (5) من القانون /60/ لعام 1979 وتصبح على الشكل التالي:

- أ. فئة الأولى: المقاسم المخصصة للسكن ويتم التصرف بها وفق ما يلي:
 1. تباع مجموعة المقاسم التي تشكل قيمتها التقييمية 60% من القيم التقييمية لمقاسم كامل المنطقة لجهات القطاع العام (لجان السكن) والجمعيات التعاونية السكنية حصراً.
 2. تباع باقي مقاسم المنطقة للأفراد الذين استملاك عقاراتهم كل بنسبة قيمة عقاره المستملاك على أن يدفع كامل تكاليف ما يخصه له.

المادة - 5

تعديل المادة (7) من القانون 60/ لعام 1979 وتصبح كما يلي:

أ. للجهة المستملكة استيفاء سلف من مشتري المقاسم على حساب قيمةها تخصص حصراً للإفناق منها على الأعمال الطبوغرافية والتنظيمية والمساحية والعقارية وتمويضات للجان وإتلاف المزروعات وإخلاء الشاغلين وعلى تأمين المياه والكهرباء والهاتف والصرف الصحي والإنارة وإنشاء الطرق والمساحات والارصفة والجائز العامة وعلى ما يلزم لهيئة المنطقة للبناء.
ب. يحق للجهة المستملكة من أجل النضال المشاور إليها في الفقرة السابقة اقتراض المبالغ اللازمة لذلك من الجهات المختصة.

المادة - 6

تعديل المادة (11) من القانون 60/ لعام 1979 وتصبح على النحو التالي:

تستثنى التمويضات الناشئة عن تطبيق أحكام هذا القانون من أحكام القانون الأساسي للعاملين في الدولة رقم 11/ لعام 1985.

المادة - 7

إذا وجد في مناطق التوسع العمراني أو ضمن المخططات المصدقة مخالفت بناء جماعية قائمة فيحق لمدن مراكز المحافظات:

- 1- تطبيق أحكام القانون رقم 9/ لعام 1974 في بابيه الأول والثاني.
- 2- استملاك ما يلزم لإحداث الطرق والمساحات والحدائق والمشيدات العامة والمقاسم السكنية أو توسيع القائم منها وهي أحكام المرسوم التشريعي رقم 20/ لعام 1983 أو تطبيق أحكام هذا القانون عليها إذا ما اعتبرت منطقة توسع وفق أحكام المادة الأولى (1).

المادة - 8

ينشر هذا القانون في الجريدة الرسمية ويعمل به من تاريخ صدوره.

دمشق في 15-9-1421 هـ الموافق 11-12-2000م

رئيس الجمهورية
بشار الأسد

1421

م/ 15-9-1421 هـ الموافق 11-12-2000م

قانون رقم 23/ لعام 2015
التاريخ-ميلادي: 2015-12-08 التاريخ-هجري: 1437-02-26
نشر بتاريخ: 2015-12-08
القسم: قانون

معلومات عن هذا القانون:
نفاذ

القانون 23 لعام 2015
قانون التخطيط وعمران المدن

رئيس الجمهورية

بناء على أحكام الدستور،

وعلى ما أقره مجلس الشعب في جلسته المنعقدة بتاريخ 11-02-1437 هجري الموافق 02-12-2015 ميلادي،

يصدر ما يلي:

الباب التمهيدي

تعريف وأحكام

المادة 1

يقصد بالتعابير الواردة في هذا القانون المعنى للمبين بجانب كل منها:

· الوزارة: وزارة الإسكان والتنمية العمرانية.

· الوزير: وزير الإسكان والتنمية العمرانية.

· الجهة الإدارية: الوحدة الإدارية المحدثة بموجب قانون الإدارة المحلية.

· المجلس: المجلس المحلي للوحدة الإدارية.

· المكتب: المكتب التنفيذي في الوحدة الإدارية.

· رئيس الجهة الإدارية: رئيس المكتب التنفيذي في الوحدة الإدارية.

· المنطقة: مجموع العفارات وأجزاء العفارات المحددة والمحيرة المراد تقسيمها أو تنظيمها.

· التقسيم: كل تجزئة للأراضي إلى مقاسم تنظيمية من قبل مالكها بقصد إقامة مبان ومرافق عامة عليها.

· التنظيم: كل تجزئة للأراضي إلى مقاسم بلطيفية من قبل الجهة الإدارية بقصد إقامة مبان ومرافق عامة عليها لتنفيذ جزء أو كامل المخطط التنظيمي المصدق.

· المقاسم: القطع التي تنتج عن تقسيم الأرض أو تنظيمها.

· المشيدات العامة: تشمل جميع مراكز الجهة الإدارية والجهات العامة والمدارس والمعاهد والجامعات العامة والأقسام والمخافر والمستشفيات والمراكز الصحية "المستوصفات" ومراكز الإطعام والصعاب "المساجد والكنائس" والمكتبات العامة والمراكز الثقافية والأماكن المعدة للآثار العامة والملاعب الرياضية ومؤسسات الرماية الاجتماعية والمقابر وما في حكمها.

· مقاسم السكن الشعبي: المقاسم المخصصة لإشادة مبان للمنشرين بالهدم ولذوي الدخل المحدود والتي نشأ من قبل الوحدة الإدارية والجهات العامة المختصة بالسكان وهطاع التعاون السكني وتقطع مجاناً من الأراضي الخاضعة للتقسيم أو التنظيم.

· مقاسم الخدمات الخاصة: المقاسم المخصصة لخدمات الخدمية وتباع للقطاع الخاص ولاشاد من قبله.

· صندوق المنطقة: هو حساب يفتح لدى أحد المصارف العامة بالدولة لصالح الوحدة الإدارية العمومية وتودع به الأموال العائدة للمنطقة التنظيمية وتسحب منه تكاليف تنفيذ التنظيم في المنطقة التنظيمية من أجور إعداد الأضابير والدراسات والتعميمات وغيرها من النفقات الإدارية ويتم السحب من قبل رئيس الوحدة الإدارية ومحاسبتها معا ويجب ان يكون في نهاية التنفيذ مجموع قيمة المقاسم النهائية مساوية لمجموع هرم العفارات وكامل الحقوق الناضجة في المنطقة والتكاليف المترتبة عليها ولا تدخل به قيمة النفقات والأعياء اللازمة لإيصال المرافق العامة إلى المقاسم المحدثة.

· المخطط التنظيمي العام: المخطط الذي يوضح الرؤية المستقبلية للتجمع السكاني وتوسعه بفعالياته كافة ويتم ذلك عن طريق تحديد الحدود العمرانية وشبكة الطرق الرئيسية واستعمالات الأراضي الواقعة ضمنه ومنهاج الوجائب العمراني بما لا يتعارض مع أسس التخطيط العمراني والبرنامج التخطيطي.

· المخطط التنظيمي التفصيلي: المخطط الذي يحدد التفاصيل للتخطيط لشبكة الطرق الرئيسية والمرجعية ومواقف السيارات وممرات المشاة والمرافق العامة والتفاصيل العمرانية للأراضي ونظام البناء حسب الاستعمال المرسوم لها وبما لا يتعارض مع المخطط التنظيمي العام ومناهج وجائبه.

أتمار 2

تم تهئة الأرض للبناء وفق المخطط التنظيمي العام والمخطط التنظيمي التفصيلي في المخططات التنظيمية المصدقة كافة بأحد الأسلوبين الآتيين:

أ. التقسيم من قبل المالك.

ب. التنظيم من قبل الجهة الإدارية.

المادة 3

إذا وجد ضمن المخططات التنظيمية المصدقة مناطق مكائفات بناء جماعية فأئمة فيحق للجهة الإدارية بقرار من المجلس بصدق من المكتب التنفيذي لمجلس المحافظة القيام بالأتي:

1. تطبيق أحكام هذا القانون عليها.

2. تطبيق أحكام قانون التطوير والاستثمار العقاري رقم 15 لعام 2008 وتعديلاته بناء على اتفاق بين المطور العقاري والمالكين أو بين المطور العقاري والجهة الإدارية.

3. تطبيق أحكام قانون الاستملاك النافذ لتسييد المحطظ التنظيمي لهذه المنطقة بما لا يتعارض مع أحكام الفقرة 2 من المادة 15 من الدستور.

المادة 4

أ. تقتطع الوحدات الإدارية مجاناً مقابل ما سيحصل عليه مالك العقار من منفعة مادية ومعنوية نتيجة دخول عقاره منطقة التنظيم أو التقسيم وما سيخصص لتأمين الخدمات الأساسية للمنطقة من طرق وساحات وحدائق ومواقف سيارات ومشيدات عامة ومقاسم السكن الشعبي ومقاسم الخدمات الخاصة وما سيطراً من ارتفاع على القيمة الشرائية للعقار. ويكون الاقتطاع لضع كل ذلك نسبة لا تتجاوز 40 بالمئة من مساحة المنطقة الواقعة خارج مدن مراكز المحافظات أما في مدن مراكز المحافظات فيكون مقدار النسبة لا يتجاوز 50 بالمئة.

ب. إذا رابت نسبة المساحة المقطوعة عن النسبة المحددة في الفقرة (أ) السابقة تقوم الجهة الإدارية بضع ثمن المساحة الزائدة وفق القيمة الحقيقية المقدره من قبل لجنة التقدير البثائي المشار إليها بالمادة 21 من هذا القانون بعد اكتسابه الدرجة القطعية.

ج. يحاسب م اقتطع أنفا لصالح النفع العام من ضمن النسب المذكورة في الفقرة (أ) السابقة.

د. يسلم مفاسم المشيدات العامة إلى الجهات المعنية ذات الطابع الإداري دون مقابل.

المادة 5

يطبق التنظيم في الحالات الآتية:

أ. المناطق المصابة بكوارث طبيعية من زلازل وهيضانات أو التي لحقها الضرر نتيجة الحروب والحرائق.

ب.

1. مناطق التوسع العمراني التي احقت بالمخطط التنظيمي العام لمدن مراكز المحافظات بعد تاريخ 11-12-2000 "تاريخ نفاذ القانون رقم 26/ لعام 2000".

2. المناطق التي تلحق بالمخططات التنظيمية العامة للبلدان والمدن بعد تاريخ نفاذ هذا القانون.

ج. المناطق التي ترغب الجهة الإدارية تنفيذ المخطط التنظيمي العام والتفصيلي المتعلق بها.

المادة 6

- أ. على الجهة الإدارية خلال ستة أشهر من تاريخ صدور هذا القانون تحديد المناطق التي يطبق عليها التنظيم على مخططاتها التنظيمي المصدق وفق أحكام المادة 5 السابقة وبمصدق المخطط الخاص بمحافظة دمشق بقرار من مجلس المحافظة بناء على اقتراح المكتب وفي بقية الوحدات الإدارية بقرار من المكتب التنفيذي لمجلس المحافظة بناء على اقتراح المجلس.
- ب. تعلن الجهة الإدارية هذه المناطق بعد تصديقها بإعلان أصولي في لوحة إعلاناتها وفي إحدى صحف العاصمة وإحدى الصحف المحلية إن وجدت ويتضمن المنطقة وأرقام العقارات الخاضعة للتنظيم فيها ويجوز الزيادة في الإعلان في الوسائل المسموعة والمرئية والمواقع الالكترونية.

المادة 7

يجوز بغور من المجلس تطبيق أحكام هذا القانون على المناطق التنظيمية القائمة بتاريخ نفاذه والتي لم يصدر بها قرار لجنة التوزيع بصيغته النهائية.

الباب الأول

إجراءات التقسيم

المادة 8

- أ. على الجهة الإدارية في مطلع كل عام واستناداً إلى خطتها في تنفيذ مخططاتها التنظيمي المصدق إعداد مخطط تحدد فيه المناطق التي يجب فيها على المالك المبادرة إلى تقسيم أرضه التي يملكها إلى مقاسم معدة للتبذ على أن تكون هذه المناطق خارج المناطق التي يطبق عليها التنظيم الجديدة بالمادة 5 ويعلن هذا المخطط وفق أحكام المادة 6 من هذا القانون.
- ب. على المالك تقسيم الأراضي التي يملكها الواقعة ضمن المناطق المحددة في الفقرة السابقة إلى مقاسم خلال مدة لا تزيد على ثلاث سنوات من تاريخ صدور قرار المجلس بتحديد المناطق المشار إليها في الفقرة السابقة. ويجوز للمجلس تطبيق التنظيم على الأراضي غير المقسمة بعد مرور المدة المذكورة مع عدم الإخلال بالحقوق المكتسبة للمالك الذي قسم أرضه خلال المدة المحددة.
- ج. يجوز للمالك المبادرة إلى تقسيم الأراضي التي يملكها والواقعة ضمن المقاطق التي يسمح فيها بالتقسيم ولو كانت هذه الأراضي غير محددة ضمن خطط الوحدة الإدارية بموجب الفقرة السابقة.
- د. على المالك الذي يرغب والتقسيم أن يتقدم بطلب إلى الجهة الإدارية للموافقة على التقسيم ويجوز قبول طلب التقسيم المقدم من قبل مالكي ثلاثة أرباع العقار المطلوب تقسيمه وفق أحكام المادة 784 من القانون المدني شريطة إبلاغ بقية المالكين بالطرق القانونية مرفقاً بإضماره تحوي الوثائق الآتية:

1. مستندات الملكية وتشمل الآتي:

أ. المستندات المثبتة للملكية صادرة عن السجل العقاري.

ب. إقرار من أصحاب الحقوق العينية والشخصية العقارية المدونة على صكائف العقارات التي تتألف منها الأرض يفيد بموافقتهم على التقسيم وترقيم إشارة حقوقهم أو نقلها لصحيفة مفسمة أو أكثر من المقاسم التي تنتج عن التقسيم بما يتناسب وهذه الحقوق.

2. مخططات التقسيم على أن تكون مطابقة للمخطط التنظيمي العام والمخططات التنظيمية التفصيلية ونظام ضابطة البناء، المصدقة مبنيًا عليها حدود المقاسم المحدثة وأرقامها ومساحاتها وصفاتها التنظيمية وحدود الشوارع المراد إحداثها.

3. إيصال بدفع رسم التدقيق ويحدد هذا الرسم من قبل المجلس سنويًا عن كل متر مربع من المنطقة المطلوب تقسيمها ويصدق من المكتب التنفيذي لمجلس المحافظة.

المادة 9

أ. تضع الجهة الإدارية بالاشتراك مع مؤسسات المياه والكهرباء والهاتف وشركات الصرف الصحي كسفنًا تقديرًا للنفقات والأعباء اللازمة لإيصال المرافق العامة من طرقات وأرصفة وصرف صحي ومياه وكهرباء إلى المقاسم الملحوظة على مخطط التقسيم مع بيان تفصيلي بما يصيب كل مفسم منها.

ب. تعد النفقات والأعباء المقدرة على كل مفسم بمثابة دين ممتاز لمصلحة الجهة الإدارية على هذا المقسم وتوضع إشارة رهن تأميني بمفصاره على صحيفته عند تسجيل الإقرار في الدوائر العقارية.

ج. يتم تسديد النفقات والأعباء اللازمة لإيصال المرافق على النحو الآتي:

1. 50 بالمئة منها تدفع عند صدور قرار لجنة التوزيع في المناطق التنظيمية أو عند صدور قرار الموافقة على التقسيم.

2. 50 بالمئة الباقية تدفع عند الترخيص.

د. لا يجوز نقل ملكية المقسم ما لم تكن النفقات والأعباء المترتبة عليه مسددة كاملًا.

هـ. إذا زادت المبالغ المستوفاة على النفقات والأعباء الفعلية للمرافق العامة ففرد الزيادة إلى دافعيها وإذا نقصت عن ذلك فيستوفى الفرق وفق قانون جباية الأموال العامة.

المادة 10

أ. نبت الجهة الإدارية بطلب التقسيم وتبلغ النتيجة لأصحاب العلاقة خلال مدة أقصاها ستون يومًا من تاريخ تقديمه وفي حال انقضاء المدة وعدم إيهت فيه عد الطلب مقبولًا بخول أصحاب العلاقة تقديمه إلى المكتب التنفيذي لمجلس المحافظة للبت فيه.

ب. تتم الموافقة على طلب التقسيم بقرار من المكتب التنفيذي لمجلس المحافظة بناء على اقتراح المكتب أو من أصحاب العلاقة ممن عد طلبهم مقبولًا خلال مدة أقصاها ستون يومًا من تاريخ تقديمه.

ج. يمنع على الدوائر العقارية تسجيل أي تقسيم لم يقترن بالموافقة على الوجه المبين في الفقرة (ب) من هذه المادة.

المادة 11

يعاقب كل من يقوم بتقسيم أرضه ضمن المخطط التنظيمي المصدق خلافاً للحكام هذا القانون بالعقوبات المنصوص عليها في قانون مخالفات البناء النافذ وتطبق العقوبات الأشد المنصوص عليها في الفواهن الناهضة وتعد اللجنة المشيعة على العقارات المقسمة خلافاً للحكام هذا القانون واجبة الهمم.

الياب الثاني

التنظيم

الفصل الأول

إحداث المناطق التنظيمية

المادة 12

1. تحدث المنطقة بمرسوم.
2. يعد مشروع مرسوم إحداث المنطقة ويرفع ضمن إشارة تحوي الآتي:
 - أ. الأسباب الموجبة للمرسوم.
 - ب. قرار المكتب باقتراح الموافقة على إحداث المنطقة.
 - ج. مخططا تنظيميا عاما بمقياس 1/2000 مبيئا عليه متهاج الوجائب العمرانية وحدود المنطقة.
 - د. مخططا مساحيا يبين الوضع الراهن للمنطقة منظمًا وفق دفتر شروط تقنية يوضع لهذه الغاية معنمدا من مديرية المصالح العقارية.
 - هـ. مخططا تشريعيها معدا من قبل الجهة الإدارية بمقياس مناسب يوضع وفق دفتر الشروط الفنية الناهذ ويعتمد من قبل مديرية المصالح العقارية على أن يكون هذا المخطط مطابقا للمخطط التنظيمي العام والتفصيلي ونظام ضابطة البناء ومبينًا عليه حدود المنطقة وحدود المقاسم المحفنة وأرقامها ومساحاتها وصفاتها التنظيمية وحمود الشوارع العنوي إحداثها أو تعديلها ومواقع وحدود الساعات والحدائق والمشيدات العامة ومقاسم السكن الشمسي ومقاسم الخدمات الخاصة وفق المخطط التنظيمي العام.
 - و. أحدث صورة قضائية مأخوذة للمنطقة.

المادة 13

1. ينشر مرسوم إحداث المنطقة في الجريدة الرسمية وفي إحدى صحف العاصمة وإحدى الصحف المحلية إن وجدت ويمكن الاستعانة بوسائل الإعلام العامة المرئية والمسموعة.

المادة 14

1. يؤلف الأملاك الحادثة ضمن المصطمة ملكا شائعا بين جميع أصحاب الحموي فيها بحصص تعادل كل منها القيمة المقررة لعقار كل منهم أو الحق العيني التي يملكه.

المادة 15

- أ. لذ يجوز إحخال عقار او جزء عقار سبق أن خضع للتنظيم أو الاستملاك أو التقسيم بالمنطقة إلا بموجب مرسوم بناء على اقتراح الجهة الإدارية صاحبة العلاقة.
- ب. يمنع إجراء المعاملات الآتية على العقارات الداخلة في المنطقة إلى حين انتهاء أعمال التنظيم فيها وهي :

1. الإفراز.
2. التوحيد.
3. منح الترخيص ببناء.

المادة 16

أ. تستثنى مناطق المخالفات الجماعية التي يصدر مرسوم إرهابها كمنطقة وفق أحكام هذا القانون من أحكام البند 3 الفقرة (ب) من المادة 15 ويجوز منح رخص البناء على بعض مقاسم المنطقة المحدثة وفقا لمخططات التقسيم على ان يكون مجموع الحصص السهمية لطالب الترخيص تعادل مساحة المقسم المراد ترخيصه مضافا اليها ما يصيب المقسم من المساحة المجانية المتصوص عليها في المادة 4 من هذا القانون واستيفاء تأمين مالي لقاء نققات وإعفاء مرافق تخدم المنطقة تقدره الجهة الإدارية.

ب. في حال وجود أبنية في المنطقة وارتاث الجهة الإدارية المحافظة عليها من خلال التنظيم فيجب تحقيق شرط مجموع الحصص السهمية للمالك الوارد في الفقرة (أ) أعلاه وفي حال عدم توفر هذه المساحة فيتم تطبيق أحكام المادة 38 من هذا القانون على أن يتم توزيع المقسم القائم عليه البناء لصاحب البناء ويدخل المبني في تقدير قيمة حقوق المالك ويقدر من قبل لجنة التوزيع الجبراري بالقيمة نفسها التي دخل بها.

المادة 17

أ. تحتفظ الجهة الإدارية مجانية وفق أحكام المادة 4 من هذا القانون بجميع الأراضي اللازمة لتنفيذ الطرق والمساحات والحدائق ومواقف السيارات والمشيدات العامة ومقاسم السكن الشعبي ومقاسم الخدمات الخاصة وفق المخطط التنظيمي لعام والتفصيلي المصدقين.

ب. يجوز للمجلس تغيير صفة المشيدات العامة إلى مشيدات عامة أخرى باستثناء المقاسم المخصصة لبناء المدارس ودور العبادة والمواقف المخصصة للحدائق.

المادة 18

أ. في حال إحداث المنطقة لسبب من الأسباب الواردة في المادة 5 من هذا القانون على الجهة الإدارية خلال ثلاثين يوما من صدور مرسوم إحداث المنطقة أن نعو بإعلان ينشر في إحدى صحف العاصمة وفي صحيفة محلية إن وجدت وعلى الموقع الإلكتروني للوزارة وتعلن صورة عنه في كل من بهو الجهة الإدارية والأماكن العامة فيها مألقي عقارات المنطقة وأصحاب الحقوق العينية والشخصية العقارية المسجلة على الصحيفة العقارية للتصريح بحقوقهم وعلى هؤلاء وكل من له علاقة بعقارات المنطقة أصالة أو وصاية أو وكالة أن يتقدم إلى الجهة الإدارية المختصة بطلب خلال ثلاثين يوما من تاريخ الإعلان المشار إليه يبين فيه محل إقامته المختار ضمن الجهة الإدارية التي تقع فيها المنطقة مرفقا بالوثائق والمستندات المؤيدة لخصوة أو صور عنها وهي حال عدم وجودها أن يذكر في طلبه المواضع والحدود والحصص والنوع الشرعي والقانوني للعقار أو الحقوق التي يعي بها.

ب. يجوز لتقارب أصحاب الحقوق في المنطقة حتى الدرجة الرابعة أو بموجب وكالات رسمية للغير مصدقة أصولا المفهام بالتواحيات وممارسة الحقوق المتصوص عليها في الفقرة السابقة نيابة عن أصحابها .

المادة 19

تطلب الجهة الإدارية خلال 10 أيام من تاريخ تسجيل مرسوم إصدارات المنطقة في ديوان الوحدة الإدارية من مديرية المصالح العقارية في المحافظة أو من السجل المؤقت والجهات العامة التي أجاز قانون إحداثها مسك سجلات ملكية إعداد جدول باسماء أصحاب العقارات وجميع الأشخاص الذين لهم حقوق عينية وشخصية عقارية على هذه العقارات ومقدار حصة كل منهم مع بيان مساحاتها والنوع الشرعية وغيرها من الحقوق والبشارات المترتبة على هذه العقارات وعلى مديرية المصالح العقارية والجهات المذكورة إحالة طلب الجهة الإدارية بنسخة ورقية وأخرى رقمية خلال مدة أقصاها ثلاثة أشهر.

الفصل الثاني

لجنة التقدير البدائي

المادة 20

تؤلف الجهة الإدارية خلال ثلاثين يوما من تاريخ صدور مرسوم إحداث المنطقة لجنة أو أكثر لحصر المقارات الموجودة في المنطقة ووصفها وتنظيم ضبوط مفصلة بمحتوياتها من بناء وأشجار ومزروعات وغيرها ولها أن تستعين بالصور الجوية المرفقة بإضبارة إحدث المنضفة للاستناد إليها في أعمال اللجان الأخرى.

المادة 21

أ. تُقدر قيمة الأراضي وما عليها من مبان وإنشاءات وأشجار وزراعات من قبل لجنة يشكلها وزير العدل بناء على طلب تقدم به الجهة الإدارية وذلك خلال مدة ثلاثين يوما من تاريخ صدور مرسوم إحداث المنطقة.

ب. تشكل اللجنة من:

1. قاض بمرتبة مستشار استئناف يسميه وزير العدل رئيسا
2. خيريين اثنين في التقويم العقاري يسميهما المحافظ مضموين
3. خيريين اثنين في التقويم العقاري يمثلان المالكين وأصحاب الحقوق في المنطقة عضوين
4. يحدد في قرار تشكيل اللجنة الزمنية لإنجاز عملها بما يتوافق مع حجمه على ألا تتجاوز ستة أشهر بدءا من تاريخ أنجاز أعمال اللجان الواردة في المادة 20 من هذا القانون.

المادة 22

1. يتم انتخاب خبراء مالكي العقارات بدعوة من الجهة الإدارية للمالكين وأصحاب الحقوق وبعد الانتخاب صحيحا بأكثرية أصوات من لبي الدعوة ويحدد في الدعوة مكان وزمان الانتخاب.
- ب. إذا لم يلب أصحاب العقارات المراد تنظيمها الدعوة للانتخاب ممثلهم في لجنة تقدير القيمة يقوم رئيس محكمة البداية المدنية بتعيين خيريين الميثار إليهما من المالكين.

المادة 23

أ. تزلي اللجنة في تقدير قيمة الأراضي أن يكون التقدير معادلا للقيمة الحقيقية للملكية قبل تاريخ مرسوم إحداث المنطقة وأن تسقط من الحساب كل ارتفاع يطرأ على الأسعار نتيجة التنظيم أو المضاربات التجارية إذا كان هذا الارتفاع بالقيمة لا يبرره ارتفاع مماثل في المناطق المجاورة مع الأخذ بالاعتبار حين تقدير القيمة التي:

1. صفة الوحدة الإدارية "مدينة - بلدة - بلدية".

2. موقع الأرض وما عليها من أبنية وإنشآت داخل المخطط التنظيمي، وقربها من مركز الوحدة الإدارية واتصالها بالعمران وتوافر المرافق العامة والصفة التنظيمية ونظام ضابطة البناء وما عليها من أشجار وزراعات ومشتدات أخرى وللجنة الاستعانة بمن تراه مناسباً من الخبراء في عملية التقييم وتقدير القيمة إذا لزم الأمر.

ب. ترفع اللجنة تقريراً بأعمالها إلى الجهة الإدارية.

المادة 24

أ. يشترط في رئيس اللجنة والعضوين المسميين من المحافظ ألا يكون لأي منهم قرابة أو مصاهرة حتى الدرجة الرابعة أو أي صلة أو مصلحة قانونية أو مالية مع أصحاب الحقوق تنطبق عليها أحكام قانون أصول المحاكمات وتعديلاته.

ب. يؤدي أعضاء اللجنة اليمين القانونية التامة أمام رئيس اللجنة قبل مباشرتهم عملهم: "أقسم بالله العظيم أن أقوم بمهمتي بأمانة وصدق".

ج. تكون اجتماعات اللجنة قانونية بحضور الرئيس وثلاثة أعضاء وتتخذ قراراتها بالإجماع أو بالأكثرية.

د. تكون قرارات اللجنة مبرمة إذا لم يطعن بها خلال ثلاثين يوماً من تاريخ إعلان التقييم.

المادة 25

أ. تقوم الجهة الإدارية خلال خمسة عشر يوماً من تاريخ انتهاء أعمال اللجنة المنصوص عليها بالمادة 21 من هذا القانون بتبليغ المالكين وأصحاب الحقوق بالقيم المقدره لعقاراتهم أو حقوقهم وتعلن في الوقت نفسه في بهو الجهة الإدارية وفي صحيفة محلية إن وجدت وفي حال عدم وجودها في إحدى صحف العاصمة انتهاء أعمال التقدير ودعوة المالكين وأصحاب الحقوق الحضور إلى المكان الذي تحده الجهة الإدارية للاطلاع على إضماره التنظيم وتقدير القيمة.

ب. تختص محكمة الاستئناف المدنية في المحافظة بالبت في غرفة المذاكرة بالطعون الواضحة على القرارات الصادرة عن اللجنة ولا يوقف الطعن إجراءات تنفيذ التنظيم ويصدر قرار محكمة الاستئناف مبرماً.

المادة 26

أ. يستحق الشاغل الفعلي المستأجر وفقاً لأحكام الفقرة (ج) من المادة الأولى من القانون رقم 20 لعام 2015 حصة سهمية تعادل نسبة 40 بالمائة من القيمة التخمينية للجزء المشغل للشاغل السكني، و40 بالمائة للشاغل التجاري وتفصل لجنة حل الخلافات بذلك ولا يستحق أي منهما السكن البديل.

ب. إذا شمل التنظيم أرضاً زراعية يترتب عليها حقوق فلاح أو لمزارع بالمشاركة أو بالبديل فيعد العقد منفسخاً بين الطرفين كلياً أو جزئياً حسب شمول التنظيم لكامل الأرض أو لجزء منها ويدفع لصاحب الحق المنوه به ما يستحقه من التعويضات المنصوص عليها في قانون العلاقات الزراعية النامذ وتعديلاته وتحدد بنسبة من قيمة الأرض الدخلة بالتنظيم.

ج. يقتطع التعويض المشار إليه في الفقرة (ب) من هذه المادة من القيمة المقدره لصاحب الاستحقاق وفق أحكام المادة 21 من هذا القانون من صندوق المنطقة ولا تصرف قبل تسليم الأرض المشغلة.

المادة 27

بحق المالكين وأصحاب الحقوق خلال ثلاثين يوما من اليوم التالي لتاريخ نشر الإعلان ان يقدموا ادعاهم بالملكية أو بأي حقوق أخرى معنى بها على عقار أو أكثر من عقارات المنطقة بطلب مستقل يودع إضبارة لجنة حل الخلافات المشكلة بموجب المادة 28 من هذا القانون.

الفصل الثالث

لجنة حل الخلافات

المادة 28

أ. تشكل لدى الجهة الإدارية بقرار من وزير العدل وخلال ثلاثين يوما من تاريخ انتهاء المدة المحددة لتقديم الادعاءات بالملكية لجنة ذات اختصاص قضائي تختص بالنظر في جميع الاعتراضات والادعاء بالملكية أو بالمنازعات العينية والشخصية العقارية على العقارات الناطقة في المنطقة وتحال إليها جميع الدعاوى المماثلة المتعلقة بالمنطقة القائمة أمام المحاكم التي لم يبت فيها بحكم مبرم وفق الآتي:

1. قاض لا تقل درجته عن مستشار بسميه وزير العدل رئيسا

2. ممثل عن مديرية المصالح العقارية في المحافظة من حملة الإجازة في الحقوق. عضوا

3. ممثل عن الجهة الإدارية من حملة الإجازة في الحقوق يسميه رئيسها. عضوا

ب. يؤدي عضو اللجنة اليمين الآتية أمام رئيس اللجنة: "أقسم بالله اعظيم أن أقوم بمهمتي بأمانة وصدق".

المادة 29

تتمتع اللجنة في سبيل الفصل في تادعاءات أو المنازعات المقدمة أو المجالة إليها بجميع الصلاحيات التي تتمتع بها المحكمة المختصة أصلا بالنظر في النزاع.

المادة 30

أ. تكون قرارات اللجنة قابلة للطعن أمام محكمة الاستئناف المدنية في المحافظة وفق المواعيد والأصول المنبثقة في استئناف قرارات قاضي الأمور المستعجلة وتفصل المحكمة في غرفة المذاكرة بالطعن بقرار مبرم ويبقى للمتضرر الذي لم يكن طرفا في النزاع أمام اللجنة أن يعي على مسبب الضرر بالتعويض عن الضرر الذي لحابه أمام القضاء العادي.

ب. يتم تنفيذ قرارات اللجنة التي لم يطعن فيها طلق الموعد القانوني وقرار محكمة الاستئناف المدنية لدى الجهات العامة وفق الآتي:

1. إما بكتاب يوجهه رئيس اللجنة إلى الجهة المختصة مرفق بصورة القرار بعد استيفاء الرسم المقرر في قانون الرسوم والتأهينات القضائية لتنفيذ الأحكام الهدائية.

2. وإما بكتاب من رئيس محكمة الاستئناف مرفق بصورة عن قرار المحكمة بعد استيفاء الرسوم القانونية.

المادة 31

تمضى اللجنة من التفيذ بالاصول والمهول المفردة في قانون اصول المحاكمات وعليها أن تبت في المنازعات المقدمه إليها خلال العدة التي تعدد بقرار تشكيلها بما يتوافق مع حجم عملها على ألا تتجاوز سنة أشهر اعتبارا من تاريخ صدور قرار تشكيلها.

الفصل الرابع

لجنة انقوزيع الإيجاري

المادة 32

1. تعد المنطقة شخصية اعتبارية تحل محل جميع المالكين وأصحاب الحقوق فيها.
- ب. تمثل الجهة الإدارية هذه الشخصية الاعتبارية وتمارس الصلاحيات التي تكفل تصفية أملاك المنطقة وحقوقها بمد اقتطاع ما يترتب عليها من نفقات ورسوم وضرائب وغيرها.
- ج. تطبق المادة 9 من هذا القانون على مناطق التنظيم.

المادة 33

على الجهة الإدارية تنظيم الجدولين الآتيين خلال ثلاثين يوما من تاريخ صدور قرار لجنة حل الخلفات ليكون أساسا لعملية التوزيع الإيجاري:

أ. جدول يستحق أصحاب الحقوق لكل عقار من عقارات المنطقة يتضمن رقم العقار والمنطقة العقارية-اسم صاحب الاستحقاق-حصته من العقار-حصته من قيمة العقار أو الحق العيني.

ب. جدول هجائي بأسماء أصحاب الحقوق يتضمن قيمة كامل حقوق كل منهم في المنطقة.

المادة 34

تنتهي أعمال التنظيم في المنطقة بتوزيع أملاكها على أصحاب الحقوق وفقا لحصصهم فيها.

المادة 35

أ. يتم التوزيع الإيجاري من قبل لجنة تشكل بقرار من وزير العدل بناء على طلب تقدم به الجهة الإدارية على النحو الآتي :

1. قاض يرتبة مستشار يسميه وزير العدل رئيسا
 2. خبيران في التقييم العقاري يسميهما المحافظ عضوين
 3. خبيران في التقييم العقاري يمثلان المالكين وأصحاب الحقوق في المنطقة عضوين.
- ب. تطبق أحكام المادة 22 من هذا القانون على ممثلي المالكين وأصحاب الحقوق في المنطقة.

المادة 36

على لجنة التوزيع الإيجاري قبل مياشترتها عليها أن تقوم بتخمين قيمة كل مقسم من مقاسم المنطقة المحددة على مصورها التقديمي وإذا نقص أو زاد مجموع قيم المقاسم على قيم كامل عقارات وحقوق المنطقة المخمنة تعتمد لجنة التوزيع على تعديل حق كل من أصحاب الحقوق بنسبة هذا النقص أو الزيادة.

المادة 37

على لجنة التوزيع الإيجاري أن تسعى ما أمكن لإعطاء كل من أصحاب الحقوق حصته في موقع عقاره القديم أو قريبا منه ولها أن تخصص لكل ذي حق مقسما أو عدة مقاسم تعادل حصته كما يمكنها أن تخصص لعدد من أصحاب الحقوق مقسما واحدا يملكونه على الشيوع على أن يحدد مقدار الحصص الشائعة لكل منهم.

المادة 38

إذا اختلفت قيمة المقسم أو المقاسم المخصصة لذي حق عن مقدار حصته تحدد لجنة التوزيع الإيجاري مقدار البديل النقدي الذي يجب عليه تأديته في حال الزيادة ومقدار ما سيقبضه في حال النقصان ويكون هذا البديل مستحق الأداء فورا على أنه إذا أعطي المدين مهلة من قبل الجهة الإدارية فتبقى حصته مرهونة حتى وفاء الذمه مع الفائدة القانونية.

المادة 39

أ. تنظم اللجنة مشروع التوزيع الإيجاري وتبلغه إلى الجهة الإدارية التي تدعو أصحاب الحقوق للاطلاع عليه بموجب إعلان ينشر في إحدى الصحف المحلية، وعند عدم وجودها ففي إحدى صحف العاصمة وفي لوحة إعلانات الجهة الإدارية وموقعها الإلكتروني إن وجد.

ب. لكل ذي علاقة خلال ثلاثين يوما من تاريخ النشر أن يبدى ملاحظاته على مشروع التوزيع بمعروض خطي يقدمه إلى رئيس اللجنة عن طريق الجهة الإدارية.

ج. عند انتهاء المهلة المحددة في الفقرة السابقة تجتمع اللجنة وتقوم بدراسة الملاحظات إن وجدت وتصدر قرارها بالتوزيع النهائي المقاسم المنطقة على أصحاب الحقوق.

د. يخضع قرار اللجنة بالتوزيع النهائي للطعن أمام محكمة الاستئناف المدنية في المحافظة خلال ثلاثين يوما تبدأ من اليوم التالي لتاريخ اعلانه في لوحة اعلانات الجهة الإدارية.

هـ. تبت المحكمة بالطعن في غرفة المذاكرة بقرار مبرم.

المادة 40

أ. على الجهة الإدارية بعد اكتساب قرار لجنة التوزيع الإيجاري الدرجة القطعية إبلاغه الدوائر العقارية خلال خمسة عشر يوما لإجراء معاملات تسجيل الملكية.

ب. على الدوائر العقارية إنجاز إجراءات معاملات تسجيل الملكية خلال مدة يحددها مدير المصالح العقارية إحصاءها عام واحد من تاريخ تسجيل الاضبارة في ديوانها.

المادة 41

إذا وجدت الدوائر العقارية المختصة أثناء التدقيق خطأ تمنع من تسجيل الملكية تقوم الجهة الإدارية بإحالة الملاحظات الواردة من الدوائر المذكورة إلى لجنة التوزيع الاجباري لتصحيح هذه الأخطاء وعلى اللجنة ان تنجز تصحيح الأخطاء المشار إليها خلال مدة ثلاثين يوما من تاريخ دعوتها للاجتماع.

الفصل الخامس

أحكام ختامية

المادة 42

يجوز للجهة الإدارية وضع اليد على الاملاك العامة والمقاسم المحدثة في المنطقة المخصصة للمشيدات العامة ومقاسم السكن الشعبي ومقاسم الخدمات الخاصة المقنطعة مجانا بموجب المادة 4 من هذا القانون الخاليه عن الذئبة بعد انجاز التقدير.

المادة 43

إن الحقوق العينية التي هي من قبيل الرهونات الواجبة على العقار قبل خضوعه التنظيم تنتقل إلى العقارات والحصص والاستحقاقات التي حلت محل العقار أو الحق الأصلي.

المادة 44

تخصص الجهة الإدارية لكل من اللجان المنصوص عليها في هذا القانون مقررًا أو أكثر دون أن يكون له حق التصويت مهمته تأمين البيانات والمعلومات التي تحتاج إليها وتحرير فيبوط جلساتها وتنظيم اعمالها ومتابعتها كما تضع تحت تصرف اللجان جميع ما تحتاجه من مستندات ووثائق ومعلومات وخبرات فنية.

المادة 45

يحق للمحافظ بناء على اقتراح المكتب اصدار قرارات لحل القضايا الفرعية التي لم ينص عليها هذا القانون واتخاذ جميع التدابير اللازمة بما لا يتعارض مع أحكامه والصلحيات المنصوص عليها في قانون البدارة المحلية.

المادة 46

أ. يسمح للجهة الإدارية بتسليم المنطقة المبادئ التي تحتاج إليها من أجل إجبارها على أن تسترد هذه السلف عند توفر الشروط في صندوق المنطقة.

ب. للجهة الإدارية استيفاء سلف من اصحاب الحقوق لحساب الجهات العامة المختصة لتأمين نفقات الطرق والمساحات والأرصنة والحدائق والماء والكهرباء والصرف الصحي والهاتف. وتعد هذه السلف من ضمن النسب المنصوص عليها في المادة 9.

ج. تصرف التكاليف الإدارية لتنفيذ التنظيم بما في ذلك الدراسات وتقويضات اللجان والاعمال الإضافية من صندوق المنطقة.

المادة 47

يجري تقدير قيمة العقارات بالمنطقة على أساس ترك الأنقاض للمالكين وأن يصار إلى هدمها وترحيلها على حساب المنطقة بعد انتهاء المهلة التي تحددها الجهة الإدارية للمالكين لأخذ أنقاض عقاراتهم.

المادة 48

تلتزم الجهة الإدارية بتسليم أراضي المقاسم خالية من الإشغالات ذلي مالكيها 'باستثناء المقاسم المنصوص عليها بالفقرة (ب) من المادة 16 من هذا القانون خلال مدة أقصاها تسعون يوما بعد تاريخ حصولهم على رخص البناء عليها وللجهة الإدارية أن تلجأ إلى الإخلاء بالطريق الإداري بعد انقضاء هذه المهلة ويعد الفرار الإداري بالبلطج سندا تنفيذيا ينفذ عن طريق دوائر التنفيذ القضائي.

المادة 49

أ. تعفى الاملاك لتداخله ضمن المنطقة من رسوم التسجيل في السجل العقاري.

ب. فعفى 'العقارات المنكوبة بسبب الكوارث الطبيعية أو الحروب من الرسوم المالية والتكاليف المحلية والرسوم الاخرى المتوجبة على عادة البناء.

المادة 50

تتصل اموال المنطقة حسب القانون المالي للولايات الإدارية.

المادة 51

يقصر حق المالكين الذين بنوا فوق أراضي الملاك العامة أو الخاصة أو المشترين منهم على أخذ أنقاض أبنيتهم ولا يحق لهم سوى ذلك ولا تدخل قيمة هذه الأبنية والمنشآت المخالفة في حساب حقوق المالكين ويجوز بقرار من المكتب تخصيصهم بمساكن بديلة من قانض ما يتوفر لدى الجهة الإدارية.

المادة 52

تختص لجنة كل الخلافات بالبيت في القضايا الناجمة عن العلاقات الإيجارية أو الزراعية ومخالفات البناء والإشغالات الواقعة على العقارات الخاصة في المنطقة وفق أحكام هذا القانون.

المادة 53

يشكل وزير العدل اللجان المنصوص عليها في هذا القانون بالتنسيق مع المحافظ والجهة الإدارية المختصة ويعد القضاة الجارية تسميتهم في هذه اللجان مفرغين لإنجاز مهامهم خلال المدد المحددة في هذا القانون وتعليماته التنفيذية.

المادة 54

أ. تستثنى تعويضات أعضاء اللجان المؤلفة بموجب أحكام هذا القانون وتعويضات العاملين القائمين على تطبيقه من الحدود المنصوص عليها في القانون الأساسي للعاملين في الدولة وتعديلاته إذا انجزوا أعمالهم خلال المهل المحددة لإنجازها في هذا القانون وتعليماته التنفيذية أو قرار تشكيلها.

ب. يصدر وزير الإدارة العملية بالتنسيق مع وزير الإسكان وتنمية العمرانية والعدل قرارا خلاصا بالتعويضات المستحقة أعضاء اللجان والعاملين على تنفيذ هذا القانون وتدفع هذه التعويضات من صندوق المنطقة.

المادة 55

لا يعتد بمخالفات البناء الجارية بعد تاريخ مرسوم إحداث المنطقة ولا تدخل في حساب تقدير القيمة.

المادة 56

يصدر الوزير التعليمات التنفيذية اللازمة لتطبيق أحكام هذا القانون.

المادة 57

أ. يلغى العمل بالنصوص الآتية اعتباراً من تاريخ نفاذ هذا القانون:

1. القانون رقم 9 إيار 1974 وتعديلاته.

2. القانون رقم 60 لعام 1979 وتعديله بالقانون رقم 26 لعام 2000.

ب. يستثنى من أحكام الفقرة (أ) أعلاه:

1. الأراضي التي صدر صك باستملاكها وفق أحكام القانون رقم 60 لعام 1979 وتعديله بالقانون رقم 26 لعام 2000.

2. الأراضي التي صدر صك بإحداث منطقة تنظيمية فيها وفق أحكام القانون رقم 9 لعام 1974 وتعديلاته مع مراعاة أحكام المادة 7 من هذا القانون.

3. تطبيق أحكام هذا القانون على المناطق التنظيمية القائمة بتاريخ نفاذه دون المساس بالمراكز القانونية المكتسبة في ظل القوانين الملغاة.

4. تراعى في معرض تطبيق هذا القانون أحكام البرسيم التشريعي رقم 40 تاريخ 20-05-20.

المادة 58

ينشر هذا القانون في الجريدة الرسمية.

دمشق في 26-02-1437 هجري الموافق 08-12-2015 ميلادي.

رئيس الجمهورية

بشار الأسد

Law – 60
Acquisition Law

The president, the Constitution, the People Assembly 30/6/1979

Article -1

A- **Area of Urban Expansion:** All, unorganized and undivided, properties and parts of properties which fall within the verified **General Organizing Plan**.

B- In Damascus Municipality, **Area of Urban Expansion:** All, unorganized and undivided, properties and parts of properties which fall within the verified **General Organizing Plan**, even if those properties fall outside its administrative borders.

Article -2

Law-9, 1974 is not applicable on Areas of Urban Expansion in Damascus and the center cities of the provinces. The Administrative Bodies, exclusively, acquire, organize and divide those Areas of Urban Expansion for their needs and the other public entities needs...for the common benefits. It is permissible to treat this matter urgently. It is not permissible for any other public entity to acquire a property directly. (Law – 20, Article -4, 1974)

Article -3

When acquiring and assessing the value of a property, the properties and part of properties included in the Area of Urban Expansion considered arable land regardless if the property was used for plantation or not. The assessment must not exceed ten times the value of its agricultural annual production.

Article -4

A- After acquiring the designated properties, the Administrative Bodies plan and divide the properties to lots, ready to build upon, and provide the public utilities. The AB sells the, lots at the cost price, to any public entity that wish to, co-operative housing societies and individuals that their properties were acquired. The AB compensates the owners of the acquired properties within five years.

B- According to this law, the buyer is prohibited from selling the lot or any part of it before finishing the construction allowed in the

Building Permit and ready for use. In case the lot was put for public auction, for some reason, the lot will be turned back to the AB instead for the same amount was sold.

Article -5

The output lots of this law will be categorized as follow:

First Category: Lots dedicated for housing and to be sold to public entities, co-operative housing societies and individuals' whom their properties were acquired, according to guidance set by the Minister of Housing.

Second Category: Lots dedicated for public buildings, (Law -9, Article -1/1974), given for free.

Third Category: Lots dedicated entirely or partly for shopping, commercial offices and etc. It is permissible to sell those lots according to the prevailing laws.

Article -6

The AB in coordination with the other public entities put a technical and financial study as well as an execution plan to provide the Area of Urban Expansion with the required utilities within a time frame.

Article -7

The AB can collect deposits from the buyers on behalf of the utilities public entities.

Article -8

A- The AB set the total cost on the following expenses base:

- 1- Total acquiring cost.
- 2- Compensation for evictions, uprooting plants, study, topography and survey expenses as well as compensation of all committees involves.
- 3- Public utilities expenses.
- 4- Administrative expenses 5% of the above expenses.
- 5- Interest charged to the AB from (1, 2, and 3).

B- The AB forms a committee to assess the value of each lot in category one and three (Article -5). The total value must equal the total cost, calculated previously. The Council in the AB verified the lots assessment.

C- The AB must settle the account of the Area within four years, taking in consideration the actual cost and expenses.

Article -9

A- The buyer of the new lot has to apply for a Building Permit within six months from the day putting hand on the lot. The building must be ready for use in the following time frame:

1- Within three years for the six or less stories high buildings.

2- Within four years for more than six-story buildings.

B- The buyer put his hand on the lot after water and electricity utilities are provided and dirt road to the lot is executed.

Article -10-

The AB in co-ordination with the General Administration of Properties Affaires... (Working overtime).

Article -11- ...

Article -12-

Buyer of a new lot must build according to a building permit within the time set in Article -9-, violator will be charged, annually, 20% of the value of its lot. Part of the year will be considered one year.

Article -13-

Acquisition Law and the Law of Building Empty Lots are applicable in all cases that were not covered in this law.

Article -14-

The Minister of Housing set the guidance and rules of selling, the buyers' responsibilities toward the AB and reselling stipulations

Article -15-

The Minister of Housing set the instructions of executing this law.

Article -16-

This law is to be published in an official newspaper.

Damascus 22/7/1979

The president



الجمهورية العربية السورية
Syril Arab Republic



www.parliament.gov.sy

قانون رقم 60/ للعام 1979

التاريخ- ميلادي: 1979-07-22 التاريخ- هجري: 1399-08-27

نشر بتاريخ: 1979-07-22

القسم: قانون

معلومات عن هذا القانون:

غير نافذ

1 مارس 1979

القانون 60 لعام 1979

للتوسع العمراني

رئيس الجمهورية

بناء على أحكام الدستور

وعلى ما أقره مجلس الشعب المنعقد بتاريخ الخامس من شعبان 1399 هجرية الموافق لـ 30/08/1979 م .

يصدر ما يلي :

مادة 1 /

عدلت بموجب قانون رقم 28 لعام 2000

يقصد بمناطق التوسع العمراني في معرض تطبيق أحكام هذا القانون:

أ. مناطق التوسع السكني ومستلزماته من العقارات الملحوظة للأملك العامة والمشيدات العامة الوارد ذكرها في المادة الأولى من القانون / 8 / لعام 1974 والأبنية الخدمية شاملة الأسواق والمحلات والمكاتب التجارية والمهن الحرة والتي ستحدد وتلحق بالمخطط التنظيمي العام بعد نفاذ هذا القانون وفق أحكام المرسوم التشريعي رقم / 5 / لعام 1982.

ب . المناطق السكنية الواسعة ضمن المخططات التنظيمية المصدقة بتاريخ نفاذ هذا القانون والتي لها مخطط تنظيمي تفصيلي مصدق أو التي سيتم وضع مخطط تنظيمي تفصيلي لها حيث تطبق عليها الإجراءات التالية:

1 . يحق للجهة الإدارية خلال ستة أشهر من تاريخ تصديق المخطط التنظيمي التفصيلي أو من تاريخ نفاذ هذا القانون أيهما أبعد أن تقرر تطبيق أحكام الباب الثاني من القانون / 9 / لعام 1974 على هذه المناطق وإذا لم تقرر الجهة الإدارية تطبيق أحكام الباب الثاني من القانون المذكور خلال المدة المحددة، يحق للمالكين في هذه المنطقة السكنية تقسيم عقاراتهم وفق أحكام الباب الأول من القانون (9) المذكور خلال مهلة ثلاث سنوات من تاريخ انقضاء مهلة ستة أشهر المبينة أعلاه.

2 . في حال انقضاء المدة المذكورة في المادة (ب - 1) أعلاه فإن العقارات التي لم تبادر الإدارة إلى تنظيمها ولم يبادر المالكون إلى تقسيمها تعتبر مناطق توسع عمراني خاضعة للأحكام الثانية من هذا القانون.

3 . تعتبر تابعة لمحافظة دمشق في معرض تطبيق هذا القانون مناطق التوسع السكني الواقعة داخل مخططاتها التنظيمي العام المصدق ولو كانت خارج حدودها الإدارية.

مادة /2

عدلت بموجب قانون رقم 26 لعام 2000

يتم استملاك وتقسيم وتنظيم مناطق التوسع العمراني في مدينة دمشق. ومدن مراكز المحافظات من قبل الجهة الإدارية حصراً وذلك لمصلحتها ومصلحة لجهات العامة الأخرى التي عدتها المادة الثانية من قانون الاستملاك الصادر بالمرسوم التشريعي رقم / 20 / لعام 1988 ويعتبر هذا الاستملاك من المشاريع ذات النفع العام ويجوز إعطاؤه صفة الاستعجال ولا يجوز لأي من الجهات المذكورة في المادة الثانية من القانون / 20 / لعام 1988 الاستملاك لمصلحتها بشكل مباشر.

لا تخضع العقارات الواقعة المائدة لمختلف الطوائف للاستملاك وفق أحكام هذا القانون.

مادة /3

تعتبر العقارات وأجزاء العقارات الكائنة داخل حدود مناطق التوسع العمراني في معرض تقدير قيمتها حين استملاكها زراعية سواء كانت مستثمرة للزراعة بصورة فعلية أو لم تكن كذلك وتقدر قيمتها حين استملاكها بما لا يجاوز عشرة أمثال إنتاجها السنوي.

مادة /4

عدلت بموجب قانون رقم 26 لعام 2000

تتولى أحيادات الإدارة والبلديات في مدن مراكز المحافظات بعد استملاك العقارات المشار إليها في المواد السابقة تخطيطها وتقسيمها إلى مفاسم جاهزة البناء وتأهيل المرافق العامة لها وبيعها بسعر الكلفة للراغبين في بنائها من جهات القطاع العام والمشترك والجمعيات التعاونية السكنية والأفراد الذين استملاك عقاراتهم ويتم دفع بدل الاستملاك خلال خمس سنوات اعتباراً من تاريخ صدور مرسوم الاستملاك.

يتمتع على من يشتري مقسماً من المفاسم المبيعة تنفيذاً لأحكام هذا القانون (باستثناء الأفراد والجهات الذين استملاك عقاراتهم) وبما لا يتعارض مع أحكام القانون / 3 / لعام 1978 إن يبيعه أو أن يتصرف به إلا بعد إنجاز بناء كامل المساحة الطابقية المسموح بنائها على المقسم بموجب نظام المصلحة جاهز للسكن أو تستعملها فيما أعدت له.

وتثبت جاهزية ابناء بموجب شهادة تصدرها الجهة المستملكة ولا يعتد بأي تصرف يجري خلافاً لتلكام هذه المادة، ويمتبر باطلاً بطلاناً مطلقاً وذلك مع عدم الإخلال بتطبيق أحكام المادة / 143، من القانون المدني وإنما تقرر بيع أحد هذه المقاسم بالمزاد العلني المنصوص عليه في القوانين والنظمة النافذة لدى دوائر التنفيذ أو الدوائر المالية أو أي جهة أخرى فيستعاض عن هذا البيع بإعادة المقسم إلى الجهة الإدارية وفي هذه الحالة ترد إلى المشتري مدفوعاته.

/ مادة 5/

عدلت بموجب قانون رقم 26 لعام 2000

نصف المقاسم الناتجة عن تطبيق أحكام هذا القانون حسب الفئات التالية:

الفئة الأولى: المقاسم المخصصة للسكن ويتم التصرف بها وفق ما يلي:

أ. تباع مجموعة المقاسم التي تشكل قيمتها التخمينية 80% من القيمة التخمينية لمقاسم كامل للمنطقة لجهات القطاع العام (مقار السكن) والجمعيات لتعاونية السكني حصراً.

ب. تباع باقي مقاسم المنطقة للأفراد الذين استملكوا عقاراتهم كل بنسبة قيمة عقاره المستملك على أن يدفع كامل تكاليف ما خصص له.

الفئة الثانية: المقاسم المخصصة للمشيدات العامة المحددة في المادة الأولى من القانون رقم 9 لعام 1974 وتسلم إلى الجهات المختصة بدون بدل.

الفئة الثالثة: المقاسم المخصصة كلياً أو جزئياً للبنية الخدمية كالأسواق وانمطلات والمكاتب التجارية والمهن الحرة وغيرها ويجوز بيعها وفق الأحكام القانونية النافذة لدى الجهة المستملكة.

/ مادة 6/

تضع الجهة المستملكة بالاتفاق مع الجهات العامة المختصة دراسة هبة ومالية وخطة تنفيذية تأمين المرافق العامة للمنطقة وهي الماء والكهرباء والاسبقة والطرق والأرضية والإدارة والهاتف والحدائق العامة، وتضاف نفقات الطرق والاسبقة والإنارة والحدائق العامة والأرضية إلى الكلفة العامة للمنطقة وتلتزم كل من الجهات العامة المشار إليها بتنفيذ المرفق العام المختصة به خلال المدة المحددة في هذه الخطة.

/ مادة 7/

عدلت بموجب قانون رقم 26 لعام 2000

أ. للجهة المستملكة استيفاء سلف من مشتري المقاسم على حساب هبتها. تخصص حصراً للإنفاق منها على الأعمال الطبوغرافية والتنظيمية والمساحية والعقارية وتمويرات اللجان وإزالة المزروعات وإخلاء الشاعلين وعلى تأمين المياه والكهرباء والهاتف والصرف الصحي والإنارة وإنشاء الطرق والمساحات والأرضية والحدائق العامة وعلى ما يلزم لتهيئة المنطقة للبناء.

ب. يحق للجهة المستملكة من أجل الأعمال المشار إليها في الفقرة السابقة اقتراض المبالغ اللازمة لذلك من الجهات المختصة.

مادة 8 /

أ. تتولى الجهة المستمكة تحديد الكلفة الإجمالية للمنطقة على أساس النفقات التالية:

- 1 - بطلات الاستملاك لكامل المنطقة المستمكة.
 - 2 - تعويضات الإزالة وإتلاف المزروعات ونفقات الدراسة والأعمال الطبوغرافية والمساحية وتعويضات لجان الاستملاك وسائر النفقات الأخرى.
 - 3 - نفقات المرافق العامة التي تتحملها المنطقة.
 - 4 - نفقات إدارة وغدنها 5% من مجموع المبالغ المشار إليها في الفقرات من هذه المادة.
 - 5 - الموائد التي تتحملها الجهة المستمكة عن أي من المبالغ المذكورة في الفقرات 1 و 2 و 3. وفي حالة ندر تحديد إحدى النفقات التي سبق ذكرها فللجهة المستمكة أن تعتمد في إجراء حسابها على تقديرات يقرها أمر الصرف.
- ب. تؤلف بقرار من أمر الصرف في الجهة المستمكة لجنة خاصة لتحديد القيم الأساسية لكل مقسم من مقاسم الفئتين الأولى والثالثة. للمذكورة المشار إليها في المادة الخامسة من هذا القانون تبعا لمختلف العوامل التي تميز مقسما عن آخر على أن لا يجاوز مجموع القيم النسبية لهذه المقاسم المقدار الناتج عن تطبيق الفقرة السابقة. وتقر هذه القيم من قبل المكتب التنفيذي في الوحدة الإدارية والمجلس البلدي في البلدية حسب الحال.

ج. على الإدارة أن تصفى حساب المنطقة خلال مدة أربع سنوات من تاريخ الإعلان عن بيع مقاسم المنطقة وتتم التصفية حسب التكاليف الفعلية بالنسبة للأعمال المنجزة وبموجب كشوف تقديرية مصدقة من أمر الصرف بالنسبة للأعمال غير المنجزة.

مادة 9 /

أ. على مشنري المقسم أن يتقدم بطلب إجازة لبناء مقسمه من الجهة المستمكة مستكملاً الشروط المصدقة المعلقة خلال مدة ستة أشهر من تاريخ استلامه المقسم. كما يترتب عليه إنجاز كامل البناء جاهزاً للسكنى ولاستعماله فيما أعد له وفقاً لما يلي:

- 1 - خلال مدة ثلاث سنوات من تاريخ إجازة البناء بالنسبة للأبنية المؤلفة من ستة طوابق فأقل.
 - 2 - خلال أربع سنوات بالنسبة للأبنية المؤلفة أكثر من ستة طوابق.
- ب. لا يتم تسليم المقسم إلى المشنري إلا بعد إجازة التسوية الترابية للطريق الموصلة إلى المقسم ونومر الماء والكهرباء في المنطقة.

مادة 10 /

تكلف الجهة المستمكة بالاتفاق مع المديرية العامة للمصالح العقارية العاملين لدى هذه المديرية بالعمل الإضافي خارج أوقات الدوام الرسمي لإنجاز الأعمال المساحية والعقارية اللازمة لقاء تعويضات تحدّد بالاتفاق بين الجهتين المذكورتين.

مادة 11 /

عدلت بموجب قانون رقم 26 لعام 2000

تستثنى التعويضات الناشئة عن تطبيق أحكام هذا القانون من أحكام القانون الأساسي لتعاملين في الدولة رقم 1 / لعام 1985.

مادة 12 /

يكلف مشترو المقاسم الذين لا يقدمون بطلبات مستكملة لشرايطها التنظيمية للحصول على إجازات بيئاتها خلال المدة المحددة في هذا القانون وضمن المهل المحددة فيه برسم نسوي قدره 20% من قيمة المقيم ابتداء من تاريخ تحقق المطالبة ويعتبر جزء السنة كالتسبة في معرض التكليف بالرسم المشار إليه في هذه المادة.

مادة 13 /

تطبق أحكام قانون الاستملاك وقانون إعمار العرصات النافذين في كل ما لم يرد عليه نص في هذا القانون.

مادة 14 /

تحدد بقرار من وزير الإسكان والمرافق أسس وضوابط للاستفادة من المقاسم وطريقة بيعها وتسديد قيمتها والتزامات المشترين تجاه الجهة الإدارية وشروط نقل ملكية المقاسم للمشترين.

مادة 15 /

يصدر وزير الإسكان والمرافق التعليمات اللازمة لتنفيذ أحكام هذا القانون.

مادة 18 /

ينشر هذا القانون في الجريدة الرسمية ويعمل به من تاريخ صدوره.

دمشق في 27/8/1399 هـ الموافق 22/7/1979 م

رئيس الجمهورية

حافظ الأسد

Appendix – D -

Law – 9

Dividing, Organizing and Building in cities

The president, the Constitution, the People Assembly 31/12/1973

Article -1

Definitions...

Council: The Municipal Council or the Executive Office.

Area: The collection of properties and divided part of properties, which are the subject of Organizing.

Lots: A parcel of land (prepared to be built upon), the output of the Organizing procedure.

General Organizing Plan: The as built plan for a city or a town and the proposed future urban development.

Detailed Organizing Plan: A plan that includes the necessary urban details, integrates with the General Organizing Plan.

Article -2

Preparing a parcel of land for building will be according to the General Organizing Plan and the Detailed Organizing Plan, using either one of the following two paths: A- Dividing in response to the property owner' desire.

B- Organizing in response to an administrative body' (Municipality) desire.

Chapter One Dividing

Article -3

When an area owner(s)' wish to divide his/her land to lots –to be built upon, the owner must apply to the administrative body in charge (Municipality) for approval. The application must include the following documents:

A- Ownership documents including:

- 1- Documents prove the ownership, issued by the Property Deed Office.
 - 2- The owner(s) of the land' affirmation and approval of the division and the transference of the rights from the old property' deed to the new –will be- lots deed(s) in accordance with their rights before and after the division.
 - 3- The owner(s) of the property' guaranty that there are no unregistered (on the property deed) rights, and in case appear some rights, the owner(s) of the property are responsible and are to compensate.
- B- Division plans providing the following:
- 1- Harmony with the General Organizing Plan and the Detailed Organizing Plans (if they exist). In addition, the streets emerging from the division must take in consideration the potential increase in resident numbers, traffic and other related factors in the land subject of the division and the surrounding properties.
 - 2- A third of the Area will be dedicated for streets, squares, parks and public buildings. This part will be given for free. In case the land abuts an old street, the area of half the width of the street will be deducted from that third.
 - 3- The free third for public use (mentioned previously) could be increased to a half if the General Organizing Plan and the Detailed Organizing Plan required that.
 - 4- If the public use area increased beyond the half, the Administrative Body' (Municipality) must pay for the exceeded area. The price will be assessed according to the Acquisition Law.
- C- A receipt of paying verification fee. The Municipality Council determines this fee which must be no more than 10 cents per square meter and no less than 100 Syrian Lira.

Article -4

- A- The Administrative Body' (Municipality) in co-operation with the Water and Electricity Establishments estimate the cost of providing public utilities (streets, sidewalks, water, sewer and power) to the new lots with detailed manifest of every lot' share.
- B- This estimate will be considered as a loan on the new lot and will be written down on the new lot' deed in the Property Deed Registry.
- C- Selling the new lot is possible only after paying the utilities estimate or getting the buyer' acceptance to pay it later. No Building Permit will be issued on the new lot until paying a half of

the utilities cost estimate. Issuing a new property deed or selling part of the new lot will be allowed only after paying the entire utility cost estimate.

D- If the actual cost of the utilities was different than the estimate, the payer will be reimbursed or charged for the difference.

Article -5

A- Properties whose all sub-divided lots are abutting verified planning public streets will be exempted from Article -3 (B) and Article -4.

B- The Minister of Housing may exempt the third and fourth degrees municipalities from Article -4 upon the Municipality Council' proposal.

Article -6

A- The Administrative Body' (Municipality) decides on the Division Request and informs the owner(s) of its decision within three months from the date of applying.

B- Upon the Municipal Council' acceptance, the Executive Office will issue an ordinance accepting the division officially.

Article -7

All Property Departments are prohibited from accepting any property division If the division was not accompanied by an official ordinance (the previous Article).

Article -8

A- The owner(s) of a property who divides his property or allow his property to be divided not in accordance with this ordinance will be fined. The Administrative Body' (Municipality) lays the fine, which is 25% of the property value according to the property assessment for taxation. The fine will be collected on behalf of the Administrative Body' (Municipality).

B- Buildings, which are erected on illegally divided property, are subject to demolition. In case demolition was postponed, the Administrative Body' (Municipality) lays an annual fine on the users of these buildings. The fine will be equal to one-year rent according to the property assessment for taxation. Collecting this fine from the users (if they were tenant) will exempt the users from any financial responsibility toward the owner(s).

Chapter Two Organizing

Section One Providing Organized Areas

Article -9

The Administrative Bodies can implement Organizing in the following cases:

A- Areas affected by natural disasters such as earthquake, floods, or areas destroyed because of wars or fires.

B- Areas fall within the Administrative Bodies' jurisdiction in the General Organizing Plan.

Article -10

An organized area will be created by a Decree upon a set of requirements (folder) including the following:

A- A new detailed plan from the Survey Trust and Estate Improvement showing the outline borders of the organized area and all the inner borders of the included sites as well as the existing buildings with a table of its floor areas.

B- A plan prepared by the Administrative Body and approved by the Survey Trust and Estate Improvement, showing the new lots' borders and the layout of the new streets and the location and borders of the designated areas for parks and public buildings.

C- A building guide determining the setback, open space among buildings, building height and the utilities networks distribution.

D- The Council ordinance of proposing an organized area.

Article -11

The decree of creating an organized area must be published in an official newspaper and in a local newspaper. In case there was no local newspaper, the decree will be published in one of the capital newspapers.

Article -12

All properties within the organized area are communally owned among the owners. The share of each owner is equal to the value of the original property.

Article -13

A- In one decree, it is permissible to create more than one organized area within one Administrative Body.

B- It is not permissible to include a site or part of a site created from an organized area or division in a new organized area unless a special decree is issued to reorganize this property and upon a proposal from the Administrative Body where the property falls in its jurisdiction.

C- It is prohibited to do any of the following, on the sites included in the organized area:

- 1- Division
- 2- Unification
- 3- Issuing building permit

Article -14

A- The Administrative Body demarcates all necessary property for streets, parks and buildings according to Article -3-, B, 2-3-4 from this law.

B- It is permissible to the Council to change the type of function used on the designated public building lots except for lots designated as schools or worship.

**Section Two
Initial Assessment**

Article -15

A- In case an organized area is created for one of the reasons listed in Article -9-, A, the Administrative Body, within one month from the issuing of the decree, call, in a local newspaper, (in case there was no local newspaper, the call will be published in one of the capital newspapers), all the owners of sites and buildings to declare their rights. The owners, their trustees or anyone with a power of attorney is to provide to the Administrative Body, within thirty days, proof, documents and photos if exist supporting his claim of his rights.

B- It is permissible for the relative to work on behalf of the rights owner.

Article -16

After issuing the decree. The Administrative Body requests from the Property Deed Trusty a list of the owners of the properties, buildings & etc.

Article -17

A- The Administrative Body forms an Initial Committee to assess the value of the sites, buildings, trees & etc. (as they are) within the new organized area.

B- This committee consists of three members one of them is an engineer (?). The committee makes its decisions by consent or majority and announces its decisions while all its members are attending.

C- It is not permissible for any member of this committee to have any relationship or relativity with any of the right owners in the new organized area. Article (174) from Court Principals Law.

Article -18

A- The Administrative Body announces, in a local newspaper, in case there was no local newspaper, the announcement will be in one of the capital newspapers, the conclusion of the initial committee. It should be clear where to check up the initial assessment.

B- All right owners mentioned in Article -15- have the right, within thirty days from the day after the announcement to:

1- Dispute the initial assessment and invoke the legal backup that supports his argument. Any assessment without objection during the thirty days period considered final. Objection of one partner in a property will be considered as an objection from the rest of partners.

2- Claim ownership or any other right on one or more than one site within the new organized area by applying a separate form. This form will be directed to the Solving Dispute Committee, Article -19-.

Section Three Solving Dispute Committee

Article -19

The Administrative Body forms a committee with legislative specialty to look into all claims of ownerships and disputes on the properties within the new organized area. In addition to all similar cases in the new organized area that the judicial system did not give them final verdict yet.

Article -20

Upon a request from the Administrative Body, the Justice Minister issues an ordinance to form the Solving Dispute Committee as follow:

A- A judge, Consular, to be named by the Justice Minister. (Head)

B- A representative of the Properties Affair General Administration. License in Law, to be named by the head of this institution. (Member)

C- A representative of the Administrative Body. License in Law, to be named by the head of the Administrative Body. (Member)

D- The members of this committee will be sworn in the present of the committee head.

Article -21

This committee has the power of a special court in settling all cases regarding the new organized area...

Article -22

The Solving Dispute Committee' verdicts are disputable ...

Article -23

The Solving Dispute Committee must conclude its work within four months from the day of its formation. Arbitrary is permissible.

Section Four Judging Assessment

Article -24

A- The Judging Assessment Committee consists of:

1- A judge named by the Justice Minister.

2- Two experts named by the Administrative Body.

3- Two experts represent the owners.

B- The Administrative Body invites the owners (Article -18- A) to elect their two representative experts. Voting of the attendees is considered sufficient to conclude the voting process.

C- In case the owners did not respond to the election invitation, a judge names two experts from Experts List produced by the Justice Ministry.

D- In case the owners' experts (one or both) resigned or did not attend the sessions any more, the Judge will replace them from the same list. In case the resignation and not attending become frequent, the committee takes its decision by the majority and the head of the committee held the swinging vote.

E- It is not permissible for any member of this committee and its head to have any relationship or relativity with any of the right owners in the new organized area. Article (174) from Court Principals Law. In addition, he/she was not a member of the Initial Assessment Committee.

All decisions made are final.

Article -25

The Judging Assessment Committee will be formed by an ordinance from the head of the Administrative Body.

Article -26

The members of this committee will be sworn in the present of the committee head (Article -20-).

Section Five Re- Assessment

Article -27 Re-assessment after five years...

Article -28 ...

Article -29 ...

Section Six Mandatory Distribution

Article -30

A- The new organized area is considered an entity that replaces all the rights owners.

B- The Administrative Body represents this entity, uses its authority to distribute rights and shares after deducting cost, fees, taxes & etc.

C- Article -4- of this law is applicable at Organizing Areas.

Article -31

The Administrative Body must use two tables as a base for the mandatory Distribution:

A- Table with the recipients' shares for each new lot including; name of the recipient, his share in the lot and his share from the total value of the lot.

B- Alphabetical table with the name of all the recipients including the value of all their shares.

Article -32

The task of organizing will end by the distribution of the shares among the recipients accordingly.

Article -33

A- The Mandatory Distribution task is done by a committee that consists of:

1- A judge named by the Justice Minister.

2- Two experts named by the Administrative Body.

3- Two experts represent the owners.

B- The members of this committee will be sworn in the presence of the committee head (Article -20-).

C- Selecting the owners' experts according to Article -24-

D- The head and the members of the committee must meet the same criteria for the Initial Assessment Committee.

E- The Mandatory Distribution Committee will be formed by an ordinance from the head of the Administrative Body.

Article -34

The Mandatory Distribution Committee assesses the value of each lot in the new organized area. The total value of the lots must be equal to the total share assessed by the Judging Assessment Committee. In case of variation, the MDC adjusts the share value by the same percentage of the difference.

Article -35

The Mandatory Distribution Committee tries its best to assign each right owner in lot as close as possible to his/her original property. According to the share value, a right owner can get more than one lot and more than one right owner can be assigned in one lot.

Article -36

In case of a difference between the share value and the lot assessment value, the right owner can collect or pay the difference...

Article -37

A- The MDC prepares a distribution proposal and informs the Administrative Body. The AB invites the rights owners by the newspaper.

B- The rights owners and their representatives have thirty days to comment on the proposal in written forms presented to the head of the committee through the Administrative Body.

C- The MDC meets after the thirty-day period for final review and pronounces the Final Distribution...

Article -38

After the MDC pronouncement becomes final, the Administrative Body informs the Property Departments so they start the procedure of creating new lots deeds.

Article -39

If the Property Departments found some discrepancies that prohibit the creation of new lots deeds procedure; the Property Departments sends notes of the discrepancies to the MDC to correct them...

**Section Seven
Conclusion**

Article -40

It is permissible to the Administrative Body to hold the designated public building lots Article -10- B after the Judging Assessment

Committee report announcement. If the lot is an arable land or an empty land, then the AD can hold the lot before the announcement of the JAC report.

Article -41

Article -42

Article -43

Article -44

Article -45



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قانون تقسيم وعمران المدن

رئيس الجمهورية

بناء على أحكام الدستور

وعلى ما أقره مجلس الشعب في جلسته المنعقدة بتاريخ 31-12-1973

يصدر ما يلي:

المادة 1 : يقصد بالتعابير الواردة في هذا القانون المعاني المبينة فيما يلي بجانبها :

الجهة البلدية : البلدية أو الوحدة الإدارية .

المجلس : المجلس البلدي في البلدية أو المكتب التنفيذي في الوحدة الإدارية .

رئيس الجهة الإدارية : رئيس البلدية أو رئيس المكتب التنفيذي في الوحدة الإدارية .

المنطقة : مجموع العقارات وأجزاء العقارات المحددة والمحجرة المكونة لتخز في المراد تقسيمها أو تنظيمها .

المقاسم : القطع التي تنتج عن تقسيم الأرض .

التقسيم : كل تجزئة لقطعة أرض إلى مقاسم بقصد إقامة مبان عليها .

المشيدات العامة : تشمل مركز الجهة :إدارية والمدارس والمخافر والمستشفيات والمستوصفات ومراكز الإطفاء والمعابد (المساجد والكنائس) والمكتبات العامة والمراكز الثقافية والأماكن المخصصة للأثار العامة والملعب الرياضية ومراكز الرعاية الاجتماعية .

طالب التقسيم : الجهة التي تتقدم بطلب التقسيم سواء، أكانت شخصاً طبيعياً أو اعتبارياً .

المخطط التنظيمي العام : هو المخطط الذي يمثل الوضع الراهن لمدينة أو قرية والنطور العمراني المرسوم لأي منها مستقبلاً في جميع المجالات .

لمخطط التنظيمي التفصيلي : هو المخطط الذي يتضمن التفاصيل العمرانية اللازمة بما يتفق مع المخطط التنظيمي العام .

المادة 2 : تم تهيئة الأرض للبناء وفق المخطط التنظيمي النائم والمخطط التفصيلي بأحد الأسلوبين التاليين :

1- التقسيم بناء على رغبة المالك .

ب- التنظيم بناء على رغبة الجهة الإدارية .

الباب الأول

التقسيم

المادة 3 : عندما يرغب المالك تقسيم المنطقة إلى قطع معدة للبناء عليه أن يتقدم بطلب إلى الجهة الإدارية للموافقة على التقسيم مرفعاً بإضماره تحتوي على الوثائق التالية:

1- مستندات الملكية وتشمل ما يلي :

1- المستندات المثبتة للملكية صدره عن فيود السجل العقاري .

2- إقرار من أصحاب الحقوق القينية المدونة على صحتف العقارات التي تتألف منها الأرض يفيد موافقتكم على التقسيم وترقيين إشارات حقوقهم أو نقلها لصحيفة مقسم أو أكثر من المقاسم التي ستنتج عن التقسيم بما يتناسب وهذه الحقوق .

3- تعهد من طالبي التقسيم يفيد عدم وجود حقوق عينية غير مسجلة على صئاتف عقارات الأرض وفي حال ظهور مثل هذه الحقوق شأنهم يتعاملون تبعة التسويض عنها لأصحابها .

ب- مخططات التقسيم ويراعى فيها ما يلي :

1- التنسيق مع لمخطط التنظيمي العام والمخططات التنظيمية التفصيلية الصنعة له عند وجودها كما يراعى في تحديد الطرق الواردة في التقسيم ما يحتمل من ازدياد السكان وحركة المرور وباقي الاعتبارات المتعلقة بعمران المدن في الأرض والمنطق المجاورة.

2- يخصص ثلث مساحة المنطقة للطرق والمساحات والحدائق والمنشآت العامة ويمنع مجاًلً ويحسم من المساحة المحابية نصف عرض الطرق العامة التي تحد العقارات المراد تقسيمها .

3- تزد المسبة العجانية المقطعة المشار إليها في الفقرة السابقة حتى النصف إذا كان المخطط العام والمخطط التفصيلي يقتضيان ذلك .

4- إذا رامت المساحة المقطعة على النصف يترتب على الجهة الإدارية دفع ثمن المساحة الزائدة ويتم تقدير هذا الثمن وفقاً لأحكام قانون الاستملاك .

ج- إيصال بدفع رسم التحقيق ويحدد هذا الرسم من قبل المجلس على أن لا يزيد عن عشرة قروش سورية عن كل متر مربع من المنطقة ولا يقل عن مائة ليرة سورية عن التقسيم الواحد.

المادة 4 : أ- تضع الجهة الإدارية بالشترك مع مؤسسات المياه والكهرباء كشفاً تقديرياً بالنفقات والتعبء اللازمة إيصال المرافق العامة من طرقات وأرصفة ومجار ومياه وكهرباء على المقاسم الملحوظة على مخطط التقسيم مع بيان تفصيلي بما يصيب كل مقسم منها .

ب- تغبر الأعباء والنفقات المفدرة على كل مقسم بمثابة دين ممتاز لصالح الجهة الإدارية على هذا المقسم وتوضع إشارة رهن بمقداره على صحيفته حين تسجيل الإمرار في الدوائر العقارية.

ج- يجوز نقل ملكية المقسم بعد تسديد ما يترتب عليه من نفقات المرافق العامة وفقاً لتقدير الجهة الإدارية أو لقاء تهمد المشتري بتسديدها مع بقاء إشارة الرهن تأميناً لوفائها على الصحيفة العقارية الخاصة بالمقسم .

ولا يرخص ببناء المقسم إلا بعد تسديد نصف نفقات المرافق العامة . أما إمرار البناء أو نقل ملكيته أو ملكية جزء منه في السجل العقاري فلا تجوز إلا بعد تسديد جميع نفقات المرافق العامة أو ما يترتب منها على الجزء المراد نقل ملكيته وفقاً لتقدير الجهة الإدارية.

د- إذا زامت المبالغ المستوفاة على النفقات الفعلية للمرافق العامة فترد الزيادة إلى رافعها وإذا نقصت عن ذلك فبستوفى الفرق وفق قانون جباية الأموال العامة .

المادة 5 : أ- تستثنى من أحكام الفقرة (ب) من المادة الثالثة ومن أحكام المادة الرابعة للمناطق التي تتصل كافة مقاسمها الناشئة عن التقسيم بطرق عامة مطابقة للتخطيط المصدق .

ب- يجوز لوزير الإدارية المحلية استئناء بلديات الدريئين الثالثة والرابعة من أحكام المادة الرابعة بناء على اقتراح المجلس .

المادة 6 : أ- تبث الجهة الإدارية بطلب التقسيم وتبلغ النتيجة لأصحاب العلاقة خلال ثلاثة أشهر من تاريخ تقديمه .

ب- ثم الموافقة على التقسيم بقرار من المكتب التنفيذي بالمحافظة بناء على موافقة المجلس .

المادة 7 : يتمتع على الدوائر العقارية نسجيل أي تقسيم لم يفترن والتصديق على الوجه المبين في المادة السابقة .

المادة 8- أ- يعاقب مالك العقار الذي يقوم أو يسمح بتقسيم عقاره خلافاً لأحكام هذا القانون بغرامة تفرضها الجهة الإدارية بقرار تعادل (25%) من قيمة العقار وفق التقدير المالي له تستوفى لصالح الجهة الإدارية وفقاً لقانون جباية الأموال العامة .

ب- تعتبر الأبنية المشيدة على العقارات المقسمة خلافاً لهذا القانون واجبة الهدم إلا في حالة تأجيل هدمها تفرضها الجهة الإدارية على شاعليها غرامة سنوية تعادل بدل إيجارها لمدة سنة محسوباً على التخمين المالي ، ويعتبر استيفاء هذه الغرامة ميرثاً لذمة الشاغل تجاه مالك العقار إذ كان مستأجراً .

الباب الثاني

التنظيم

الفصل الأول

إحداث المناطق التنظيمية

المادة 9 : لجهات الإدارية تطبيق التنظيم في الحالتين الآتيتين :

أ- على المناطق المصابة بآثار طبيعية من زلازل وفيضانات ، أو التي لحقها الدمار نتيجة الحروب أو الحرائق .

ب- على المناطق التي ترغب الجهة الإدارية تنفيذ المخطط التنظيمي العام المتعلق بها.

المادة 10 : تحدث المنطقة بمرسوم وبالاستناد إلى إضارة تؤدي على ما يلي :

أ- مخطط تفصيلي حيث صادر عن أمانة المساحة والتحسين العقاري مبرهناً عليه حدود المنطقة وحدود كل من العقارات الداخلة فيها ولأئيرة المشادة عليها مع جدول بمساحتها.

ب- مخطط معد من قبل الجهة الإدارية ومعتمد من قبل أمانة المساحة والتحسين العقاري ، يبين عليه حدود المقاسم المحدثة وحدود الشوارع المنوى إحداثها أو تعديلها وموقع وحدود المساحات والحائق والعشيدات العامة .

ج- منهاج تحديد الوجائب العمرانية والأثرية والتاريخية والشروط الناشئة عنها ولا سيما فيما يتعلق منها بالفسح الفاصلة ما بين المباني التي يجب تركها خالية من :بناء ، وارتفاع البناء والتصميمات المعمارية وتوزيع شبكات المجاري والكهربك والمياه والهاتف وغيرها من متطلبات المنطقة .

د- قرار المجلس باقتراح إحداث المنطقة .

المادة 11- ينشر مرسوم إحداث المنطقة التنظيمية في الجريدة الرسمية وفي إحدى الصحف المحلية وعند عدم وجودها ففي إحدى صحف العاصمة .

المادة 12- تؤلف التملك الداخلة ضمن المنطقة التنظيمية ملكاً شائعاً مشتركاً بين جميع أصحاب الحقوق فيها بحصص تعادل كل منها القيمة المقدره لعقار كل منهم أو الحق العيني الذي يملكه .

المادة 13- أ- يجوز بمرسوم أن يحدد عدد المناطق التنظيمية التي يمكن إحداثها دفعة واحدة في أي جهة من الجهات الإدارية .

ب- لا يجوز إدخال عقار أو جزء من عقار ناتج عن تنظيم منطقة أو استملاك أو تقسيم في مطلق تنظيم جيدة إلا بموجب مرسوم خاص بالعقار المراد إعادة تنظيمه بناء على اقتراح الجهة الإدارية صاحبة العئفة .

ج- يصح إجراء المعاملات الآتية على العقارات الداخلة في المنطقة .

1- الإفراز .

2- التوحيد .

3- منح الترخيص بالبناء .

المادة 14- أ- تقطع الجهة الإدارية جميع الأراضي اللازمة لتنفيذ الطرق والمساحات والحمايق والمنشآت العامة ووفقاً للأحكام الفقرات 2 و 3 و 4 من البند (ب) من المادة الثالثة من هذا القانون .

ب- يجوز للمجلس تغيير صفة المشيدات العامة إلى مشيدات عامة أخرى باستثناء المفاصم المخصصة لبناء مدارس ومعاهد فلا يجوز تغيير صفتها .

الفصل الثاني

التقدير البدائي

المادة 15- أ- في حال إحداث المنطقة التنظيمية لسبب من الأسباب الواردة في الفقرة (أ) من المادة التاسعة على الجهة الإدارية - خلال شهر من صدور مرسوم إحداث المنطقة - أن تدعو بإعلان ينشر في صحيفة محلية واحدة على الأقل وعند عدم وجودها ففي إحدى صحف العاصمة مالي عقارات المنطقة وأصحاب الحقوق العينية عليها للتصريح بحقوقهم وعلى هؤلاء وكل من له علاقة بعقارات المنطقة أمالة أو وصاية أو وكالة ، أن يقدم إلى الجهة الإدارية المختصة خلال ثلاثين يوماً من تاريخ الإعلان المشار إليه بياناً يعين فيه محل إقامتهم المختار ضمن المدينة التي تقع فيها المنطقة مرفقاً بالوثائق والمستندات المؤيدة لحقوقه أو صوراً عنها { إن وجدت } وفي حال عدم وجودها أن يذكر في بيانه المواضع والضوء والخصص والنوع الشرعي والقانوني للعقار أو الحقوق التي يدعي بها .

ب- يجوز لأقارب أصحاب الحقوق في المنطقة التنظيمية من أي درجة كانت القيام بالواجبات وممارسة الحقوق المنصوص عليها في الفقرة السابقة نيابة عن أصحابها .

المادة 16- بعد صدور مرسوم إحداث منطقة التنظيم تطلب الجهة الإدارية من أمانة السجل العقاري إعداد جدول بأسماء أصحاب العقارات والمتصرفين بها وجميع الأشخاص الذين لهم حقوق عينية على العقارات الداخلة ضمن المنطقة .

المادة 17- أ- تشكل الجهة الإدارية لجنة بدائية لتقدير قيم العقارات الداخلة ضمن المنطقة بحالتها الطاهرة والإشغالات الملاممة لغيرها والحقوق العينية والحقوق المصنعة بها بشكل مستقل تمهيداً لتخصيصها بصاحب الحق النهائي .

ب- تؤلف هذه اللجنة من ثلاثة أعضاء يكون أحدهم مهندساً . وتصدر اللجنة قراراتها بحضور جميع الأعضاء بالإجماع أو بالأكثرية .

ج- لا يجوز أن يكون عضواً في اللجنة البدائية كل من له نزوي للاستحقاق أو بأي من عقارات المنطقة المطبق عليها هذا القانون علاقة قرابة أو صلة تنطبق عليها أحكام المادة (174) من قانون أصول المحاكمات .

المادة 18- أ- تعلن الجهة الإدارية في لوحة الإعلانات لديها وبالنشر في صحيفة محلية إن وجدت ، أو في إحدى صحف العاصمة إن لم توجد عن انتهاء أعمال اللجنة البدائية المنصوص عليها في المادة السابقة ويجب أن يتضمن الإعلان إشارة صريحة للجهة المختصة التي يجب مراجعتها للاطلاع على جدول التقدير البدائي الموجودة لديها .

ب- يحق لجميع الأشخاص الوارد ذكرهم في المادة 15/ من هذا القانون إن يقدموا خلال ثلاثين يوماً من اليوم الذي يلي تاريخ نشر الإعلان أو التبليغ المشار إليهما في الفقرة السابقة :

أ- اعتراضهم على التقدير الهادي مع تعيين المواطن القانوني ضمن حدود الجهة الإدارية وتعتبر القيم المقدرة غير المستعرض عليها خلال المهلة المحددة في هذه الفترة مبرمة ويعتبر اعتراض أحد الشركاء في المشار بمثابة اعتراض بقية الشركاء .

ب- إدعاءهم بالملكية أو بأية حقوق أخرى مدعى بها على عقار أو أكثر من عقارات المنطقة التنظيمية بطلب مستقل يودع إضبارة لجنة حل الخلافات المشكلة بموجب المادة /18/ .

الفصل الثالث

لجنة حل الخلافات

المادة 19- تشكل لدى الجهة الإدارية لجنة ذات اختصاص قضائي تختص بالنظر في جميع الإدعاءات بالملكية أو بالمنازعات العينية على العقارات الداخلة في المنطقة التنظيمية ونحال إليها جميع الدعاوى المماثلة المتعلقة بالمنطقة القائمة أمام المحاكم التي لم يبت فيها بحكم ميرم.

المادة 20- بناءً على طلب يجب أن تتقدم به الجهة الإدارية حين وجود منازعات تحل في اختصاص لجنة حل الخلافات ، يصدر وزير العدل قراراً مبرماً بتشكيل هذه اللجنة كما يلي :

أ- قاض لا تقل درجته عن مستشار بسميه وزير العدل

رئيساً

ب- ممثل للمديرية العامة للمصالح العقارية من حملة الإجازة في الحقوق بسميه مديرها العام

عضواً

ج- ممثل للجهة الإدارية من حملة الإجازة في الحقوق بسميه رئيسها

عضواً

د- يؤدي عضواً للجنة اليمين التالية أمام رئيسها :

(أقسم بالله العظيم أن أقوم بمهمتي بأمانة وصدق وألا أفشي أسرار المذاكرة) .

المادة 21- تتمتع اللجنة في سبيل الفصل في الإدعاءات أو المنازعات المقدمة أو المحالة إليها بجميع الحقوق التي تتمتع بها المحكمة المختصة أصلاً بالنظر في النزاع .

المادة 22- تكون قرارات اللجنة قابلة للطعن أمام محكمة استئناف المحافظة وفق الميعاد والأصول المتبعة في استئناف قرارات قاضي الأمور المستعجلة وتفصيل محكمة الاستئناف في غرفة المذاكرة والطعن بقرار ميرم ، ويبقى للمتضرر الذي لم يكن طرفاً في النزاع أمام اللجنة أن يطاع مسيّب الضرر الذي أصابه أمام القضاء العادي .

يجري ترميد قرارات اللجنة التي لم يطعن فيها خلال الميعاد القانوني وقرار محكمة الاستئناف لدى أي من الجهات العامة ، أما بكتاب يوجهه رئيس اللجنة إلى الجهة المختصة مرفقاً بصورة القرار بعد استيفاء الرسم المقرر في قانون الرسوم والضمانات القضائية لتنفيذ الأحكام البدائية وإما بكتاب من رئيس محكمة الاستئناف مرفقاً بصورة عن قرار المحكمة بعد استيفاء الرسوم القانونية .

المادة 23- تعفى اللجنة من التقيد بالأصول والمهل المقررة في قوانين الأصول ولها أن تلياً إلى التحكيم بناءً على اتفاق الخصوم مع التفويض بالصالح أو بكونه . على اللجنة أن تبت في المنازعات المقدمة إليها خلال أربعة أشهر على الأكثر من تاريخ صدور قرار تشكيلها .

الفصل الرابع

التقدير التحكيمي

المادة 24- 1- تؤلف اللجنة التحكيمية كما يلي :

1- قاض يسميه وزير العدل رئيساً

2- خبيران (تسميهما الجهة الإدارية) عضوين

3- خبيران يمثلان المالكيين عضوين

ب- يتم انتخاب الخبيرين ممثلي المالكيين بدعوة من الجهة الإدارية لبقتهما . ويعتبر الانتخاب ناقداً بأكثرية أصوات من لبي الدعوة ويتم الدعوة وفق أحكام الفقرة (1) من المادة (18) من هذا القانون .

ج- إذا لم يلب المالكون الدعوة المذكورة لانتخاب ممثليهم في اللجنة التحكيمية يقوم القاضي البدائي أو قاضي الصلح في المنطقة (في حال عدم وجود قاض بدائي) بتعيين الممثلين من قائمة الخبراء الصادرة عن وزارة العدل .

د- إذا استقال أو تخلف ممثلاً المالكيين أو أحدهما عن حضور الجلسات بصار إلى تسمية يديل عن المتخلف أو المستقيل من قِبَل القاضي البدائي أو قاضي الصلح حسب الحال .

وفي حال تكرار الاستقالة أو النخاف تُمّ التلجة أعمالها بالأكثرية وعند تساوي الأصوات يرجح جانب الرئيس .

هـ- يشترط في رئيس وأعضاء اللجنة ما يشترط في عضو لجنة التقدير البدائي بموجب الفقرة (ج) من المادة (17) ولا يجوز أن يكون عضواً في اللجنة التحكيمية من كان عضواً في اللجنة البدائية .

و- تكون قرارات اللجنة مبرجة لا تقبل أي طريق من طرق المراجعة أو الطعن .

المادة 25- تشكل اللجنة التحكيمية بقرار من رئيس الجهة الإدارية .

المادة 26- تجتمع اللجنة التحكيمية بدعوة من رئيسها وبعد أن يتحقق الرئيس من عدم وجود ما يمنع من قيام الأعضاء بأداء مهمتهم يظفهم اليمين المتصوص عليها في المادة (20) من هذا القانون .

الفصل الخامس

إعادة التفسير

المادة 27- 1- يعاد تقدير قيم اتمقارات والحقوق الداخلة في المنطقة تحكيمياً من قبل اللجنة التحكيمي السابقة بنفسها للمنطقة ولمرة واحدة فقط بعد انقضاء خمس سنوات على صدور مرسوم إحدات المنطقة إذا لم تنجز فيها أعمال التنظيم وتمتبر الأعمال منجزة بتاريخ تسجيل نتائجها في السجل اليومي لدى رئيس المكتب المعاون العقاري .

ب- عند تعذر اجتماع اللجنة التحكيمية السابقة لتقيب عضو أو أكثر من أعضائها لأي سبب كان تسمي الجهة التي كان يمثلها بديلًا عنه .

ج- على اللجنة إنجاز عملها خلال شهرين من تاريخ مباشرتها مهمتها .

المادة 28- عند انسواء عن تقدير قيمة عقار! أو أكثر أو حق عهلي مترتب عليها في المنطقة بدأتياً أو تحكيمياً. تقوم اللجنة التحكيمية بتقدير ما سهى عنه على ضوء الأسعار التي ذمنت بها سائر عقارات المنطقة .

المادة 29- لا تؤثر إعادة تقدير قيم العقارات على إجراءات تنظيم المنطقة ولا سيما فيما يتعلق بأعمال التوزيع الإجبري ووضع اليد .

الفصل السادس

التوزيع الإجباري

المادة 30- : تعبر المنطقة التنظيمية شخصية اعتبارية نحل محل جميع المالكين وأصحاب الحقوق فيها .

ب- تمثل الجهة الإدارية هذه الشخصية الاعتبارية وتمارس الصلاحيات التي تكفل تصفية أملاك المنطقة وحقوقها بعد انقضاء ما يترتب عليها من نفقات ورسوم وضرائب وغيرها .

ج- تطبق المادة الرابعة من هذا القانون على مناطق التنظيم .

المادة 31- على الجهة الإدارية تنظيم الجولين التاليين ليكونا أساساً لعملية التوزيع الإجباري:

أ- جدولاً باستحقاق أصحاب الحقوق لكل عقارات المنطقة يتضمن : اسم صاحب الاستحقاق ، وحصته من العقار ، وحصته من قيمة العقار أو الحق العهلي .

ب- جدولاً هجائياً بأسماء أصحاب الحقوق يتضمن قيمة كامل حقوق كل منهم في المنطقة .

المادة 32- تنتهي أعمال التنظيم بتوزيع أملاكها على أصحاب الحقوق وفقاً لخصصهم فيها .

المادة 33- أ- يتم التوزيع الإجباري من قبل لجنة تؤلف على النحو التالي :

1- قاض يسميه وزير العدل رئيساً

2- خبيران تسميهما الجهة الإدارية عضوين

3- خبيران يمثلان المالكين عضوين

ب- يؤدي أعضاء لجنة التوزيع الإجباري أمام رئيسها اليمين المنصوص عنها في المادة 29 من هذا القانون .

ج- يتم انقضاء خيري المالكين وفق الأحكام الواردة في المادة 24/ .

د- يشترط في رئيس وعضو لجنة التوزيع الإجباري ما شترط في عضو اللجنة البدائية بموجب الفقرة (ج) من المادة 177 .

هـ- يصدر رئيس الجهة الإدارية قراره بتشكيل اللجنة وفق ما هو مبين أعلاه .

المادة 34- على لجنة التوزيع الإجباري قبل مشاركتها عملها أن تقوم بتخمين قيمة كل مفاسم من مفاسم المنطقة المحددة على مضمونها التفصيلي وإذا زد مجموع قيم المقاسم أو نقص عن مجموع قيم كامل عقارات وحقوق المنطقة المضمنة تمتد لجنة التوزيع إلى تعديل حق كل من أصحاب الحقوق بنسبة هذه الزيادة أو النقصان .

المادة 35- على لجنة التوزيع الإجباري أن تسعى ما أمكن لإعطاء كل من أصحاب الحقوق حصته في موقع عقاره القيم أو قريباً منه ولها أن تخصص لكل ذي حق مقسماً أو عدة مقاسم تماثل حصته كما يمكنها أن تخصص لعدد من أصحاب الحقوق مقسماً واحداً يملكونه على الشيوع على أن يحدد مقدار الحصص المأثمة لكل منهم .

المادة 36- إذا اختلفت قيمة المقاسم أو المقاسم المحصصة لدى حق من مقدار حصته تحدد لجنة التوزيع الإجباري مقدار التعويض النقدي الذي يتوجب عليه تأديته في حال الزيادة ومقدار ما سيتقاضاه في حال النقصان ويكون هذا التعويض مستحق الأدلة فوراً .

على أنه إذا أعطي المدين مهلة من قبل صاحب الاستحقاق أو من قبل اللجنة فتبقى حصته مرمونة حتى وفاء الذمة مع الفائدة القانونية .

المادة 37-1- تنظم اللجنة مشروع التوزيع وتبليغه إلى الجهة الإدارية التي تدعو أصحاب الحقوق للإطلاع عليه بصوجب أعلام ينشر في إحدى الصحف المطبوعة وعند عدم وجودها ففي إحدى صحف العاصمة .

ب- لكل ذي علاقة - خلال 30 يوماً من تاريخ النشر أن يبدي ملاحظاته على مشروع التوزيع بلائحة خطية يقدمها إلى رئيس اللجنة من طريق الجهة الإدارية .

ج- عند انتهاء المهلة المعنية في الفقرة السابقة تجتمع اللجنة وتصدر قرارها بالتوزيع النهائي لمقاسم المنطقة على أصحاب الحقوق ويكون مبرماً ويعلن هذا القرار في لوحة إعلانات الجهة الإدارية لمدة 30 يوماً للإطلاع وأخذ العلم .

المادة 38- بعد اكتمال قرار لجنة التوزيع الإجباري الصفة المبرمة تبلغه الجهة الإدارية للدوائر العقارية لإجراء معاملات تسجيل الملكية .

المادة 39- إذا وجدت الموائر العقارية المختصة أثناء التدقيق أخطاء نابع من تسجيل الملكية تقوم الجهة الإدارية بإحالة الملاحظات الواردة من الموائر المذكورة إلى لجنة التوزيع الإجباري لتصحيح هذه الأخطاء وفي حال تعذر اجتماعها لأي سبب من الأسباب الواردة في الفقرة (ب) من المادة 27 تستكمل اللجنة ومق أحكام هذه الفقرة .

وعلى اللجنة أن تنجز تصحيح الأخطاء المشور إليها خلال مدة ستين يوماً من تاريخ دعوتها للاجتماع من قبل الجهة المذكورة .

وتكون قرارات اللجنة مبرمة ولا تخضع لأي طريق من طرق المراجعة أو الطعن وواجبة التسجيل .

الفصل السابع

أحكام عامة ووظيفية

المادة 40- يجوز للجهة الإدارية وضع اليد على الأملك العامة والمقاسم المحدثة في المنطقة المخصصة للأغراض المبينة في الفقرة (ب) من المادة 10 بعد إنجاز التقدير التحكيمي باستثناء الأراضي الزراعية والعرضات حيث يمكن وضع اليد عليها قبل ذلك .

المادة 41- إن حقوق العينية التي هي من قبيل الرهونات المنوجهة على العقار قبل خضوعه للتنظيم تنتقل إلى العقارات والحصص والاستحقاقات التي حلت محل العقار أو الحق الأصلي .

المادة 42- تخصص الجهة الإدارية لكل من اللجان المنصوص عليها في هذا القانون مقررأ مهمته تأمين البيانات والمعلومات التي تحتاج إليها وتحرير ضبوط جلساتها وتنظيم أعمالها ومتابعتها كما تضع تحت تصرف اللجان جميع ما تحتاجه من مستندات ووثائق ومعلومات وخبرات فنية .

المادة 43- رئيس الجهة الإدارية - بعد استطلاع رأي المجلس إصدار قراراته لحل القضايا الفرعية التي لم ينص عليها هذا القانون واتخاذ جميع التدابير اللازمة لتنفيذه بما لا يتعارض من أحكامه .

المادة 44- أ- يسمح للجهة الإدارية بتسليف المنطقة المبالغ التي تحتاج إليها من أجل إنجازها على أن تسترد هذه السلف عند يوم السبوتة في صندوق المنطقة .

ب- تصرف اللشفت التي تحتاج إليها المنطقة بما في ذلك تعويضات الإخلل وإتلاف المزروعات والأجور وتعويضات اللجان والأعمال الإضافية من حساب المنطقة .

المادة 45- يجري التفسير البدائي والتحكيمي لقيمة العقارات بالمنظمة على أساس ترك الأقباض للمالكين وأن يصار إلى هدمها وترحيلها على حساب المنظمة التنظيمية بعد انتهاء المهلة التي يحددها الجهة الإدارية للمالكين للخذ أنقاض عقاراتهم .

المادة 46- تلزم الجهة الإدارية بتسليم أراضي المقاسم خالية إلى مالكيها خلال مدة أقصاها 90 يوماً بعد تاريخ حصولهم على رخص البناء عليها وللجهة الإدارية أن تلجأ إلى الإخلل بالطريق الإداري بعد انقضاء هذه المهلة .

المادة 47- أ- تعفى الأملاك الداخلة ضمن المنطقة من رسوم التسجيل في السجل العقاري .

ب- تعفى العقارات المنكوبة في المناطق التي طبق عليها التنظيم بسبب أضرارها بالكوارث الطبيعية أو الدمار نتيجة الحروب أو الحرائق بالإضافة إلى الإعفاءات السابقة من رسوم بناء المقاسم المخصصة لأصحاب العقارات المنكوبة لمرة واحدة بعد انتهاء التنظيم .

المادة 48- تؤلف الجهة الإدارية عند الاقتضاء لجنة أو أكثر لحصر العقارات الموجودة في المنطقة ووصفها وتنظيم ضبوط مفصلة بمحتوياتها من بناء وأشجار ومزروعات وغيرها للسناد إليها في أعمال اللجان الأخرى .

المادة 50- أ- يقتصر حق المخالفين الذين بنو فوق أراضي الأملاك العامة على اخذ انقاض أبنيتهم ولد يعترف لهم بلئ حق سوى ذلك .

ب- تنظر لجنة حل الخلافات في القضايا المتفرعة عن مخالفات البناء المرتكبة على العقارات الخاصة في المنطقة وتصفى حقوق أصحابها بعد تسوية مخالفاتهم وتسديد ما يقرب عليهم لقاء هذه المخالفات للجهة الإدارية .

المادة 51- بقدر التعويض المتوجب دفعه عن المزروعات والأثمار التي يجري إتلافها عند الاقتضاء من قبل لجنة يؤلفها رئيس الجهة الإدارية من 3 أعضاء أحدهم كبير بالأمور الزراعية بقرار مبرم لا يقبل نطقن .

المادة 52- إذا شملت المنطقة التنظيمية أرضاً زراعية يترتب عليها حقوق لفلاح أو لمزارع بالمشاركة أو بالبدل ، فيعتبر العقد منفسخاً بين الطرفين كلياً أو جزئياً حسب شمول التنظيم لكل أو لجزء الأرض ويدفع لصاحب الحق المنوه عنه من حساب المنطقة التنظيمية ما يستحقه من التعويضات المنصوص عليها في قانون العلاقات الزراعية بسبب فسخ العقد .

المادة 53- أ- يجوز في مناطق التنظيم القائمة بتاريخ صدور هذا القانون التي لم توزع مقاسمها إجبارياً أو لم تبع بالمرادفة العلنية ، إتلااب على أصحاب الحقوق لتهدم امعاءاتهم بالملكية أو بأية حقوق عينية أخرى على عقار أو أكثر من عقارات المنطقة التنظيمية إلى الجهة الإدارية .

ب- يتم الإعلان وتقديم اللباعات واللبت بها وفق أحكام المواد رقم صخ/ 18/ و 19 و 20 و 21 و 21 و 22 و 23) من هذا القانون .

المادة 54- يجوز لرئيس الجهة الإدارية خلال 6 أشهر من نفاذ هذا القانون أن يدعو اللجنة التي قامت بالتوزيع الإجباري في المناطق المحدثة قبل صدوره والتي لم يتم تسجيلها في السجلات العقارية بسبب أخطاء مانعة من التسجيل للنظر في ملاحظات الدوائر العقارية وتطبيق على هذه المناطق أحكام المادة 39 .

المادة 55- يجوز لوزير العدل بناء على اقتراح الجهة الإدارية تدب قاض أو أكثر يتفرغون لعمال لجان حل الخلافات واللجان التحكيمية ولجان لتوزيع الإجباري .

المادة 56- أ- تستثنى تعويضات العاملين في اللجان المؤلفة بموجب أحكام هذا القانون من الحدود القصوى المنصوص عليها في المرسوم التشريعي رقم 167 لعام 1963 وتعديلاته إذا أنجزوا أعمالهم خلال المهول المحددة لانجازها في هذا القانون .

ب- تحدد هذه التعويضات بقرار من وزير الإدارة المحلية وتدفع من صندوق المنطقة التنظيمية.

المادة 57- تطبق أحكام هذا القانون على المناطق التنظيمية القائمة بتاريخ نفاذها باستثناء :

:- أصول تصديق المصورات حيث يتم ذلك بالاستناد إلى كل من المواد 6 و7 و8 و9/ من قانون تنظيم وعمران المدن الصادر بتاريخ 1-22-1933 .

ب- تصفية المناطق المنفذ بيع بعض مفاصمها بالمزاد العلني حيث يتم ذلك بالتوزيع الإجباري للمقاسم غير المباعة وفقاً لنص المادة 12 من المرسوم التشريعي رقم 102/ تاريخ 23-1-1935 وتلغى جميع الأحكام المخالفة لهذا القانون وخاصة القرار بقانون رقم 7 لعام 1959 والمرسوم التشريعي رقم 169 لعام 1970 وقانون تنظيم وعمران المدن الصادر بتاريخ 1-22-1933 وتعديلاته وكافة الأحكام المخالفة لهذا القانون .

المادة 58- يصدر وزير المحلية التعليمات اللازمة لتطبيق أحكام هذا القانون عند الاقتضاء.

المادة 59- لا تسري أحكام هذا القانون على مخالفات البناء الجارية قبل تاريخ نفاذه .

المادة 60- في حال تقرير هدم أي بناء نسري عليه أحكام المذالمات السابقة وفقاً للنتيجة التي كانت نافذة تقوم الجهة الإدارية بالتعويض على صاحب البيت المقرر هدمه قبل التنفيذ أو تسليمه مسكناً آخر مساوياً له .

المادة 61- ينشر هذا القانون في الجريدة الرسمية .

دمشق في: 4-4-1394 هـ الموافق لـ 27-1-1974م

رئيس الجمهورية

حافظ الأسد

Appendix – E-

Decree -5 Urban Planning Principals

The president, the Constitution 23/1/1982

Modified

Decree -3 13/2/1983

Article -1

- C- Urban planning Principals: the unified principals which organize the process of residential urban planning and they include the following:
- The general scientific principles for construction and urban planning.
 - The steps and procedures that must be followed in preparing the Planning Program for the General Organizing Plan, the Detailed Plan and the Building Code in any residential area.
- D- Planning Program: The program that specifies the instant and future needs for a residential area according to the Urban Planning Principals and (the site, social & economic status of the users). The program specifies survey of the population, density, required utilities and the needed public buildings.
- E- General Organizing Plan: A plan that shows the future expectation of a residential area and its expansion by marking the borders and streets network and the land use within it. In addition to the Building Guide and Building Code which should not contradict with the Urban Planning Principals and the Panning Program.
- F- Detailed Organizing Plan: A plan that specifies all planning details for major and side streets networks as well as sidewalks, open public spaces. In addition, all lots details and land use without contradiction with the General Organizing Plan and the Building Code.
- G- Residential Area: A city, town or village and all the villages and farms that falls in the Administrative Body' jurisdiction.
- Office: The executive office for the AB council.
 - Administrative Body: Municipality or administrative unit.
 - Council: Municipal Council in the municipality, or Local Council in the administrative unit.

Article -2

The Housing and Utilities' Ministry sets the Urban Planning principals with the objects of responding to the residential areas needs within the available means of each area in the frame of overall regional planning in the Syria Arabic Country. The principals will be set by a presidential decree. ...

Article -3

- A- In order to provide Building guides, General and Detailed Organizing Plans the responsible AB for every residential area preparing a Planning Program within the framework of the Urban planning Principals.
- B- The specified Planning Program is to be approved by the Housing and Utilities' Ministry, within 20 days from the day it was received, or modified upon the Ministry request. If the ministry did not respond the set time frame, the Planning Program is to be considered approved.

Article -4

The AB prepares all General, Detailed Organizing Planes in all phases as well as the Building Code without contradiction with the Urban planning Principals and the Planning Program of the designated residential area.

Article -5

- A- The General, Detailed Organizing Planes as well as the Building Code are to be approved and made public by the Council.
- B- The General, Detailed Organizing Planes as well as the Building Code will be made public in the main hall of the AB. Owners and affected people with the plans will be called personally or by newspapers. It is permissible to use other mean of media if the AB found that necessary.
- C- Owners and affected people can object within 30 days from the day of making the plans public. The objection must be in written form stating the objector' notes.
- D- A regional technical committee formed and headed by the mayor includes:
 - 1- The designated member from the Executive Office.
 - 2- Head of Technical Services Department.
 - 3- Head of Archeology department in the province.

- 4- The person in charge of streets network in the Technical Services Department.
 - 5- The person in charge of urban planning in the Technical Services Department.
 - 6- Two experts in the field of City Planning. One chosen by the Housing and Utilities' Minister and the other is chosen by the Mayor.
 - 7- An expert lawyer in the properties affairs chosen by the Mayor.
- E- The head of the committee and the head of the Technical Services Department are to attend all meeting and they do not have the right to vote. In addition, the head of the committee and more than half of the committee members have to attend in order for the meeting to be legal. ...

Article -6

Without contradiction with the Urban planning Principals and the Planning Program for every residential area:

- A- The minister of Housing and Utilities, upon a proposal from the Office, declares the General Organizing Plans, Building Codes and their amendments for the city center of the provinces.
- B- Declares the Detailed Organizing Plans and their amendments for the city center of the provinces, (except for Damascus) by a decree from the Office upon a proposal from the Council.
- C- In Damascus City, declares the Detailed Organizing Plans by a decree from the Council upon a proposal from the Office.
- D- Declares the General Organizing Plans, Building Codes and their amendments in the rest of administrative bodies by a decree from the Office.

Article -7

- A- The Ministry of Housing and Utilities is to be informed by any General or Detailed Organizing Plans, Building codes and their amendments within 15 days.
- B- The Minister of Housing and Utilities has 45 days to object if there was any violation to the Urban Planning Principals or the Planning Program.
- C- If there is a conflict in applying the previous section, the Prime Ministry will look into the case.

Article -8

Without contradicting the Planning Principals or the Planning Program, it is permissible to modify the verified General and Detailed Organizing Plans as well as the Building Codes as follows:

D- After one year of the initial announcement, the Plans or Building Code could be subject for objections.

E- Then, the procedure can be repeated once every three years.

F- The AB can introduce any modifications or amendments for the public benefit within the same time frame.

G- The Mayor is not bound by the time frame restriction to introduce modifications or amendments.

H- This law is the base for judging the objections.

Article -9

Article -10

Article -11

Article -12

Article -13

The President



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مرسوم تشريعي رقم 5/ للعام 1982

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القسم: مرسوم تشريعي

معلومات عن هذا القانون

٢٥٦

المرسوم التشريعي 5 لعام 1982
قانون التخطيط العمراني

رئيس الجمهورية

بإذاعة على أحكام الدستور، يرسم ما يلي:

المادة 1

يقدم بالتعابير التالية في معنى تطبيق هذا المرسوم المعاني العجيبة بآاء كل منها:

أ- أسس التخطيط العمراني : هي المبادئ الموحدة التي لتنظم عملية تخطيط التجمعات السكانية وتضمن ما يلي:

- الأسس الهندسية العامة لتخطيط العمراني والبناء
- الخطوات والمراحل الواجب اتباعها في تحضير البرنامج التخطيطي لحاص بدراسة المخطط التنظيمي العام والتفصيلي ونظام البناء أي تجمع سكاني.

ب- البرنامج التخطيطي: هو البرنامج الذي يحدد الاحتياجات الأنية والمستقبلية لتجمع مكاني وفق أسس التخطيط العمراني استناداً إلى واقع هذا التجمع ويحدد البرنامج عدد السكان والكثافات السكانية ونوع وتعداد الخدمات والعشيد، لعامة اللازم له .

ج- المخطط التنظيمي العام: هو المخطط الذي يوضع الرؤية المستقبلية للتجمع السكاني وتوسعه ويتم ذلك عن طريق تحديد الحدود العمرانية وشبكة الطرق الرئيسية و سيمحالات كافة الأراضي الواقعة ضمنه وسهيج ونظام بناء كل منها بما لا يتعارض مع أسس التخطيط العمراني العام ونظام تينده .

د- المخطط التفصيلي: هو المخطط الذي يحدد الأبعاد الميز لتخطيطه لشبكة الطرق الرئيسية والثفرمية وممرات المشاة وانفراغات الخدمة

- وكثافة التفاصيل العمرانية للأراضي حسب الاستعمال المرسوم لها كز ذلك بما لا يتعارض مع المخطط التنظيمي العام ونظام البناء .
- هـ. التجميع السكاني: المعدلة أو تبديلاً أو انقضية ذات الشخصية الاعتبارية والقرى والعزابع التي تتبع إحدى الوحدات الإدارية.
 - و. المكتب: المكتب التنفيذي لمجلس المحافظة
 - ز. الجهة الإدارية: البلدية أو الوحدة الإدارية
 - ح. المجلس: المجلس البلدي في البلدية أو المجلس المحلي في الوحدة الإدارية

المادة 2

تضع وزارة الإسكان والمرافق أسس التخطيط العمراني بصفة قطعية بتطبيقات التجمعات السكانية ضمن الإمكانيات المتوفرة لكل منها في إطار التخطيط الإقليمي الشامل لمقترن تعريفي الموزني وتصدر بمرسوم،
وإن أن يصدر هذا المرسوم يستمر العمل بالأسس المعمول بها لدى وزارة الإسكان والمرافق وفي حدود أحكام هذا المرسوم استثنائياً.

المادة 3

- أ. في سبيل وضع المخططات التنظيمية العامة والتفصيلية وأنظمة البناء تضع الجهة الإدارية المختصة لكل تجمع سكاني برنامجاً تخطيطياً ضمن حدود أسس التخطيط العمراني المتأقفة.
- ب. يدرج برنامج التخطيط الخاص بكل تجمع سكاني على وزارة الإسكان والمرافق لموافقة عليه أو طلب تعديله خلال 20 يوماً من تاريخ تسجيله في ديوان الوزارة وإلا اعتبر مقراً ويعتبر هذا البرنامج جزءاً مكملًا للأسس المذكورة في الفقرة السابقة لمنظمة لهذا التجمع.

المادة 4

تعد الجهة الإدارية مشاريع المخططات التنظيمية العامة والتفصيلية في جميع مراحلها وكذلك أنظمة البناء للتجمعات السكانية بما لا يتعارض مع أسس التخطيط العمراني وبرنامج التخطيط لكل تجمع.

المادة 5

- أ. يدرج مشروع المخطط التنظيمي العام والمخطط التنظيمي التفصيلي ونظام البناء على المجلس لمقترن في وزارة والموافقة على إعلانه.
- ب. يعلن مشروع المخطط التنظيمي العام والمخطط التنظيمي التفصيلي ونظام البناء وتعديلاتها في جبهة إدارية ويعدى نزل لهم علاقة بالمشروع المعين لتداول عليه بطريق التبليغ الشخصي أو بموجب بيان ينشر في صحيفتين محليتين أو إحدى صفحتي الجريدة لأكثر الأشاراً لدى الجهة المعلنة وتجاوز الاستعانة بوسائل الإعلام المسموعة والمرئية في نظر ذلك وفق ما تقرره الجهة الإدارية.
- ج. يمكن الاعتراض على مشاريع المخططات وأنظمة البناء مقترن إليها في العشرة اأولية خلال 30 لثالين يوماً من تاريخ الإعلان وبالمم الاعتراض مسليداً ضمن فيه العشرة ملاحقاته.
- د. تنظر في الاعتراضات لجنة فنية إقليمية يشكلها المحافظ ورئيس المكتب برئاسة وعشوية:

1. عضو المكتب التنفيذي المختص
2. مدير خدمات الفنية
3. مدير إدارة المحافظة
4. المسؤول عن الطرق في مديرية خدمات الفنية
5. خبيرين من المهندسين ذوي الخبرة في مجال تخطيط المدن يختار أحدهما وزير الإسكان والمرافق وأخر يختاره المحافظ
6. خبير في الشؤون العقارية من حقوقيين يختاره المحافظ
7. بعض اجتماع اللجنة رئيس الجهة الإدارية المختصة والمهندس المسؤول عن الشؤون الفنية فيها دون أن يكون لهما حق التصويت ولا يكون اجتماع

لجنة صحياً إلا بحضور رئيسها وأكثر من نصف الأعضاء ورسول لجنة نتائج دراستها وتوصياتها إلى المراجع المختص بالقرار أو إصدار المشروع تعلن بموجب المادة السادسة من هذا القانون التشريعي.

المادة 6

- أ. فيما لا يتعارض مع أسس التخطيط العمراني والبرنامج التخطيطي لكل تجمع سكاني: تصدر المخططات التنظيمية العامة وأنظمة البناء وتعديلاتها لمدن مراكز المحافظات بقرار من وزير الإسكان والمرافق بناء على اقتراح المكتب.
- ب. تصدر المخططات التنظيمية لتفصيلية وتعديلاتها لمدن مراكز المحافظات من عدة صيغة دمشق بقرار من المكتب بناء على اقتراح المجلس.
- ج. تصدر المخططات التنظيمية التفصيلية لمدينة دمشق بقرار من مجلس المحافظة بناء على اقتراح المكتب.
- د. تصدر المخططات التنظيمية وأنظمة البناء وتعديلاتها في بقية الجهات الإدارية بقرار من المكتب.

المادة 7

- أ. يصدر وزير الإسكان والمرافق صورة من أي مخطط تنظيمي عام أو تفصيلي أو تصاميم بناء أو ترميمها خلال 15 يوماً من تاريخ القرار الذي يتخذه المكتب أو مجلس محافظة دمشق بإصدار كل منها ولا اعتبار موافقة التنفيذ حكماً.
- ب. يوزع الإسكان والمرافق خلال 45 خمسة وأربعين يوماً من تاريخ تسجيل القرار في ديوان الوزارة إيقاف تنفيذه في حال مخالفته لأسس التخطيط العمراني أو البرنامج التخطيطي الخاص به ولا اعتبار مبرراً.
- ج. إذا نشأ خلاف نتيجة تطبيق المادة السابقة فيعرض الخلاف على رئاسة مجلس الوزراء لحيث به.

المادة 8

- فيما لا يتعارض مع أسس التخطيط العمراني والبرنامج التخطيطي يجوز تعديل المخطط التنظيمي العام والتفصيلي وأنظمة البناء المصدقة وفق المواعيد والإجراءات التالية:
- أ. يعلن المخطط أو نظام البناء بعد مرور عام واحد على إصداره لأول مرة وتقبل الاعتراضات عليه.
 - ب. بعد المخطط أو نظام البناء مرة بعد ذلك كل ثلاث سنوات وتقبل الاعتراضات عليه.
 - ج. للجهة الإدارية اقتراح إدخال التعديلات التي تقتضيها المصلحة العامة على المخطط أو نظام البناء في المواعيد المحددة في هذا القانون التشريعي.
 - د. للمحافظ رئيس المكتب أن يستثنى اقتراح إدخال تعديلات على أرض البلدية أو أملاك الدولة أو الخيرية مشروع حيوي ذي نفع عام من شرط المادة المقررة في هذه المادة.
 - هـ. يحد بالاعتراضات والاقتراحات المشار إليها في هذه المادة وفق أحكام هذا القانون التشريعي.

المادة 9

- أ. يتولى مكتب سلطة مجلس في المناطق والأراضي غير التابعة لأية جهة إدارية في المحافظة كما يتولى رئيس المكتب مهمة رئيس المجلس.
- ب. مع مراعاة أسس التخطيط العمراني والبرنامج التخطيطي تصدر المخططات التفصيلية وأنظمة البناء في المدن النموذجية والشواحي والتجمعات المعددة بقرار من وزير الإسكان والمرافق بناء على اقتراح المكتب.
- ج. صدر المجلس الأعلى للسياحة نظاماً خاصاً لإقامة المنشآت السياحية في المناطق والأراضي غير التابعة للجهات الإدارية في المحافظة.

المادة 10

- أ. يوزع الإسكان والمرافق تقنية العاملين في الوزارة وخارجها بالعمل بوضع أسس التخطيط العمراني ودراسة وتدقيق البرامج التخطيطية والمخططات

- التنظيمية وأنظمة البناء ضمن النطاق الرسمي وخارجه ومنحهم تعويضات ومكافآت بقرار منه بعد موافقة وزير المالية.
- ب. يجوز للمخالف ورئيس المكتب تكليف المحاسبين في الدولة بدراسة المعطيات التنظيمية وتنفيذها على الطبيعة مع أنظمة البناء ومنحهم مكافآت تشجيعية لقاء ذلك.
- ج. يجوز لجهة إدارية بموافقة المحافظ ورئيس المكتب لتعاقد مع أية جهة لإتمام دراسة المعطيات التنظيمية وتبنيها على طبيعة ووضع أنظمة البناء.
- د. تمنح اللجنة الفنية الإقليمية المخصص عنها في المادة 5 من هذا المرسوم التشريعي ومقرها تعويضاً بقرار من المحافظ ورئيس المكتب.
- هـ. تستثنى المكافآت والتعويضات المشار إليها في هذه المادة من أحكام المرسوم التشريعي رقم 167 لعام 1963 وتعديلاته ويتم منحها وفق أسس يصدر بتحديد ما قرّر من مجلس الوزراء بناء على اقتراح وزيرى لإدارة المحنية والإسكان بالمرافق.
- و. تحرى المكافآت والتعويضات وكافة المنفقات الواردة ذكرها في الفقرات (ب)، (ج، د) من اعتمادات الجهة الإدارية ذات العلاقة.
- المادة 11**
- يسر وزير الإسكان والتخريف والتعويضات اللازمة لتنفيذ هذا المرسوم التشريعي.
- المادة 12**
- تلغى كافة أحكام المخالفة لهذا المرسوم التشريعي.
- المادة 13**
- ينشر هذا المرسوم التشريعي في الجريدة الرسمية.
- دشق في 28/3/1402 م الموافق 23/1/1982 م

رئيس الجمهورية
حافظ الأسد

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Glossary & Arabic Terms

A. H. stands for the Islamic Calendar which starts in the year 621 AD, when the Prophet migrated from Mecca to Medina.

Allotment the act of bestowing or allotting a piece of dead land.

Ath-roo plural of **Thiraa** arm span or a cubit which is from 46 to 50 cm.

Authority Housing Ministry and/or Damascus municipality.

Building Code for Damascus City 492 M.T. 3/5/1997.

Building guidelines used for building regulations in the traditional quarters.

Cadastral survey plan.

Caliph or **Calpha** the head of the Islamic state.

Decree followed with the abbreviation **M.T.** means it is issued by the Executive Council of Damascus Municipality.

Demarcation defining a piece of land by whatever was available of objects such as stones, sticks or walls.

Easement the right to buy access and bring/dispose water and utilities through the neighbor's property.

Extroverted opening toward outside.

Externality unequal contribution from private sectors to the commonwealth.

Fina has two meanings: The private open space within a property, the courtyard, and the space between a private and a public space.

Introverted opening toward inside (courtyard).

Haraa street, alley, pathway and etc.

Housing policy's tools (legislation, planning, Building code and etc.)

Ijma', the consensus of the entire Islamic jurists.

Jazeereh a block surrounded by streets.

Legislations used for building regulations in the new settlements.

Mahalla or **Hay** a traditional quarter

Madahub plural of **Madhab** schools of thought (**Sunni** has four schools of thought; **Hanafi**, **Maliki Shafi'I** and **Hanbali**, one **Shi'i** school of thought **jaffari**)

Mawat or dead land un-owned and unused land (without trace of building, cultivation, or communal use, such as a cemetery).

Mukatat Wagaeeb Requirements Plan.

New settlement replacing a traditional quarter.

Organizing Law used to build new settlements in Damascus.

Preemption giving joint owners and sometimes abutting landlords the right to preempt sale transaction in their favor.

Planning Law used to replace traditional quarters in Damascus.

Prescription the right to acquire a property due to use over an extended period of time.

Public hearing the authority invites and consults immediate neighbors at an early stage of a new planning application in order to ensure that the public is aware of how plans are developing, and every individual weighs his/her advantages and disadvantages in the new plan.

Qiyas or **Ijtihad** the use of the human reason in the elaboration of law
Qur'an the Islamic book

Rental Law a form of providing shelter to the state's employees at the expense of the private sector.

Reviving a land investing in a land by building on it or planting it

Sharia Islamic based law

Shiber – finger span (from 0.20 to 29 cm).

Sunna the sayings and acts of the prophet Mohammad (peace be upon him)

Suk market

Traditional quarter old quarter which was established during or before the Ottoman Dynasty.

Tribe kinfolk or clan.

Urf is one of the supporting sources in Islamic law (at the local level). It is the product of the nature of the people and their culture, inherited by generations until a new custom can overrule it.

Usufruct the right of use and exploit of a property to a person other than the owner.

Walk-up building four to five-floor apartment building.

Waqf giving ownership of a property to God and working to live on that property.

