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PROPERTY ENHANCEMENT

The invention relates to property enhancement, and in particular a method for apportioning entitlement to an enhanced property.

Problems have been known to arise in apportionment of entitlement where an existing property having a plurality of owners is redeveloped. In particular such problems arise when not all of the owners are in agreement as to whether the property should be redeveloped, or how proceeds from the redevelopment should be apportioned.

An example of such a situation arises in relation to the situation in Singapore following recent legislation. Singapore is a small island state. Land is scarce and limited. The population is increasing, and with it comes the pressure on land for residential and other uses. In addition, Singapore has an effective Government, good economy and an adequate defence force. The legal and judiciary system is good, transparent and effective, giving protection to investments. The political stability is also an added advantage where the question of investments is concerned.

Surrounding Singapore are countries whose residents regard Singapore as a safe haven for their investments. For these reasons, a large number of the residents in the surrounding countries invest their capital in Singapore.

There are also other factors promoting investments in Singapore, such as the political climate in the region.

One popular investment comprises real property. Additionally, the emphasis of the Singapore Government is to encourage home ownership by local Singaporeans. As a result of the policy, some 90% of the local Singaporeans

own flats. These flats have appreciated substantially in value over the years. With substantial Central Provident Fund (CPF) saving, which is mandatory under the law (amounting to about 40% of the nominal salary), there is a substantial pool of saving in the CPF. The applicable rules allow the saving to be used for the purpose of investing in property.

For the above reasons, the pressure on land in Singapore is immense and in recent years there has been a substantial increase in the value of real property. This has resulted in developers being anxious to purchase land to redevelop.

A large number of condominiums in Singapore were built some more than 10, 20 or 30 years ago. These are typically low-rise buildings with no lifts. More importantly, they have deteriorated over the years and some are beyond economic repair and upgrading. Additionally, they have not been built to maximise the allowable limit under the law, resulting in under-use of the land space on which they have been built.

Recently the Government revised its policy in regard to the development of land in Singapore. The effect of this revision is to increase the allowable amount of development on land, particularly residential land. It has, therefore, become profitable for owners of an old condominium to agree to sell together all their units in the condominium to a developer. Such a sale would enjoy a very substantial premium in the sale price of the units over and above the price at which an individual sale of a unit in a condominium can fetch. Such sales have come to be known as "en bloc" sales.

In the last three years, a fair number of en bloc sales have taken place in which all the owners had agreed voluntarily to a joint sale. However, a large number of

attempts at en bloc sales have been prevented because some owners have refused to agree for a variety of reasons to the en bloc sales.

The invention identifies the underlying problems giving rise to the difficulties currently encountered. The invention further provides solutions to these problems. Accordingly the invention comprises a tool which can be used in trade and commerce and which indeed will promote and benefit trade and commerce, in particular in relation to property development.

According to the invention there is provided a method of apportioning, for each of two or more proprietors of property to be enhanced, an enhanced entitlement portion of the enhanced property comprising the steps of determining each proprietor's entitlement portion of the property to be enhanced, and apportioning a corresponding entitlement portion in the enhanced property plus an additional enhancement portion. As a result an entirely fair system of apportionment is achieved.

The entitlement portion may comprise the physical area of the property to be enhanced owned by the proprietor, and the enhancement portion may be a function of the proprietor's share value in the property to be enhanced. Accordingly both strata title area and share value are taken into account. The enhancement portion may also be a function of property enhancement costs, satisfying the developer as well.

A monetary value may be assigned per unit area of the enhanced entitlement portion as a function of property cost and enhancement cost, giving the owners the option of partially or fully cashing out.

The method may be carried out by a computer program.

According to the invention there is further provided

a formula for calculating, for each of two or more proprietors of an existing property to be enhanced, an enhanced entitlement portion of the developed property, in which the enhanced entitlement portion is the sum of the entitlement portion of the existing property and an enhancement portion. The entitlement portion may comprise the physical area of the property to be enhanced owned by the proprietor. The enhancement portion may be a function of the share value of the property to be enhanced owned by the proprietor and, as a reducing factor, property enhancement costs. The enhanced entitlement portion and/or a monetary value is calculated per unit area of enhanced entitlement portion may be calculated based on one or more of the group of factors: land area, plot ratio, gross floor area, nett floor area (less circulation area), market price of land, land cost, building cost, development charge, development cost, professional costs, stamp duty, legal costs, developer's share of nett floor area, owner's share of nett floor area, total of existing of SSCT area, total enhancement area available for sharing.

The formula may be carried out by a computer program.

According to the invention there is further provided a property development scheme in which an existing property to be developed is owned by at least one owner and an enhanced entitlement portion for the owner is determined in the developed property, a monetary value being assigned per unit of entitlement in the developed property. The owner preferably has the option of taking the enhanced entitlement portion or the monetary value thereof, or a combination of the enhanced entitlement portion and the monetary value thereof. The developed property may be divided into sub-units and the owner can

increase or reduce the enhanced entitlement portion to an integral number of sub-units, the difference being made up in monetary value. Thus, a clear alternative, and flexible, option to taking an apartment in the development is provided.

The enhanced entitlement portion is preferably calculated according to the formula set out above.

According to the invention there is yet further provided a scheme for settling a dispute amongst a plurality of proprietors of a property in which the dispute is settled by a representative body representing all of the owners, for example a management corporation. Accordingly, disputes or recalcitrance between individual proprietors are avoided, and decision making mechanisms may be already set up for the representative body.

The invention also relates to an invitation to tender for development of an existing property owned by two or more proprietors stipulating a minimum value for one or more of the group of criteria: minimum enhanced entitlement portion in the developed property against entitlement portion in the existing property; minimum monetary value assigned per unit of entitlement in the developed property; minimum building costs per unit of entitlement in the developed property; minimum circulation area in the developed property; minimum common facilities in the developed property; minimum requirements of sub-unit in the developed property. The minimum requirements of the sub-units in the developed property may comprise one or more of the group of: minimum number of bedrooms in a sub-unit, minimum area of each sub-unit in the developed property. The enhanced entitlement portion and monetary value are preferably calculated according to a formula as set out above.

The invention further provides a transaction in

which an existing property owned by a plurality of proprietors is developed, the proprietors retaining their entitlement in the form of an enhanced entitlement. The enhanced entitlement may comprise an entitlement area in the developed property. As a result no out-and-out sale is required.

The invention also extends to a method of negotiating a property development and/or a method of enhancing or developing a property including a method, and/or a computer program, and/or a formula, and/or a scheme and/or an invitation to tender and/or a transaction as set out above.

As demonstrated by the following illustrative examples the invention recognises that the first difficulty at joint sale is that the majority owners are unwilling to sue the minority owners, even in cases where they have been advised that the chances of success in a suit are high. This is partly attributable to cultural reasons which have resulted in owners being unwilling to sue their neighbours despite the attraction of a windfall. Additionally, they are not sure what suing is all about and they want to avoid the trouble and inconvenience of a court case. There are also costs payable, whether they win or lose, and worse, if they lose an action because of the party and party costs involved. There are even situations where some of the majority owners take the stand that they would refrain from any legal action and wait for other majority owners to take legal proceedings. These owners would then try to enjoy the fruits of the litigation, and at the same time would not be liable for the expenses involved in litigation. This in turn has resulted in other majority owners not being prepared to proceed with legal proceedings at all, resulting in a deadlock position.

Some owners may feel they want a greater reserve price when the market conditions do not sustain that reserve price. If such owners' expectation is not met, they refused to take part in the joint sale.

The second reason, particularly relevant in Singapore, why en bloc sales are prevented is that under S.78 of the Singapore Land Titles Act, it must be proven that it is "just and equitable" for the strata title to be terminated. There is a lot of room for the minority owners to resist the application under S.78. For example, the resistance may be based on the ground that it is not fair that the minority owners should be deprived of a chance to obtain an alternative unit in the new development. But if it is proposed that units be allocated to all the owners, some of the other owners may however want to "cash out" and may prefer to be paid in cash for their existing units. With the case the latter kind of owners can purchase alternative units and avoid what they perceive to be the inconvenience of being involved in another development.

A third problem is that in some condominiums, the strata title areas (i.e. the physical area owned by each proprietor typically separated from others by horizontal planes or layers) do not reflect the share values in the condominium of each owner, that is to say, whilst the flat of an owner may be (say) 3,000 sq.ft. (approx. 280 sq. meters) in area, his share value in the condominium may be less than those of the other owners who have a smaller strata title area. Under S.78, upon the termination of the strata title scheme, the common property is to be shared by the owners in the same proportion as their respective share values in the common property before the termination.

The concept of strata title has been borrowed by

Singapore from Victoria and New South Wales in Australia. One manner of providing for subdivisional ownership in a building is that of a freeholder of the land granting leases for various periods to the lessees of the individual units. Some properties in Singapore are still held under this sort of title. However, under strata title legislation, an individual owner of a unit is given a subsidiary strata certificate of title, each of which title states the area of that particular unit and the "share" which a subsidiary proprietor (i.e. an owner of that unit) owns in the common property by way of "share value". By the phrase "share value" is meant the number of shares (almost identical to the company law share context) owned by that subsidiary proprietor in a corporation known as the Management Corporation. The Corporation owns the common areas of the whole project. The phrase "common property" is defined in the Singapore Land Titles Act to mean the effect of all the properties of the project not comprised in the individual ownerships stated in the subsidiary strata titles. These would include such things as the common corridors, the staircases, the garden, the carparks, and facilities such as, the tennis courts and swimming pool, etc., if any. An individual subsidiary strata owner merely owns the airspace enclosed within his unit. There are also rules governing the rights between the individual proprietor and the corporation or another proprietor concerning such things as the walls, ceilings and the floors.

The "share values" are proposed by the builder of the project to the authorities and the authorities either accept or amend the proposal. Once the share values are determined as being vested in a particular subsidiary proprietor, the values are not changeable.

In the older condominiums, the share values were

arbitrarily ascribed. For example, equal share values were ascribed to individual subsidiary proprietor regardless of the respective sizes of the units owned by different proprietors. Furthermore, the share values are rounded upwards or downwards to whole numbers so that they do not reflect exactly, by way of percentages in decimal numbers, the exact proportion that the area of the proprietor's unit bears to the area of all the units in the project.

Accordingly it will be seen that the apportionment of entitlement in a developed property is a very complex issue.

A fourth obstacle to the en bloc sale efforts also particularly relevant in Singapore is the revenue measure recently introduced by the authorities (the "May 15" measure). This requires the owner of a property who has purchased it within the last three years to pay real property gains tax and stamp duty if he disposes of his unit within three years. The result is that if the owner who has bought his unit within the last three years takes part in a joint sale, then the owner has to pay the real property gains tax and the stamp duty. He would therefore require that these be paid by all the other owners and this attempt will be met with, in most cases, resistance by the other owners.

The invention address these problems and provides various solutions, as illustrated by the following examples.

A solution to the first problem is to provide that the entity which should take the lead in an en bloc transaction is not the individual owner but the Management Corporation (MC). There are a lot of advantages in this. If the MC takes the lead then there is no need to set up mechanisms for decisions to be made

because the mechanism for making the decisions by the MC are already provided for under the Land Titles Act in the case of Singapore. Costs and disbursements are also paid by the MC which typically has a substantial sinking fund. Most importantly, if any legal proceeding is necessary, the MC would be the applicant-plaintiff. This would avoid the first problem entirely, namely as to who the Plaintiff should be if legal proceedings are taken. However, in relation to Singapore at least, to get the MC to be the engine leading these transactions, it is essential that the MC must act within the scope of the Land Titles Act. The transactions must relate to the making of the improvement of the common property within S.48 of the Land Titles Act.

To qualify as an improvement in the form of a total redevelopment it must be ensured that the transaction is not a joint sale because the MC is not empowered to act in any joint sale effort under the Act. So, the answer lies in structuring the deal not as a joint sale by the owners but as a joint development/redevelopment of the property by the MC.

The solution is further enhanced by introducing a "cash out" provision which addresses the second problem identified above. This provision requires that detailed calculations are done and provides that:

(1) each owner is entitled to the same strata title area in the new development as he now enjoys in the old development, and

(2) each owner is also entitled to an additional share in the enhanced area in the new development, after deducting the developer's entitlement of his development costs (the sharing amongst the owners of the balance enhanced area is to be in the proportion of the

share value enjoyed by the owners in the existing common property). This would be fair and reasonable because a owners would then be entitled to a new unit in the new development equal to his present strata title area, and he would also have a share in the nett enhanced area (after the developer's share of the enhanced area).

This method of calculation is eminently fair and would get rid of the objections to the method of apportionment, dealing with the third obstacle set out above.

The cashout provision goes on to say that if a owner cashes out, then he is entitled to payment in cash of the value of his entitlement calculated according to the following formula:

Entitlement x cashout value per square foot (discussed in more detail below).

Since there is no out-and-out sale, the question of reserve price does not arise and since each owner is entitled to sell his entitlement at a premium either to the developer or to a third party, he would stand to gain more than if he were to sell his unit at a joint sale with a reserve price.

The cashout value can be determined following the formula set out in Appendix 1 hereto. It will be seen that the formula takes into account a large number of variables. Firstly the basic area of the underlying land is calculated. The plot ratio (the maximum allowable factor by which the basic area can be increased to form habitable space) is determined to arrive at the gross floor area. Against this, a circulation percentage is

calculated to establish how much effectively common area there will be, generally rendering the development more spacious. The circulation area is thus the difference between the gross floor area and the nett floor area, which cannot be sold by the developer and is used for, for example, common corridors and stairways. The remaining area is calculated as the nett floor area to be shared amongst the owners of the developed property.

The land cost per square foot is then determined by calculating the market price of land divided by the nett floor area. The building cost per square foot is calculated and multiplied by the gross floor area to arrive at the total building cost. To this is added the development charge to arrive at the development cost. Professional and legal charges including stamp duty, conveyancing and so forth are calculated as a percentage of the development cost and added to it to give a total development cost.

This total development cost is divided by the nett floor area to arrive at the total development cost per square foot of nett floor area i.e. the total land cost plus all other costs of building the project per square foot. The total development cost per square foot of nett floor area plus the land cost per square foot are then summed. The developer's share is expressed as a percentage based on the total development cost divided by the sum of the total development cost and the market price of the land. This effectively represents the proportion of the investment made by the developer against the total cost of the development and land price. In the development cost, the circulation area is not saleable. the cost of building such areas must be added to the cost for the nett floor area, which is saleable.

Accordingly the percentage of the net floor area

available to the developer is a straight percentage of the total nett floor area and the owner's share of the nett floor area is the remainder. From this the enhancement area to be shared amongst the owners is found by subtracting from the owner's share of the nett floor area in the developed property, the nett floor area available to the owners in the existing property. The enhancement area available for sharing is then divided between the proprietors proportional to the share value of the property to each owner. The total of the new area entitlement for each owner is then calculated by adding his existing entitlement area (Subsidiary Strata Certificate of Title of SSCT area) to his share of the enhanced area. The cost value of the new area entitlement is the product of the new area entitlement and the sum of the land cost and the total development amount per unit area and comprises the minimum cash-out value. The developer, in tendering for the project, may offer a higher amount, taking into account the market value of existing condominiums in the same area with comparable facilities. The market price of the new area entitlement is the product of the market price per square foot and the new area entitlement.

For example the formula can be embedded in a computer program to calculate the cashout value, taking into account the various factors involved in a redevelopment. The cashout value equals the total development costs of each square foot of the new development. If one owner's entitlement is short of the area of a unit in the new development, then he is entitled either to sell his excess (or indeed the whole of his entitlement) to the developer at the cashout value, or to purchase additional area from the developer at the same cashout value so as to arrive at a complete

unit. The vital requirement of the formula is that it provides a cashout value acceptable to all of the owners and the developer, taking into account the owner's entitlement and the development costs.

The above formula would also solve the fourth problem identified above posed by the May 15 measures. An exchange for the existing strata title area for an equivalent and enhanced area in the new development is not regarded as a sale, and therefore the owner is not required to pay the real property gains tax and the stamp duty. However, insofar as the cashout is for the existing area, then real property gains tax and stamp duty would be payable on the amount of cash attributable to the existing strata title area.

Most importantly, the owners' entitlement in the new development becomes a tradable item. If he wants to cashout his entitlement, then he would be at liberty to sell his entitlement to a third party in the same way as a future commodity can be sold or assigned. The sale would be at a premium over and above the cashout value. A third party (or even the developer) may be prepared to pay a premium over and above the cashout value (but probably at a discount of the present market value of an equivalent development which has already been built). This would give the owner an opportunity to make money and would deprive an unwilling owner of the argument that he would not enjoy the profits on the redevelopment if he were to sell his unit on an out-and-out basis to the developer.

For the developer, if not all the owners in a unit decide to cash out their entitlements, then his outlay for the total development would be substantially reduced, since typically the purchase price of land accounts for 70% of the total development costs. This would lead to

interest saving and financing costs to the developers, some of which can be passed on to the owners in the form of greater entitlements.

Once the owners agree (or are made to agree by a court order for example under S.78 in Singapore) the MC together with the owners would invite tenders from prospective developers to redevelop the other condominiums. The invention identifies parameters within which the developers would be asked to compete for the redevelopment. These parameters are as follows:

(1) The minimum area of entitlement of each owner in the next development in exchange for the present strata title areas would be prescribed. the tenderers will compete to allocate larger areas of entitlement.

(2) The minimum amount of the cashout value is to be stated at a per square foot (or metric equivalent) basis (equal to the estimated minimum total development costs per square foot of the new development). A developer, in order to clinch the deal, may be prepared to offer a higher cashout value.

(3) The minimum building costs per square foot would be prescribed in order to ensure quality construction.

(4) A minimum circulation area would be prescribed to ensure a spacious development, as opposed to a cramped one.

(5) The minimum common facilities, such as, a swimming pool and tennis courts, would be

prescribed.

(6) A configuration of the new units in the redevelopment would be prescribed, such as, the minimum number of bedrooms in a unit, and the minimum area of each unit, in the development.

(7) Rent subsidies or other deals for accommodation of the owners whilst development is in progress.

It will be seen, therefore, that the invention both identifies problems associated with existing arrangements and provides solutions to those problems. Although the situation is discussed with particular reference to Singapore, it will be seen that it is applicable to any situation in which a plurality of owners of a property of any type require a level of certainty in relation to their entitlement following an enhancement of that property. In states other than Singapore, similar considerations will arise where there is equivalent or similar legislation and it will be seen that the methods and calculations outlined above will be appropriate for any such set of circumstances.

APPENDIX 1

	A	B	Formulae
1	Land Area	45,000	
2	Plot Ratio	2.10	
3	Gross Floor Area	94,500	B1xB2
4	Circulation	12.50	
5	Nett	0.88	100-B4/100
6	Nett Floor Area	82,688	B3xB5
7			
8	Market Price of Land	$90,000,000	
9	Land Cost per square foot	$1,088	B8/B6
10			
11	Building Cost per square foot	$220	
12	Total Building Cost	$20,790,000	B3xB11
13	Development Charge	$11,000,000	
14			
15	Development Cost	$31,790,000	B12+B13
16	Professional Stamp Legal etc (in %)	1.10	
17	Professional Stamp Legal etc (Amount)	$34,969,000	B15x1.1
18			
19	Development Cost per square foot of NFA	$423	B17/B6
20	Development Cost + per square foot	$1,511	B9+B19
21	Total Development + Land Cost	$124,969,000	B17+B8
22	Developer's share in percentage	27.98	(B17/B21)x100
23	Developer's share of NFA	23,138	B6(B22/100)
24			
25	Owner's share in percentage	72	100-B22
26	Owner's share in NFA	59,550	B6xB25/100
27			
28	Total of Existing SSCT Area	47,125	
29	Total Enhancement Area available for sharing	12,425	B26-B28
30			
31	Owner A		
32	Existing SSCT Area	2,309	
33	Share of Enhanced Area	621	B29/20
34	Total of new area entitlement	2,930	B32+B33
35			

36	New area entitlement at cost	$4,428,589	B34xB20
37	Assume market price per square foot at	$1,800	
38	Market value of entitlement	$5,274,429	B34xB37

CLAIMS

1. A method of apportioning, for each of two or more proprietors of property to be enhanced, an enhanced entitlement portion of the enhanced property comprising the steps of determining each proprietor's entitlement portion of the property to be enhanced, and apportioning a corresponding entitlement portion in the enhanced property plus an additional enhancement portion.

2. A method as claimed in claim 1 in which the entitlement portion comprises the physical area of the property to be enhanced owned by the proprietor, and the enhancement portion is a function of the proprietor's share value in the property to be enhanced.

3. A method as claimed in claim 2 in which the enhancement portion is also a function of property enhancement costs.

4. A method as claimed in any preceding claim in which a monetary value is assigned per unit area of the enhanced entitlement portion as a function of property cost and enhancement cost.

5. A computer program for carrying out a method as claimed in any of claims 1 to 4.

6. A formula for calculating, for each of two or more proprietors of an existing property to be enhanced, an enhanced entitlement portion of the developed property, in which the enhanced entitlement portion is the sum of the entitlement portion of the existing property and an enhancement portion.

7. A formula as claimed in claim 6 in which the entitlement portion comprises the physical area of the property to be enhanced owned by the proprietor.

8. A formula as claimed in claim 6 or claim 7 in which the enhancement portion is a function of the share value of the property to be enhanced owned by the proprietor and, as a reducing factor, property enhancement costs.

9. A formula as claimed in any of claims 6 to 8 in which the enhanced entitlement portion and/or a monetary value is calculated per unit area of enhanced entitlement portion based on one or more of the group of factors: land area, plot ratio, gross floor area, nett floor area (less circulation area), market price of land, land cost, building cost, development charge, development cost, professional costs, stamp duty, legal costs, developer's share of nett floor area, owner's share of nett floor area, total of existing of SSCT area, total enhancement area available for sharing.

10. A computer program for carrying out a formula as claimed in any of claims 6 to 9.

11. A property development scheme in which an existing property to be developed is owned by at least one owner and an enhanced entitlement portion for the owner is determined in the developed property, a monetary value being assigned per unit of entitlement in the developed property.

12. A scheme as claimed in claim 11 in which the owner has the option of taking the enhanced entitlement portion or the monetary value thereof, or a combination of the

enhanced entitlement portion and the monetary value thereof.

13. The scheme as claimed in claim 11 or 12 in which the developed property is divided into sub-units and the owner can increase or reduce the enhanced entitlement portion to an integral number of sub-units, the difference being made up in monetary value.

14. A scheme as claimed in any of claims 11 to 13 in which the enhanced entitlement portion is calculated according to the formula set out in any of claims 6 to 9.

15. A scheme for settling a dispute amongst a plurality of proprietors of a property in which the dispute is settled by a representative body representing all of the owners.

16. A scheme as claimed in claim 15 in which the representative body comprises a management corporation.

17. An invitation to tender for development of an existing property owned by two or more proprietors stipulating a minimum value for one or more of the group of criteria: minimum enhanced entitlement portion in the developed property against entitlement portion in the existing property; minimum monetary value assigned per unit of entitlement in the developed property; minimum building costs per unit of entitlement in the developed property; minimum circulation area in the developed property; minimum common facilities in the developed property; minimum requirements of sub-unit in the developed property.

18. An invitation to tender as claimed in claim 17 in which the minimum requirements of the sub-units in the developed property comprise one or more of the group of: minimum number of bedrooms in a sub-unit, minimum area of each sub-unit in the developed property.

19. An invitation to tender as claimed in claim 17 or 18 in which the enhanced entitlement portion and monetary value are calculated according to a formula as claimed in any of claims 6 to 9.

20. A transaction in which an existing property owned by a plurality of proprietors is developed, the proprietors retaining their entitlement in the form of an enhanced entitlement.

21. A transaction as claimed in claim 20 in which the enhanced entitlement comprises an entitlement area in the developed property.

22. A method of enhancing or developing a property including a method as claimed in any of claims 1 to 4 and/or a computer program as claimed in claim 5 and/or a formula as claimed in any of claims 6 to 9 and/or a computer program as claimed in claim 10 and/or a scheme as claimed in any of claims 11 to 14 and/or a scheme as claimed in claim 15 or 16 and/or an invitation to tender as claimed in any of claims 17 to 19 and/or a transaction as claimed in claim 20 or 21.

23. A method of negotiating a property development including a method as claimed in claim 20.