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מתכננים למען זכויות תכנון (ע"ר)

مخططون من اجل حقوق التخطيط

Planners for Planning Rights

Resident Initiated Dynamic Planning

Implementable plans in East Jerusalem

–A suggested solution for the housing crisis–

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Bimkom – Planners for Planning Rights was founded in 1999 by professional planners and architects, in order to strengthen the connection between planning procedures and human rights. The organization makes use of professional and research tools to advance human rights and social justice in the field of planning, development and distribution of land resources, and assists professionally, economically or socially weaker communities to gain fulfillment of their rights in planning matters. Bimkom is active throughout Israel, and its stance represents the public interest in the advancement of transparency in planning practices, and fair and equitable division of resources in planning and development.

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1. Introduction and Background to the Document

The severe housing shortage in Palestinian neighborhoods in East Jerusalem is due to a longstanding failure in planning, and a lack of development, which are the outcome of governmental and municipal policy over many years¹. However, in recent years there has been a change in the attitude of the planning institutions towards the Palestinian neighborhoods, and there seems to be recognition of the problem, and understanding that the planning system must provide solutions. The planning committees discuss many detailed outline plans relating to East Jerusalem and an effort is made to approve them when possible, within the framework of accepted planning policy.

Within this framework, in recent years, unprecedented activity in the field of planning has taken place in East Jerusalem. This activity is led by residents who own the land, and who initiate their own plans and promote them before the planning committees. The transition to resident-initiated planning was made possible with the introduction of Amendment 43 to the Planning and Building Law, which among other changes, for the first time allows residents to prepare and submit their own plans to the planning committees².

¹ For details of the factors leading to the housing crisis see Bimkom, Policy, Planning and Development in East Jerusalem, Jerusalem, currently being prepared for publication.

² In 1995 a change was made to the Planning and Building Law, known as Amendment 43. One of its tidings was the acknowledgment of the right of landowners and people with vested interests in a specific plot of land to initiate an urban building plan for that plot. This was manifested in subsection 61a (b) which stated that “a government ministry, local committee or council, each in its own jurisdiction area, and also parties with an interest in the area, may prepare a local outline plan or detailed plan and submit it to the Local Planning Committee; if the plan is in the jurisdiction of a district planning committee, a copy of the plan must be presented to the District Planning Committee.”

In East Jerusalem, the combination of private land ownership, poor planning infrastructure, and lack of investment in development, have created a thirst for change in the field of planning. Little by little, resident-initiated planning is narrowing the gap between the many needs of the residents in terms of housing, and the limited possibilities for development and building provided by the neighborhood plans. This gap is far from being closed, but in some areas the current planning boom is a significant advancement. The effect of this change on the planning patterns in East Jerusalem can be clearly seen in the following statistics:

Since Israeli law came into force in East Jerusalem in 1967 and until the present day (the data presented are correct to the end of 2012), 800 outline plans³ (general and detailed) came into force in the Palestinian neighborhoods in East Jerusalem:

- Of these, only about 120 plans (15%) were validated during the first three decades of the period in question (1967-1998). All the plans approved during this period were prepared by the planning institutions (mainly the municipality). The vast majority dealt with general planning of the Palestinian neighborhoods, and the detailed planning for public functions such as schools and roads. A number of the plans were for development on the land of churches, and a number for the construction of hotels. Only 14 of the 120 plans are detailed planning for housing.

- About 360 additional plans (45%) went into effect in the decade after the amendment came into force (1999-2008)⁴. These plans were mostly for housing, expansion of existing buildings,

³ An outline plan provides a statutory zoning program for a particular area. A general plan only designates the places to which the zoning applies, whereas a detailed plan is needed before building permits can be granted.

⁴ The first of the private plans, the preparation of which began immediately after the implementation of the amendment in 1995, reached the stage of validation some three to four years later. They began to receive statutory approval only from 1999.

regularization of existing building, increased building ratios, correction of building lines, and rezoning open public space for residential construction. Almost all these plans were the private initiatives of interested parties regarding the land in question, some completely private and some at the joint initiative of residents. Only about 40 of the 360 plans were initiated by the municipality and these addressed issues that are beyond the detailed planning for housing (completion of general planning for the neighborhoods, reparcellation plans, schools, roads, etc.)

- The rest of the plans, about 320 (40%), came into force between 2009-2012, after the approval of the Jerusalem 2000 Local Outline Plan by the planning committees, which was followed by the freezing of the plan's deposition process and its subsequent use as a policy document of sorts. These 320 plans are similar in nature to those of the previous decade, but differ from them in two significant ways: 1) the current wave of plans is completely private and very few are the result of community organization and partnerships. 2) all of them (except one) are in the area designated in the Jerusalem 2000 outline plan as "existing urban residential zones," and there are no deviations into open spaces or into areas designated as "proposed urban residential zones" (also known as expansion areas or polygons) .

In addition to the plans mentioned above, there are also municipal planning initiatives for the general planning of a number of East Jerusalem neighborhoods, and for some of the expansion areas proposed in the Jerusalem 2000 outline plan. These initiatives, some of which are nearly a decade old, have encountered many obstacles and are not progressing satisfactorily. In fact, not one of these plans has been approved by the planning committee. In light of this, we can say that the planning and development of Palestinian neighborhoods in East Jerusalem depend, almost entirely, on resident-initiated planning.

Nonetheless, as noted, residents' plans in recent years have been private plans for small plots, from which only small areas can be set aside for public use. Thus the opportunity for change inherent in plans of this type is missed. Beforehand, when there were partnerships and when plans were approved for medium-large areas, it was possible to increase the land reserves for public use alongside the necessary improvement in the area of residential building. This document highlights the potential of private-community planning and suggests ways to enhance it, and garner the most benefit for quality of life in the neighborhoods.

2. Aims of the Document

- A.** Finding a **solution to the housing crisis** in Palestinian neighborhoods in East Jerusalem by opening the way for regularization of houses built without permits and providing more options for construction.
- B.** Creating a system of **planning tools** for areas that are built-up in practice, are on privately owned land, and are characterized by non-uniform and informal construction, built without previous planning (or without corresponding to existing plans).
- C.** Promoting detailed planning which is **implementable** for the Palestinian neighborhoods in East Jerusalem by adjusting their planning to the social, environmental and cultural characteristics of their residents.
- D.** Formulation of operational proposals for addressing the needs of the residents in housing, education, environment and infrastructure (both physical and social), in order to bring the situation in the neighborhoods to that of **normal functioning**.

3. Planning Principles for the Palestinian Neighborhoods

The Problem

In the Palestinian neighborhoods of East Jerusalem there is a severe housing shortage which is mainly due to years of defective and unsuitable planning - both in terms of content of the plans and the zoning in them, and in terms of the mechanisms for their implementation. These plans include a reserve of residential units that can be built in theory, the inadequacy of the plans - as well as numerous problems and barriers on the way to implementation - prevent this construction from actually being carried out. By its very nature, planning touches on many issues that are not necessarily related directly to the issue of housing; it is impossible to isolate this planning issue from other planning issues. Therefore, in this chapter we will discuss the full range of planning, and possible ways to deal with obstacles along the way, while identifying unique tools for planning in an informal environment. The chapter will deal with physical planning tools as well as bureaucratic and institutional mechanisms that must be developed, in an effort to eventually reach solutions to the housing crisis.

The Solution

Implementable Plans: the idea underlying the proposed tools in this document is that worthwhile planning is planning that can be implemented, and on the basis of which development can be carried out. Plans that fail to deal with the possibilities and needs inherent to the area cannot be realized. Such plans are unnecessary, and their preparation is a waste of resources and time. Every zoning provision and every clause, in any plan to be deposited in the future for the Palestinian neighborhoods of East Jerusalem, should be written (and read) with this in mind.

The solution proposed in this document focuses on the already built-up environment of these neighborhoods, and as such does not presume to solve all the planning problems in the area.

Conditions Necessary for a Solution

- A necessary condition for the success of implementable planning is broad consensus between residents (landowners). This therefore requires a basic capacity to organize and the ability to cope over time.
- Another necessary condition is cooperation between the residents, the planner and the planning authorities. To enable cooperation and agreement, a system of mutual trust must be built which is based on familiarity with the area and its inhabitants.
- A further necessary condition is mobilization of the whole system, and cooperation between the planning institutions and the various municipal departments, which should adopt specialized practices and flexible procedures in order to jointly solve the housing and planning crisis in East Jerusalem.
- A preliminary step to this system-wide mobilization is a change in its attitude toward existing statutory plans. The approach to the statutory plans applying to the Palestinian neighborhoods should be pragmatic and somewhat suspicious. Where parts of the plans can still be implemented, this must be done immediately. However, regarding the rest of the area, there should be changes in the form of new, implementable plans⁵. The essence of good planning lies in its ability to change and adapt itself to a changing reality.
- There should be a similar approach to standards and "correct" planning principles which do not suit the situation on the ground. For example, the principle of not allowing building in the valleys

⁵ See "Implementable Plans" below

should be waived or adjusted in order to save an existing home from demolition or to allow construction of a school.

Over all, the planning system must stop relating to the current situation on the ground, messy and complicated as it is, as a problem or barrier, and begin to see its potential as a stimulus for development and for the creation of a complex and interesting built-up residential environment. It is important to note that the ideas detailed below developed from the ground up and are based on planning experiences in recent years. Analysis of the successes and failures of these local planning initiatives assisted in the formulation of these proposals. Following are suggestions relating to the field of planning itself, suggestions regarding organization of the residents, recommendations regarding the bureaucratic apparatus, and, finally, actual examples to illustrate the issues.

3.1 The Field of Planning

In recent years, new approaches have entered the planning discourse which promote bottom-up planning, and the planning of informal environments. These approaches stand against modernist planning thought that requires hierarchy in planning, in which general planning precedes detailed planning, and which prefers institutional planning (top-down) to grassroots planning. Such conservative approaches assume that planning is done for generations and that it requires a degree of professional coercion. In contrast, the new approach is much more flexible and adopts the dynamic characteristics of life in the present age. Accordingly, planning can start from the bottom up, and also connect to ideas that come from the top down. Planning should allow flexibility and be open to ongoing changes.

In this document we suggest combining the old and new approaches, in accordance with the

subject at hand. General planning, characterized by the top-down approach, can be used when necessary to solve a particular problem, and can be combined with spot planning growing out of the grassroots. We believe that East Jerusalem neighborhoods suffer from an excess of general planning that does not bring them any closer to the implementation of long-awaited development. Existing general planning, despite its many problems, has laid the planning basis for roads and a schematic public infrastructure that can, and should, be followed up with detailed planning. At the same time, we view general planning as an inhibiting factor, which leads to stagnation in the neighborhoods, and distances them from development, and therefore we suggest limiting it - both in terms of the topics that it addresses, and in terms of its duration.

3.1.1 General Planning

The writers of this document value general planning and are aware that certain planning solutions are possible only in the framework thereof. However, it is important to emphasize that the goal of planning in general, and within this, the goal of general planning, is to enable the development of the city for the benefit and welfare of its residents. Thus, general planning should be limited to those vital issues, which cannot be addressed in detailed planning.

In our experience, the preparation of general plans for the existing fabric of the Palestinian neighborhoods in East Jerusalem, as it has been carried out in the past and is being conducted at present, is a delaying factor in the path toward development, because it deals with the general picture, does not zoom in on the details, and does not relate to the complexity and uniqueness of the current situation in the field. Therefore, we recommend limiting this stage as much as possible. Our proposal to shorten the phase of general planning is based on the fact that the infrastructure of land uses and main road systems already exists in practice, and that

East Jerusalem is ripe to progress toward the phase of development and implementation (for specific proposals regarding implementation, see chapter 3.1.2)

Should there nonetheless be a need to prepare a comprehensive neighborhood plan, the timeframe for planning should be limited. Further, during the planning period, private, detailed or implementable plans in the area should not be blocked. A way must be found to allow dialogue between these two parallel tracks without detailed planning being delayed. To improve the efficiency of the planning, general plans should focus on public needs (including roads, public buildings and public open spaces), and on bringing these to the necessary detailed and statutory level.

Furthermore, in order to promote comprehensive and effective planning, the planners must deepen their knowledge and understanding of two main issues: the local community that lives in the area and for whom the plan is being prepared; and the physical situation that exists de-facto on the ground. These two issues, which are noticeably lacking in municipal planning to date, are essential and complementary starting points.

- A. **The local community:** Unlike the planning of a vacant area, which is intended for new communities that have not yet been established, in the case of planning in a built-up and populated environment, the planners must identify the local community, learn their history and clarify their wishes. The relationship with the residents must be based on trust and coordination of intentions, and include a variety of levels of coordination and updating (starting with the description of the planning framework - what it does and does not include – and ending with the learning of local knowledge that cannot be gained from maps and aerial photographs).

B. The physical situation on the ground: The second starting point is the existing situation on the ground. According to this approach, the actual situation - road layout, open spaces and existing construction - has a greater importance than the statutory plans prepared over the years which have not been implemented. Accordingly, we suggest examining the situation on the ground prior to the preparation of general plans, in the following order of precedence:

1. Roadways: studying and mapping the existing road network, including its internal hierarchy, problematic issues and where roads are lacking.
2. Construction: mapping all existing buildings in the area (residential, public, commercial and employment, and other uses) and identify trends of layout and density.
3. Open areas: identification of open spaces at the edges of the neighborhoods and in the valleys.
4. Local knowledge: identifying sites around the neighborhood which are significant for residents (such as a sacred tree, a historic building, a mosque, or a meeting-place) on the basis of local knowledge from the residents, in order to develop preferred social centers.
5. Land uses according to statutory plans
6. Land available for public development: Locating Waqf lands and State lands which constitute a significant land reserve for the establishment of public buildings and public housing projects.
7. Major infrastructure.

In order to optimize the stage of general planning, and in order that it not be a limiting factor for the detailed planning carried out in the framework of implementable plans, we

suggest reducing the number of land uses which the general plan allocates to four main zones: main roads; comprehensive construction (see explanation below); large public buildings; and large open spaces. Hereby, the general planning will demarcate the basic distinction between open spaces and development areas (including potential areas for expansions), outline the scheme of main roads, and strive to find land for the establishment of large public buildings such as schools. We suggest differentiating between large public spaces (both open and built) and small public areas: large areas will be demarcated in the framework of the general planning, whereas small areas will not be zoned as public in the general plans, but will rather be included in the comprehensive construction zones. The exact locations of the small public spaces will be determined in the framework of the detailed implementable plans.

In accordance with this approach, we recommend that a new zoning category be created for general plans, which will be known as "comprehensive construction" and will include housing, small public buildings, neighborhood commerce, local roads, municipal services and pocket gardens. In these areas, it will not be possible to receive building permits directly from the authority of the general plans. That is to say, in the comprehensive building zones, the general plans will provide a flexible outline for the preparation of detailed implementable plans, in which detailed land uses will be specified. Below we expand upon the proposals and recommended practices regarding the issues which, in our view, should be dealt with in general planning.

The System of Roads in General Planning

The existence of a proper, good quality road system is the basis for planning and development in an urban setting. A good road system organizes the space, ensures accessibility to all parts thereof and enables the provision of infrastructure to all buildings. A good road system brings water, electricity, sewage and drainage, telecommunications infrastructure, sidewalks, parking, lighting and sometimes even landscaping. Formally, the existence of a statutory road is a prerequisite for any kind of development, be it public buildings, residential buildings or parks. Therefore, the first step towards mitigating the distress, and promoting development in the Palestinian neighborhoods of East Jerusalem, is massive investment in road infrastructure in the neighborhoods.

In many of the neighborhoods, the existing road system is in poor condition, both physically and in terms of planning. Even the few roads that have been paved by the municipality do not include most of the infrastructure mentioned above, and they are strewn with bumps and potholes and are very poorly maintained. In neighborhoods built on sloping topography there are roads that are so steep such that driving on them, or walking along them, is quite difficult and dangerous (especially in winter). These steep roads are sometimes the sole access to educational institutions, and are therefore much used. In many neighborhoods, many roads are paved by the residents themselves in order to establish connections between and access to homes. Naturally, these roads do not include additional infrastructure.

Another problem with the road system outlined in the statutory general plans is the degree to which they match the existing roads in the area. Roads planned according to the route of existing roads were found to be appropriate and easier to implement than those which pursue a completely new route. In rural areas undergoing a process of urbanization, the existing road

network is usually based on proprietary and other agreements among the residents; it should therefore be taken into account when preparing a statutory plan for the neighborhood. In most of the villages which have become neighborhoods, comparison of planned roads and existing roads shows that in many cases planned roads that were not implemented have become irrelevant, while the existing roads, even though not statutory, continue to serve the residents. In many places, where a planned road deviates from the existing roads and passes through privately owned land, homes have been erected in such a way that the statutory roads can no longer be implemented. In fact, the only places in which statutory roads exist are at points of overlap between the planned system and the existing system.

The conclusion which arises is that any planning intervention in the layout of roads within the built fabric of the neighborhoods must be based on the existing road network, while taking advantage of the possibilities for upgrading and expanding existing roads. While planning the roads, the following considerations must be taken into account: efficiency of the road network and adjustment of the road's route and width to the conditions on the ground. Expanding the spread of roads into the heart of the neighborhoods should be discussed in negotiations with the residents, as part of the dynamic preparation of detailed implementable plans, and not as part of the general planning stage. Experience has shown that in most cases the existing layout of the roads, which results from the layout of land ownership, is also correct in terms of engineering, although sometimes there will be a need for flexibility regarding regulations.

Comprehensive Construction

As stated above, we suggest that within the framework of general planning a new zoning type be designated at the level of the (non-detailed) outline plan: "comprehensive construction". In this zone, construction and development of different types will be allowed for a variety of uses,

including homes, public buildings, neighborhood commerce, local roads, municipal services, pedestrian paths and pocket gardens. Building in the comprehensive construction zone will be allowed only after the approval of detailed implementable plans. This zoning will include the existing construction in the area, as well as vacant land for construction in the future. There will not be further details regarding land uses in this new zoning type. The designation “comprehensive construction zone” should be flexible enough to serve as the basis for the preparation of detailed implementable plans, in which land uses will be specified.

It would be best to forego the designation of compounds for detailed planning in advance. However, if the planning authorities decide that compounds should be designated and marked in the general plan, it should be specified that these compounds can change and that the boundaries are not binding. The boundaries of the planned areas will be fixed later in the framework of the implementable plans, as a result of resident organization and the precise location of the lands they own. Planning committees should be open to accepting planning boundaries which might seem irrational (i.e. not pleasing to the eye).

There should also be maximal flexibility with regard to the plan’s housing capacity. The maximum capacity for residential construction can be set in the general planning, while the specific arrangements should be left to the discretion of the planning committees at the detailed planning stage. The maximum building capacity should be set as a wide range, relating to the entire area covered by the general plan, not specifically according to compound. Alternatively, construction capacities can be set for each compound, provided a provision be added to the plan allowing transfer of rights between the compounds. The final capacity of each compound will be determined in the framework of the detailed implementable plans.

Today, in the District Planning Bureau, there is a tendency to establish general construction principles which are binding for entire neighborhoods, regarding building rights and allowed building height. This sweeping approach disables the potential benefits of the provision of added building rights as an incentive to donate land for public use. When the building rights are fixed in advance, and are uniform for the entire neighborhood, added building rights cannot be given to encourage provision of land for public needs. This compensation mechanism is necessary when planning an informal environment, and hence it should be allowed.

The conclusion drawn is that as part of the general planning, construction zones should be marked as comprehensive, leaving determination of the extent of building rights to the detailed plans, as a derivative of the allocations for public purposes. Determination of building rights and maximum building height, which provide incentives for giving land for the public good, requires individual negotiations and coordination with landowners. This task should be carried out within the framework of the detailed implementable plans.

Public buildings in general planning: As mentioned above, smaller areas designated for public buildings will not be marked in the general plans, but will rather be defined as one of the permitted, and necessary, land uses in areas designated for comprehensive construction. The exact locations of these small public buildings and use made of them will be determined by agreement within the framework of the detailed implementable plans.

In densely built-up areas, spaces can be found for small public buildings, but it is difficult, and sometimes impossible, to find big enough spaces to accommodate larger educational structures, such as schools. Our proposal, therefore, is that after exhausting existing

construction options within the neighborhood, and to the extent that space for a school or other large public building cannot be found, an appropriate solution must be found. The lack of land for public buildings is due to a number of different problems, and accordingly, the solutions must be diverse. The problems are:

- Inadequate allocation of plots of land for public facilities in statutory plans.
- Many of the plots designated for public buildings were not expropriated from their owners, and the plans were not realized.
- Many plots zoned for public buildings are located on steep slopes which are difficult and expensive to build on.
- Access roads to the public spaces were never implemented.
- Some of the plots designated for public buildings have had homes erected on them by the landowner and people live there.

The following solutions are suggested for these problems:

- Large areas should be identified on the outskirts of the neighborhoods for schools and other large public buildings. Since in most cases the land designated for development has in practice already been built on, these plots should be located outside of the built-up areas⁶, in spaces which the statutory plans designate as open areas, and if necessary, also in the valleys and in the scenic development areas of main roads⁷.
- When preparing a general plan, all the plots designated for public buildings in previous plans must be identified and the condition of each examined to determine whether or not it can be

⁶ In the center of the neighborhoods, there is already existing parcellation (even if not registered and recognized) into small plots. The edges of neighborhoods often have large areas not yet divided into plots, from which areas for schools can be derived.

⁷ This clause is contrary to the principles set forth in the Jerusalem 2000 Outline Plan, which has not yet been deposited. We believe that the outline plan should be used in a flexible fashion, especially in this matter, in order to allow for the construction of schools in the areas marked in the plan as open spaces.

realized. In many cases it will be discovered that a particular plot can be realized by implementing the following solutions.

- The Jerusalem Municipality should act vis-à-vis the Ministry of Education in order to receive special additional budgets for the construction of public buildings on steep terrain. Construction on steep slopes is not impossible, but is more expensive. As stated above, in many cases the land designated for public buildings in statutory plans for East Jerusalem is characterized by steep terrain.

- Identification of plots available for construction should be carried out in coordination with the municipal roads department, in order to find a solution to problems of accessibility. Development and paving of roads should be advanced abutting plots available for the construction of public buildings, even if this requires modification and adaptation of the planned route of the road set out in the approved plans. For this solution to be feasible, there must be improved cooperation between various municipal departments. The plot for development must be found, the road leading to it located, and its implementation promoted in parallel with the immediate actual construction of the public building.

- In many places, and in the framework of detailed implementable plans, it is possible to switch between plots which were designated for public use but are not vacant and vacant plots zoned as residential. As stated, this will be done after negotiations with the residents and with the consent of those concerned.

Open Areas in General Planning

In many of the Palestinian neighborhoods in East Jerusalem, the statutory plans allocate large swaths of land as open areas. Residents have learned from experience that these open areas (usually defined as open scenic areas) are neglected and unnecessary, and their initial reaction is that this zoning designation should be cancelled, and development enabled in the areas to

which it applied. At the same time residents are interested in the development of playgrounds, as well as recreation and sports areas.

Therefore, we suggest that open scenic zoning be totally annulled, or be limited to the margins of neighborhoods and valleys only. Instead of large open scenic areas, there should be designations for public open space, private open space, and sports and recreation areas⁸.

These designations should cover only limited spaces, in line with the size of the neighborhood, the residents' needs and generally accepted programmatic principles.

The Jerusalem 2000 Outline Plan, , which has not yet been deposited for public review, introduces a new approach to the distribution of open spaces, in which multi-neighborhood parks will be developed around the city (on the basis of city "quarters"). This new approach is contrary to the clear preference of the residents of the East Jerusalem Palestinian neighborhoods for small parks scattered throughout the neighborhoods, rather than large, concentrated parks. Conversations with residents have taught us that women and children tend not to go to remote public places which contain many hidden corners. Generally, women do not drive, and therefore parks that are a 10 minute drive away will not be of use to them and their children. In contrast, small pocket gardens located in the heart of residential complexes are an optimal solution.

Similarly to areas for public buildings, pocket gardens will be among the uses allowed in the comprehensive construction zones. The exact location of these gardens will be determined by agreement during the next stage, within the framework of detailed implementable plans.

⁸ Similarly for cemeteries, swimming pools and function halls. These lands will remain privately owned and will not be expropriated. Regarding the public management of such areas for public needs, see below, section 3.3.

Commerce and Employment in General Planning

Most statutory plans, including those in preparation (with the exception of that for the main commercial area of East Jerusalem), ignore the need for areas of commerce and employment in the Palestinian neighborhoods. Other than limited commercial space and limited strips of shop fronts, the plans do not relate to the issue at all⁹. To create a variety of options for the development of commerce and employment, general planning should anchor such development in three ways:

1. Locating employment and trade areas at the entrances to neighborhoods. (Rather than in one remote area)
2. Identifying and strengthening grassroots commercial development (usually along the main roadways)
3. Approving a variety of commercial uses in areas designated for comprehensive construction.

There should be a preference for small- and middle-sized commercial and trade zones scattered throughout the neighborhoods, rather than concentrated in large and remote locations. Accordingly, the exploitation of main traffic arteries, such as the planned Eastern Ring Road, should be considered, allowing the development along these roads (for example in areas zoned for excess landfill) of mid-sized employment complexes combined with other land uses, including residential construction.

Concentrations of commercial and business initiatives can be detected in many neighborhoods, often close to residential buildings along the main streets in the neighborhood. General plans

⁹ An exception to this are the statutory plans for the neighborhoods along the Ramallah Road, which include land uses that combine commerce and housing. This zoning expresses the desired direction: combining land uses, and employing a level of flexibility.

should strengthen and expand these local development trends, by allowing long commercial fronts and intensive construction along the roadways. Eventually, a variety of commercial and employment land uses should be included, allowing the construction of retail premises and private offices inside neighborhoods and residential complexes.

Local knowledge in general planning

Every neighborhood has its own history, whether ancient or more recent. Many neighborhoods have local traditions which bestow honor or sanctity on certain corners (a tree, a house, or site). Some of the communities had traditional meeting places, which, over the course of the years no longer serve that purpose, but remain in local memory. Even today, despite the weakening of community cohesion, there are noteworthy meeting places, seating areas and informal trails. Such knowledge exists within the community, sometimes openly and sometimes having to be attentively culled from the residents. Such local knowledge creates a sort of initial neighborhood map of sites and connections on which the continued planning should be based.

Major infrastructure

Provision of water, sewerage, electricity, lighting, drainage and communication infrastructure, is based on a functional road system. For the Palestinian neighborhoods in East Jerusalem to begin to function properly, and for the small compounds developed in the implementable plans to be realized, the Jerusalem Municipality must make a concentrated effort to upgrade these infrastructures.

The development of infrastructure which has begun in recent years must be strengthened and increased to close the gaps and deficits in all the aforementioned infrastructure, especially

neighborhood roadways, water lines, sewage and drainage, and development of waste treatment facilities. The system of garbage collection and recycling must also be upgraded.

The centers of many neighborhoods are built up at a density that makes it particularly difficult to plan roads and vital infrastructure. These compounds are commonly found in historic village centers. We suggest that as part of the general planning, a provision will be added allowing the definition of such areas as a "Casba" (or "inaccessible compound"). The result of this designation will be the need for special flexibility and adaptability regarding infrastructure and provision of services (as in the case of garbage collection in Yemin Moshe and the Old City neighborhoods). These special arrangements will be defined in the implementable plans.

3.1.2 Implementable Plans

After completion of the general plan, in parallel to its preparation, or even unconnected to it, development within neighborhoods must be allowed on the basis of detailed plans, which can also be spot plans. The planning institutions must show maximal flexibility in dealing with these detailed plans and approving them, even when the general outline planning has not been completed, provided that at least a network of main roads exists.

In the Palestinian neighborhoods of East Jerusalem, planning that is implementable usually comes in the form of small plans. Plans with a limited area, and with clearly defined stakeholders, are more likely to reach the stage of implementation, and they should therefore be encouraged and advanced.

What is an implementable plan?

1. Initiative - the initiators of the plan are neighborhood residents, landowners and neighbors who are interested parties, and who arrange to join forces to promote an implementable plan.
2. Level of detail – an outline plan that includes detailed instructions on the basis of which building permits can be issued for both public areas and private lands.
3. Size - usually (but not necessarily) an implementable plan is for a relatively small area. In most cases the number of landowners promoting the plan is small (a single landowner, a number of siblings who inherited land from their father, several neighbors who have an agreed arrangement between them, etc.).

The guiding principle which pervades all the proposals in this document is the principle of implementability - without a clear potential of implementation, a plan has no value. A plan with the potential of implementation is one in which residents and planning authorities can agree on all the details contained therein, a plan which all the stakeholders are interested in promoting, and which grows naturally from the physical infrastructure of the area. It should be remembered that residents who organize to promote a plan are both the developers of the plan and its beneficiaries. They hire the services of a planner who works on their behalf. The planner must know the community and be sensitive to its needs, while at the same time having authority to determine, decide and even impose their opinion. All planning is painful, and all planning includes a degree of coercion. However implementable plans are not plans prepared by the local planning and building committee for the residents (even if the local committee might theoretically initiate such a plan), but rather the residents prepare the plan, and the municipality enables and promotes it, with an emphasis on joint planning rather than “participatory”

planning¹⁰. Following is the recommended way to plan, and the opinion of the authors regarding various aspects of implementable planning.

How is an implementable plan prepared?

Once compliance with the criteria listed above for implementable plans has been proven, and the Local Planning and Building Committee (in accordance with the mechanisms recommended later in this paper) has committed to help residents as much as possible in advancing the plan toward approval, then planning can begin.

The physical starting point of the plan is the actual situation on the ground. According to this view, the deployment of existing roads and existing construction should have more weight than old, unimplemented, statutory plans. Years without organized development, during which the statutory plans were not implemented in practice, led to the fact that on the ground, things took shape which were not in line with the planned land uses. As a result, the statutory plans have, in many cases, become irrelevant.

As with the general planning, preparation of implementable plans should also examine the situation on the ground from various perspectives. In these types of plans, there are additional aspects beyond those to be examined within the framework of general planning: land ownership patterns; local roads; housing; small and medium-sized public buildings and institutions (both in designated buildings and non-designated ones); small and medium-sized open spaces; commercial and other uses; and infrastructure.

¹⁰ The concept of public participation in planning reflects a hierarchical mode in which the planning authority has priority, and it gives residents the opportunity to participate in planning, whereas joint planning reflects a greater degree of equality and reciprocity. "Participatory" planning strengthens the residents' sense that responsibility and authority are held by the Local Planning Committee and they (the residents) are barely taken into account. By contrast, residents who are also the clients of the plan feel responsible for the planning project and this feeling increases the chances of the project's success.

Land Ownership Structure

Implementable plans are not reparation plans, which have been found to be unsuitable for implementation in built-up areas, (including partially built areas) in the Palestinian neighborhoods of East Jerusalem. Rather, they are plans which offer a viable alternative to the division of land. This alternative is based on familiarity with the land ownership patterns in the area included in the plan, and agreements among the owners about the land to be allocated for public purposes.

One of the benefits of implementable plans is that the land ownership structure is clear, detailed and accurate: when the plan is initiated by residents (a single landowner, or a family that inherited a plot of land, or neighbors cooperating on the initiative), the division of ownership is known and agreed upon - although in most cases not registered by the Israel Land Registry.

Detailed knowledge of the ownership structure is the basis for the layout of land-uses in a way which balances the burden of provision of land for public needs among the different partners. In the event that the allocations for public purposes cannot be evenly shared, one or several of the mechanisms for compensation listed below can be agreed upon.

Roads in Implementable Plans

The planned road network in implementable plans should be based on the actual road system in the area. The existing road network has a long history and is usually based on proprietary and other agreements between the residents¹¹. Based on these historical agreements, it is easier to reach agreement on the expansion of existing roads, even if corrections to the route are

¹¹ See below, section 3.1

required. Therefore, a system of roads based on upgrading and expanding existing roads shortens the way forward towards implementation.

In many cases, a village environment that has undergone a process of urbanization has a partial, informal road system which needs completion. In a neighborhood for which a general plan has been prepared, this incomplete road system should be included in the area zoned for comprehensive construction. At the stage of preparing implementable plans, roads should be marked, even if they are not based on existing historical paths. The planning of a new road, which will also serve areas outside the scope of the implementable plan, should be along the boundaries of blocks of land ownership, as much as possible, while ensuring that the penetration of the route into the block is minimized. In contrast, a new local road meant to provide access to plots included in the plan, can be placed wherever the partners to the plan agree upon. This process, as well as any deviations from existing roads, will be done in consultation and coordination with the residents who initiated the project and with the landowners' consent, using one or several of the compensation mechanisms set forth below. This process will also include agreed parking solutions.

In many cases it will be impossible to include a standardized road system in an implementable plan, whether because the roads are too narrow or due to extremely hilly terrain. One solution, which the Jerusalem Municipality has used in the past and which can be used in these cases, is a change in the definition of the road. Instead of being zoned as a road, the route may be designated as a public thoroughfare and/or shared pedestrian-vehicular road and / or pedestrian walkway on which cars are permitted. This solution bypasses the problem.

Another possible solution is through the designation of a road with minimum standard width, and

marking any houses which overlap its boundaries as slated for demolition. A comment can then be added to the provisions of the plan postponing realization of the full width of the road until the intervening parts of the buildings are demolished. This enables planning a wide road without destroying buildings which extend into the scope of the planned road. The demolition will be carried out in the future in any case, when the landowner elects to exercise the extra building rights granted by the implementable plan, and builds a new building within the new lines, appropriate to the plan for the road.

It is important to remember that planned roads which are not implemented in practice and which do not have a physical manifestation in the field may become irrelevant due to housing construction and other uses of the space. To avoid this possibility, haste should be made to demarcate the route immediately upon acceptance of the plan. At the very least, the ground should be marked using a temporary layer of gravel, even if the actual height of the new road will be different.

In recent years, it has become common for plans to include provisions for bicycle paths. This allocation is welcomed for established neighborhoods, but is an unreasonable and disproportionate burden for the majority of Palestinian neighborhoods. Although we appreciate the value of this healthy sport, we suggest waiving this requirement in plans for East Jerusalem Palestinian neighborhoods.

Housing in Implementable Plans

The layout of buildings in a given area is also based on a long history of development and on land ownership patterns. Many neighborhoods were informally built in response to needs, and in continuation of local building traditions that were never subject to strict statutory plans. Similarly

to the issue of roads, construction of housing in implementable plans should be based on the existing layout of construction in the area.

In areas for which a general plan has been prepared, residential areas will be included in the comprehensive construction zone, along with other uses such as public buildings, neighborhood commerce, local roads, municipal services, pedestrian walkways and pocket gardens - all as detailed in the above section on building in general plans¹². The comprehensive construction zone should include the existing buildings as well as vacant space for future development.

As stated, implementable plans should accommodate all existing structures, except in extreme cases when a building or part thereof constitute a hazard which cannot be overcome through planning, and when all stakeholders agree on its removal. In these cases, removal of a fence or limited demolition of part of a structure can be carried out in consultation and coordination with the resident initiators of the plan, and with the consent of the owner of the structure. If necessary, one or several of the compensation mechanisms listed below may be used.

In places of existent dense construction, which is beyond the maximum permitted building rights in the neighborhood, the plan should strive to accommodate this construction along with an agreement regarding reciprocal compensation. Even if the partners to the plan ultimately decide to destroy the excess floor or part of a building, the decision will be the result of a process of persuasion and consent.

If the planning and enforcement authorities avoid actual demolitions of houses, and focus on planning activities, this would constitute a trust-building element and the first step toward mutual

¹² See above, section 3.1

dialogue between the residents and the planning authorities - a first step towards the preparation of an agreed upon, implementable plan that includes significant concessions on both sides.

Public Buildings and Institutions in Implementable Plans

Further to the above, regarding public buildings in general planning, implementable plans will identify land for small and medium public uses only (such as kindergartens, family health centers, day centers for the elderly, etc.). One of the main difficulties in the development of Palestinian neighborhoods in East Jerusalem is how allocation of land for public purposes matches realistic options available to residents. As stated, the usual methods of allocating land for public needs through expropriation orders in detailed plans or reparation plans is inappropriate in the Palestinian neighborhoods. This document suggests that in parallel to the normal expropriations track, the planning institutions should develop other methods to allocate land for public purposes, and local residents will be able to choose between them in accordance with their wishes and beliefs. Alternative tracks include, for example, the possibility that the land to be used for public buildings be held by the Waqf or be rented long-term from its private owners.

The purpose of these alternative tracks is to solve two major problems:

1. Creating a balance between residents – in order to create a fair plan, which the residents will agree to, a situation must be effected where everyone gains something, or at least no-one loses in a big way. Some of the proposed alternative tracks aim at this.
2. Bypassing the issue of recognition or non-recognition of Israel's rule. Often, residents who want to contribute land or assets to the community find it difficult to do so if it requires registration of the property in the name of the Israeli authorities (i.e. the

Jerusalem Municipality). Since the purpose of planning is not to increase the municipality's assets, but to supply areas for public activity, suitable alternative solutions must be found which answer public needs, and which are also acceptable to the landowners.

To ensure access to public buildings for residents who do not live in the area of the implementable plan, public spaces should be located as near to the plan's boundary as possible and close to a road. In addition, a clear priority should be given to the location of public buildings at the intersection of several privately owned plots, so that the public building "sits" on pieces of land taken from several private plots. If no such vacant space exists, the building can be located on an individual plot, while using one or several of the compensation mechanisms listed below.

Open Spaces in Implementable Plans

Further to the above details regarding open spaces in general planning, implementable plans will include only small and medium-sized plots (100-800 m²) as open spaces that fit the definition of "pocket parks." The pocket parks should be designated as open private space (with public access) or open public space¹³, in accordance with the wishes of the residents and landowners.

In plans initiated by a single landowner or family, it is recommended to locate the pocket garden in the back, between the houses. In plans initiated by a group of neighbors who are not from the same family, a more public location at the edge of the residential complex and next to a road is preferable.

¹³ We recommend that the land designation "open scenic area" not be used at all, since it does not allow for any development and it exempts the municipality from its responsibility towards the neighborhoods.

Additionally, clear priority should be given to pocket gardens located at the intersection of as many privately owned plots as possible, so that the space of the garden takes only a small area from each. If such a vacant area cannot be found, the pocket garden can be located on an individual plot, while using one or several of the compensation mechanisms listed below. These pocket gardens should be developed immediately upon acceptance of the plan, so that they will not stand empty and neglected for years. Pocket gardens are not private gardens but rather they are land zoned as open public space (whether owned by the municipality, residents' committee or Waqf); ownership will be determined in the framework of the implementable plan.

Commerce in Implementable Plans

At the local level, small-scale commerce and clean industry do not require separate zoning. General planning which allows a variety of utilizations in residential areas, or implementable planning which allows this, should be flexible enough to form the basis for such evolution as it arises from the field. If the partners to the plan are interested in allocation of a specific area for commerce, this can be done in a residentially zoned or separately zoned area, in accordance with the residents' wishes.

Infrastructure in Implementable Plans

Further to what was stated above regarding major infrastructure in general planning, the infrastructure in implementable plans should be based on the existence of the well laid out and effective main roads. The existence of major infrastructure will enable relatively easy development of internal infrastructure in most neighborhoods in which implementable plans will be prepared, and its connection to the main infrastructure without the need for special adjustments.

Nonetheless, there are many neighborhoods in which the actual construction is so dense that it creates pockets and compounds which are inaccessible. In these dense neighborhoods, which are built like a Casbah or the quarters of the Old City, it is difficult to provide wired infrastructure of the type that is normally deployed along roads. But the task is not impossible.

In cooperation with the municipality, such “Casbah” compounds must be defined, and surrounding roads found that come as close as possible to the compound, and where possible, parking areas should also be found nearby. At this point, the systems of infrastructure must be separated from the roads, and penetrate deep into the neighborhood along alleys or pedestrian paths.

Rainwater drainage in these alleys will be above ground, leaving enough space for other infrastructure to pass below street level. Due to poor accessibility for fire-fighting vehicles, a fire hydrant system should be added along the alleys. Unique solutions for collecting garbage, such as the system in the Old City, should be formulated and carried out in agreement with the residents.

3.2 Internal Tools and Mechanisms for Compensation

As explained in the previous section, implementable plans are based on the principle of all-around gain, and to ensure their implementation, various flexible compensation mechanisms should be implemented for the provision of land for public purposes.

This chapter offers a range of planning and compensatory mechanisms aimed at the provision of residential building rights, the legalization of existing buildings, and the creation of land

resources to be used as public areas. These mechanisms are proposed as an alternative to forced expropriation of land for public purposes, or expropriation on the basis of reparation, without the owner's consent. The common denominator of the proposed mechanisms is flexibility and openness to creative solutions in order to reach agreed upon and implementable solutions. The proposed mechanisms can be developed and refined, several mechanisms can be combined, or replaced with other mechanisms found to be more appropriate, as long as the basic principles of consensus and balance are not harmed.

3.2.1 Balance in Providing Land for Public Areas

All landowners who are partners to the plan will provide land for public use according to their share in the plan, so that the burden of this provision is divided equally among all. The planner will consider how to share the agreed allocations when determining land uses. This planning mechanism is highly recommended in areas where it can be implemented, as it does not involve payments and compensation, and is based on the ownership structure and the current situation on the ground. The mechanism is effective in relatively simple and easy cases, where all the landowner-partners to the plan have available land.

Based on the land ownership map, which the partners to the plan will prepare, vacant areas will be identified for public uses: a small public building, a pocket garden, an access road into the heart of the neighbourhood etc. (as described above in section 3.1). The public spaces will then be located at the points where various plots meet, such that each landowner will contribute their share of the needed public area.

3.2.2 Contribution to Public Areas in Exchange for Additional Building Rights

As mentioned at the beginning of the document, the planning authorities should waive the hard and fast, all-inclusive building norms regarding building rights and permitted building heights in

the Palestinian neighborhoods of East Jerusalem. This waiver is critical for the development of this compensation mechanism, the essence of which is the provision of extra building rights as an incentive to contribute land for public use. When the building rights are pre-set and uniform for the entire neighborhood, allocation for public purposes cannot be encouraged by providing additional building rights.

In plans in which it is not possible to share the allocations for public use between all partners, the land for public needs will be taken from a single landowner or a number of them. In compensation for the contribution of the area for public use, and in line with the size of the plot, the owner will be given extra building rights beyond those granted to other partners in the plan. These additional rights will be given after consultation with experts in the field (economists and/or assessors) and will be agreed upon by all partners.

This mechanism is also suitable for cases where the owner of suitable vacant land for public purposes is also the owner of a building which, in terms of height, size, or number of housing units deviates from the accepted norm in the area. In such a case, legalization of the excess construction can be considered in return for contribution of the vacant land for public use.

3.2.3 Added Building Rights as Compensation for the Demolition of a Building

In principle, implementable plans should include all existing building without the need for demolitions. However, there are cases in which the construction in the area may pose a hazard that cannot be overcome through planning - for example, when the existing building does not allow the establishment of a necessary access road, which cannot be rerouted. In such cases, the need for full or partial demolition of an existing structure arises. In recompense for the demolition, and depending on the size of the built area to be demolished, the owner of the

building slated for demolition will receive extra building rights beyond that which the other partners to the plan received. These additional rights will be given after consultation with experts in the field (economists and/or assessors) and be agreed upon by all partners, subject to flexible planning considerations.

3.2.4 Establishing a Joint Fund

The mechanism proposed here is one of internal organization of the partners to the plan, so that they will be able to compensate whomever may end up harmed by the shared plan. In the absence of a fair planning solution, if some of the partners are harmed more than others in the allocations for public purposes, they will receive compensation from the joint fund. There are cases in which one landowner must give up the ground floor of a house, or when only one landowner contributes the land for a pocket garden area and/or donates more land than others for a public building or road etc. The purpose of the fund, in part, is balancing responsibilities between the partners to the plan.

Contributions for public needs and/or eventual demolitions, required as part of the implementable plan, can be compensated through monetary payment from the joint fund. The landowners and other stakeholders affiliated with the plan will provide an amount to be determined (one-time or monthly) to the fund, and the money thus raised will be used for the project in various ways:

- Payment of professionals (surveyors, architects, engineers, lawyers, etc.)
- Purchase of land from one of the partners in order to allocate it for public use.
- Acquisition of part of an existing structure so as to designate it for public use.
- Financial compensation for those who have to give up part of their land and/or demolish a building or floor, for the benefit of all.

3.2.5 Affordable Housing in Exchange for Building Additions

Based on the underlying principles of implementable planning, various social initiatives can also be promoted, including affordable housing. Once enough land has been set aside for public purposes and all partners who contributed to this have been compensated, building initiatives can also be advanced for apartment buildings for sale or rent at lower prices, which will be affordable for young couples and other families. To make this possible, additional building rights should be granted beyond those approved for plots on which no affordable housing is built.

3.3 Bureaucratic Mechanisms

The success of implementable plans is conditioned on the readiness of the planning institutions to bring real change to the prevailing situation in the East Jerusalem Palestinian neighborhoods. Some of the mechanisms proposed in the previous section are internal mechanisms which do not require intervention of the planning institutions. But some of them, especially those that offer extra building rights and/or waive accepted restrictions, require readiness and involvement of the planning authorities. Based on the assumption and hope that the ideas presented here are welcomed by the planning authorities, the bureaucratic system must adapt itself to the residents, free them to act, and remove barriers that stand in their way. The authorities must understand the complexity of the area, be aware of agreements reached between the residents, and assist in implementing those agreements within statutory plans. On this matter, the authorities require flexibility, openness and creativity, both at the level of general planning and of detailed planning. In order to arrange these special regulations, it may be necessary to define certain areas as "Special Planning Zones", to which special planning principles are applied.

The General Planning Level

- First it must be carefully considered whether a new general plan is needed for a particular neighborhood, or whether the statutory plan might not already provide a basis for detailed implementable planning.
- To the extent that general planning is needed, the planning bodies (the district planning office or the city engineer) should include a limited number of designated land uses in the plan, and one of these should be for comprehensive construction, as described in chapter 3.1.1 above.
- The general plan should be approved quickly (in no more than 12 months).
- The planning team accompanying the planning process should include representatives from the District Planning Bureau, representatives of the planning office working on the general plan, and representatives of the residents. The objectives of the team will be rapid advancement of the plan, and the removal of the barriers thereto. The team will meet throughout the year of planning, on dates set in advance, as a means to hasten the planning process.
- In addition, the planning team will hold meetings with the planning teams associated with any implementable plans which are included in the area of the general plan.

The Detailed Implementable Planning Level

- Accompaniment by a planner on behalf of the planning authority: The planning authority (in the municipality and/or district planning bureau) should allocate professional personnel, who will be trained to accompany the dynamic planning process. Such positions can be filled by one of the reviewers of the plan currently working within the system, who will receive the authority to offer practical solutions or to accept new ideas arising from the field, on the one hand, and to examine the possibility of accepting the proposed planning mechanisms, on the other hand. All this depends on the capacity for flexible thinking and openness to new

ideas and creative solutions. The accompanying planner will also help residents facing municipal or judicial prosecution, and work to delay legal proceedings regarding unpermitted, existing construction.

- Establishment of a public/community body to manage assets for public use: In order to overcome the political problem of registering land for public use in the name of the Israeli Jerusalem Municipality, these assets could be listed in the name of a different public/community body. We propose setting up a neutral body (or relying on an existing entity) which is accepted by both the municipality and the residents, whose role is to manage these public assets and take care of them. In coordination with the municipality and the original landowners, this neutral body shall set the official status of the property to be provided for public use, accompany the writing of agreements and contracts in each case, and handle future problems that may arise. Such a public entity could be an institution in charge of managing the assets of the Waqf, or another reliable public institution. Landowners will be able to choose between the regular route of expropriation, after which the property will be registered in the name of the municipality, or putting their land, which has been contributed for public purposes, in the trust of the alternative entity.

- Regulation of the uses made of private land allocated for public use: Additional responsibilities given to the public/community body will be the authority to determine how the property will be transferred to public use (compensation for existing construction that was built without permits, sale of the property or its long-term lease), as well as the authority to determine the type of public use that will be employed in the property. The role of the public/community body will be to institutionalize the public activity carried out on private property, to ensure its continued existence over time, and to protect the property's owner

from harm due to public use which may interfere with the neighborhood's accepted lifestyle. Not all public activities are suitable for dense residential complexes. We are not necessarily referring to the activities of outside agencies such as the police or an ideological settlement, but factors whose activity may be a disturbance to the neighborhood lifestyle. Therefore, under the agreement signed between the landowner and the municipality or the alternate body, the use to be made of the land must be agreed upon. If the property is not utilized for public use during a timeframe to be determined, the property will be returned to its owner.

- Educational buildings on private land: In line with the above principle, it is proposed that public uses, which according to current practice require that the land be registered in the name of the municipality (such as school buildings), be allowed to function on private land that will not be expropriated. However, the public use must be arranged by way of long-term agreements and contracts.

- Public use of ground floors: In the past, the retroactive legalization of upper floors, which exceed the allowed height and were built without permits, has been proposed in exchange for handing over the ground floor for public use. In such cases, public institutions will operate on the ground floor of the building, alongside residential use of the floors above. When allotting a residential plot for mixed use in this way, there is a need for great sensitivity regarding the type of public use on the property. Not all public uses are suitable for integration in a residential complex. Therefore, there must be a contractual agreement about the nature of the use that will be made of the asset. The municipality must commit to not changing the designated public use without the owner's consent¹⁴.

¹⁴ An interesting mechanism was developed by the municipality of Bnei Brak regarding public areas in new buildings constructed under National Outline Plan 38 amendment 2. The Local Planning and Building Committee

4. Implementable Plans - Examples from the Field

This chapter describes a handful of plans (among scores of such plans) which were developed and prepared by the architect Ayala Ronel during her years as a planner for residents in various Palestinian neighborhoods of East Jerusalem. It should be stressed that in the cases described here, use has not yet been made of the bureaucratic mechanisms proposed above, such as the allocation of land for public purposes via the Waqf, because the mechanisms do not yet exist. Only the internal mechanisms have been used.

4.1 Example 1: A Typical Implementable Plan

Plan 9713 for the al-Ashqariyah area, in southwest Beit Hanina, extends over about 83 dunam and was validated in 2012. The plan regulates the status of a residential neighborhood, largely built in an informal manner since the land designation in the approved statutory plan (3000b) is for open scenic area. The initiative for preparing Plan 9713 came from a single resident who decided to take action following the partial demolition of his house. To this end, he recruited his neighbors, many of whom had outstanding demolition orders against their homes. This group of residents turned to the neighborhood's Community Center with the request that it accompany them in the choice of architect and the dynamic planning process.

established a policy whereby in any implementation of NOP 38 involving demolition of the existing building and construction of a new building (on the basis of Amendment 2 to NOP 38), a condition for granting the building permit would be allocating a certain part of the ground floor for public buildings - kindergartens, daycare etc. The policy defines the types of public use and clarifies that the area is not for other public uses. The local committee is preparing a plan to make this policy statutory, but is utilizing the policy in the meantime, by virtue of a clause in NOP 38 which enables it to do so.

The goal was to legalize the existing construction and to add options for future construction, both for residential as well as public use, without the need for demolitions and without having to prepare a re-parcellation plan. Given the situation on the ground, it was not possible to create a fair plan in which all the partners equally contribute their share of land for public use. The need to invent more complex compensatory mechanisms and planning tools arose. The following mechanisms were included in Plan 9713:

Communal joint fund: The residents launched a communal joint fund via the Community Center, into which each partner deposited a fixed amount. Money collected from the residents was used to hire the planner's services, finance the necessary surveys, and assemble a planning team. Later on, based on the needs that arose, residents deposited further sums into the joint fund. During planning it was found that even after the addition of another landowner (see below) not enough land could be designated for public use through equal contributions or through extra building rights (see below); it became clear that additional available land was needed for this purpose. The residents located a vacant plot of land adjacent to the plan's boundary. The acquisition of the land by the partners was financed with the money that had accrued in the joint fund. Most of the area of the plot was set aside for public use and was designated as open public space. That part of the plot that was not set aside for public use was marked in the plan as a plot zoned for residential use, and it remained jointly owned by all the partners. Sale of the plot to a private developer to build an apartment building (for sale or for rent) may return the value of the partners' contributions to the communal joint fund, or even increase it.

Allocations for public areas in exchange for additional building rights: As mentioned, with the assistance of the urban planner of the Community Center, the residents were able to add another landowner to the group, who did not live in the neighborhood, but who owned a plot adjacent to their land. Unlike other plots included in the plan, it was vacant and therefore

appropriate for public buildings. Part of the vacant plot was designated in the plan for public buildings, and the rest, which the owner retained, was designated for residential purposes. The landowner gave up some of his land for the public good, and in return, increased the value of the rest of his land through rezoning it from open scenic area to residential. Furthermore, the property owner was granted increased building rights (Special Residential Area 2, in which it is permitted to build up to 120% of the area of the plot over four stories) beyond those granted to other partners (Special Residential Area 1 in which it is permitted to build up to 75% of the area of the plot over three stories).

Key actors: An important condition that contributed to the success of the plan was the residents' organization and management, with the assistance of the Community Center. The initiative came from the residents, one of whom was particularly charismatic and dedicated to the issue, and who encouraged the other partners to continue despite the many problems that cropped up along the way, even when no solutions were in sight. In addition, the Community Center planner, Nasser Abu-Leil, who the residents trusted based on long-standing acquaintance with his integrity, professionalism and devotion to the cause, was actively involved in the planning, in organizing the landowners, and harnessing them to advance the plan.

4.2 Example 2: Flexibility and Creativity in Planning

Plan 9838 in Deir al-'Aamud, the southern part of Sur Baher, was approved in August 2012, but its final validation has not yet been officially published. The plan covers about 35 dunam, which were not previously included in a local outline plan, and it was intended to regularize a residential neighborhood informally built by the villagers on their land. The neighborhood is located on a slope leading from Sur Baher southward, to the edge of the municipal boundary. Over the years, with no planning and without permits, houses and a mosque were built beside

the road which runs along the slope. Some of the houses were built many decades ago.

Following the demolition of several houses, and demolition orders for additional ones, a group of people organized and decided to plan the area. Concomitant with the planning, negotiations began with the Jerusalem city hall to formulate an agreement between the residents and the municipality in which the residents would commit to cease building without permits, and the municipality would undertake to cease demolitions. The agreement was written, but just before signing it, the municipality withdrew from the agreement and the signing never took place. Nevertheless, planning continued and was eventually approved. Following are the planning tools and compensatory mechanisms used in Plan 9838:

Communal joint fund: Residents deposited money into a common joint fund. The funds collected were used to hire the planner's services, finance the necessary surveys, and assemble a planning team. Later, based on needs that arose, residents deposited further sums into the joint fund.

Equally shared allocation of land for public needs: Due to the plan's location in a relatively sparsely built area, the residents could all, by mutual agreement, set aside land for public purposes, although not in exactly equal amounts. The partners voluntarily allocated land for public buildings at the edge of the built-up areas, sometimes even in the valleys. Plots for public buildings were created from land set aside by a number of landowners, at the point where their lands meet. Some of the open areas were established in a different way: the areas were not defined as open public space, but rather as open private space for agricultural use. Defining these areas as open private space for use as agricultural areas and orchards, allowed retention of their scenic value as defined by the planning authorities, and allowed ownership of the land to stay private.

Administrative flexibility regarding accepted standards: The road network of the plan was based on existing roads and paths, although these did not meet the accepted standards in terms of road width and slope. The balanced and reasonable approach of the municipal traffic department, which took into account the fact that the neighborhood is relatively isolated and distant from other neighbourhoods, and which was persuaded to act outside the accepted rules, allowed for the necessary flexibility and the eventual approval of roads that did not meet all the standard requirements.

Key actors: Faiz, who organized the group, did not live in Deir al-'Aamud, but rather in the neighborhood atop the hill. His late brother's widow and three children lived in Deir al-'Aamud and Faiz wanted to help them. The fact that he was not from the area and had no personal interest therein helped build the partners' confidence in him. He organized the residents and established the planning and support team, which included both an architect and a lawyer.

4.3 Example 3: An Unusually Large Plan that was Successful

Plan 6671 for the area of Hud at-Tabel in the west of Beit Hanina is not a typical implementable plan. The area of the plan, which came into effect in January 2002, is very large, about 628 dunam, and is divided between many landowners. A successful combination of factors led the plan to be implementable, despite its size and the multiplicity of owners. The plan's area was mostly vacant and a small part of it contained informal building, at various density levels. The plan was initiated by the neighborhood community center, after residents who had received demolition orders for homes built without permits turned to them. Prior to the preparation of the plan, the area – later to be included in it – had been designated as Open Scenic Area according to approved statutory neighborhood plans. Plan 6671 changed this designation and allocated entire compounds for residential construction. However, the Jerusalem Municipality demanded

that the western edge, adjacent to the municipal boundary, remain zoned as open space, without building rights. Acceptance of this requirement would have created a distinction between the various landowners in the area of the plan; some would be prohibited from building and developing their land, while their neighbors would enjoy the legal ability to do so.

Eventually, through the open mindedness and good will of all parties, a combination of two types of zoning were allocated to the western section of the plan: open scenic area, and special residential areas. Most of the land was zoned as open scenic, but square compounds (where a house or two could be built, subject to the conditions set out in the plan) were incorporated schematically therein. The exact location of the buildings was not fixed on the blueprint, but was rather left to the discretion of the landowners, according to their needs and wishes, with certain restrictions.

Although this combination of zoning types does not allow intensive construction at an urban density, as in the rest of the plan, it allows landowners to exercise their right to live on their land, and provides flexibility regarding the exact development of the area. Today, more than a decade after the approval of the plan, building in the area is carried out with permits and in line with the plan, well-kept homes dot the area, and it is apparent that the residents care about their neighborhood and take responsibility for it.

Operational conclusions: The District Planner in the Interior Ministry was the key figure in this plan. The planner, Pascal Broid, accompanied the plan through the planning process, accepted the creative ideas in it, and enabled its rapid advancement. He did not accept the endless wait for the opinions of the various municipal departments, and when these were delayed, he advanced the plan without them. The plan was approved in record time (in terms of the Israeli

planning system) of three years – sufficient time for efficient planning, while not leaving time for conflicts and crises. In our opinion, had the planning taken any longer, group members would have begun to get discouraged and the partnership for the initiative might have fallen apart before the process was completed.

4.4 Example 4:

An Unusually Large Plan that was Unsuccessful (so far)

Plan 10133, which covers approximately 260 dunam on the Kisan slope in the southern part of the neighborhood of Sur Baher, has not been approved. This is a large and complex plan and its preparation has been under way for more than ten years. The plan is presented here as an example of the difficulties and lack of efficiency that characterize large and cumbersome plans, even when the mechanisms of implementable planning are included therein. Most of the area of Plan 10133 is marked in the statutory neighborhood outline plan (2302a) as designated for detailed planning¹⁵, while the rest is defined as open scenic area.

Although most of the area is designated for housing, as aforesaid, subject to detailed planning, the Jerusalem Municipality has refrained from detail planning there. The area of the plan contains a number of buildings constructed without permits. Following the demolition of some houses and demolition orders delivered for additional ones, residents decided to undertake the task of planning. The land included in the area of Plan 10133 is privately owned, and although it is not registered the division into plots as well as the land ownership map are agreed upon by the residents. They organized, collected money, and with the assistance of the chair of the Community Center, chose an architect and an accompanying team.

¹⁵ An area designated for detailed planning is an area which is intended for development, but the planning for this will be done at some point in the future.

However, in parallel to the promotion of this plan by the residents, the Jerusalem Municipality started preparing general plans which applied, inter alia, to the area of Plan 10133: the Jerusalem 2000 Outline Plan, and the South East Jerusalem Plan. As work on each of these general plans took place, residents were requested by the municipality to freeze the local plan they had initiated until the completion of the general plans. And after these two general plans were completed, the municipality has now frozen Plan 10133 for the third time, until the completion of a new master plan for Sur Baher. This repeated freezing created a situation in which it was impossible to promote the local plan and to bring it to fruition, thus severely damaging the confidence of the residents and eventually leading to the dismantling of the group. Despite the failure of the plan, as of the date of writing, we have decided nonetheless to present the mechanisms developed in the process of its preparation.

Organization: Due to size and complexity of the area, as well as the multiplicity of partners, a small group of representatives was established whose role was to liaison between all the partners and the planner, to act vis-à-vis the municipality, and, of course, to determine the amount to be deposited in the joint fund. In addition, the group was accompanied by the head of the neighborhood committee.

Communal joint fund: The residents opened a communal joint fund in which each of them deposited a fixed amount. The funds collected were used to hire the planner's services, finance the necessary surveys, and assemble a planning team. Later, based on needs that arose, residents deposited further sums into the joint fund. One side effect of lengthening the duration of the planning, due to the municipality's demand to freeze it for long periods while general planning was completed (see above), was that the planning institutions added different

requirements over time, which further prolonged and raised the cost of the process. As a result, residents often had to add substantial amounts of money into the joint fund.

Land allocation for public needs: The area of the plan includes a wide range of plots: cultivated areas along with rocky terrain; gently sloping land along with land on steep slopes; large plots and small plots. As part of the planning, spatial conditions were analysed and unique solutions considered for each area, in line with the conditions. Spaces were identified on the edges of the plan and in the valleys as appropriate areas for public buildings, by taking equal parts of several adjacent plots, in such a way that new plots with multiple ownership were created.

In the rest of the neighbourhood, allocations for public use were set in accordance with the size of the plot, the slope and the accessibility, and accordingly, the building rights for the rest of the plot were set. When a larger share was taken for public use, higher building rights were granted. Conversely, small plots and plots characterized by steep inclines, from which almost no part was allocated for public needs, were given relatively low building rights. This diversity of building rights contributed to improving the urban structure of the area included in the plan. However, the differential building rights proposed met resistance from the District Planning Bureau. Cancelling this mechanism may render the idea behind the plan futile, after the residents worked hard to reach agreements.

Key actor: The head of the neighborhood committee, Haj Hassan Abu Assla, does not own land in the area of the plan, and so has no personal interest therein. In addition, Haj Hassan, who previously worked for the city's Planning Department, is a known figure in planning circles, and his involvement helped to advance the plan.

Operational conclusions: Resident organization is a delicate and vulnerable issue that needs planning momentum to survive. When the planning is drawn out, and success of the statutory process is distanced, despair begins to stir among the residents, which is expressed in disagreements and accusations that break the delicate connections between them. The greater the size of the plan, the more important it becomes that the plan advance rapidly toward its goal. Additionally, the more complex the planning solutions, the more important it becomes that there be openness and flexibility on the part of the District Planning Bureau.

5. Summary

In 1995, Amendment 43 was made to Israel's planning and building law. This amendment recognized the right of landowners, and/or interested parties, to initiate a local plan on their land. Amendment 43 caused a wave of private planning in Israel. Palestinian residents of East Jerusalem, who suffered from poor infrastructure and especially restrictive planning, took advantage of the new possibilities in the law, and began promoting plans in an attempt to break through the limitations of the existing planning, and to increase the possibilities for development in their neighborhoods.

However, this new option, while indeed necessary, is not sufficient. One should not underestimate the change created by the hundreds of plans prepared by the residents and approved the planning committee since the change in the law, but the basic flaws of the existing planning were not cancelled. Residential units have been added but not enough, and building rights have increased but without correspondence to landowners' needs. In particular, the change took place in the private sphere, without an adequate response to necessary public needs. Over the years, the shortage of public buildings and public open areas has increased,

and the poor road system is facing collapse. In effect, as a result of poor planning and development that is only partial and entirely spontaneous, the Palestinian neighborhoods have become neighborhoods which are almost entirely lacking public infrastructure.

This document proposes a solution, even if only partial, to the housing crisis in the Palestinian neighborhoods of East Jerusalem. The solution is based on emerging development trends, arising from the ground up, and on latent possibilities in the law. In effect, we are proposing to encourage private planning, and to guide it towards implementation via the facilitation of agreements among residents, and between residents and the planning committees. The document describes useful practices for reaching such agreements, and emphasizes the need for maximum flexibility of all concerned, especially the members of the planning committees – all within the confines of the law.

The housing crisis in the Palestinian neighborhoods of East Jerusalem can be resolved. The solution is to get rid of the principles of "correct" but unimplementable planning, and to move toward flexible and dynamic planning which adapts itself to the constantly changing situation of the area. As discussed above, only planning of this type, accompanied also by the removal of barriers along the building licensing track¹⁶, is implementable.

¹⁶ For details of the barriers to licensed building, see Bimkom: Policy, planning and development in East Jerusalem, Jerusalem, currently being prepared for publication.

6. Addendum

Bimkom - Planners for Planning Rights has been active in the Palestinian neighborhoods of East Jerusalem since its inception in 1999, and has been involved in trying to achieve infrastructure, public services and adequate planning for the Palestinian residents. Bimkom works in East Jerusalem in a variety of ways, out of a desire to help residents contend with the deficiencies of their built environment: the housing crisis, demolition orders, deficient infrastructure, the huge shortage of classrooms, pollution etc.

Over the years, and with the growing number of meetings with the Palestinian residents, the organization's staff has gained extensive knowledge regarding the nature of the problems from a local, non-institutional perspective, and of possible ways of dealing with them. As we accumulated experience, we also deepened our understanding that a solution, if only a partial one, to the problems of the Palestinian neighborhoods of East Jerusalem lies in rethinking the planning system, the planning tools, and plans that can be implemented. In this document, which was written in collaboration with architect Ayala Ronel, we develop these ideas, in the hope that they will become practical tools that will be used by the planning authorities.

Bimkom's Planning Experience in the Palestinian Neighborhoods of East Jerusalem

Between the years 2004 and 2011, Bimkom led planning of the neighborhood of al- Isawiyyah in East Jerusalem. An in-depth public participation process was undertaken as part of the project, a professional planning team was established, and a detailed outline plan for the neighborhood was drawn up. The plan was recommended for deposition by the Local Planning Committee, however, because of a dispute over the boundaries, it was never discussed by the District Planning Committee which is authorized to approve it. Despite estimates for population growth in the neighborhood, and despite the severe shortage of land for residential and public areas, the planning authorities were not interested in significantly enlarging the neighborhood, but only in the regulation of internal land uses. Accordingly, the planning authorities did not help promote the plan, and placed significant barriers to it, by way of other plans (the Jerusalem 2000 Outline Plan, and Plan 11092a for a national park). Had they behaved differently, the plan would likely have been approved by today, and many spatial problems of al-Isawiyyah would have been solved.

In 2006-2007 Bimkom conducted a planning survey in Jabal al-Mokabber / as-Sawahrah. The survey collected information about the physical state of the neighborhood and the plans applicable to it, in all spatial matters reflected in the statutory zoning plans. The planning basis was compared with the existing situation on the ground, and the current picture of development potential in the neighborhood became clear. The information collected was transferred to the municipality and the District Planning Office in the Interior Ministry. In areas in which the potential for immediate development of public spaces was identified, detailed information was given to specific bodies in the municipality in order to promote the specific development.

The planning survey was expanded in 2009 - 2013 to cover all of the Palestinian neighborhoods in East Jerusalem, and similar information was collected, analyzed and edited.

Architect Prof. Ayala Ronel's Planning Experience

Prof. Ayala Ronel runs an architecture and planning office in Jerusalem. Over the past 25 years she has been involved in urban planning of complex areas throughout Israel: in Tel Aviv, Eilat, Arad, and especially in East Jerusalem, where the planning was carried out either on behalf of the Jerusalem Municipality (in Beit Safafa), the Community Center (Beit Hanina) or on behalf of residents - private landowners and developers or independently organized groups of residents.