

Possible solutions for illegal city development in Beykoz

Introduction

The idea which led to this paper was created during an university project dealing with city development possibilities in the city region of Istanbul. The project was set in the municipality of Beykoz, a Bosphorus adjacent district of roughly 250.000 inhabitants in the very northeast of Istanbul's Asian part. The project was a combined work of Vienna University of technology, Yildiz technical university Istanbul and the University of Dortmund as well as an interdisciplinary work of architects and spatial planners. (El-Khafif, et al. 2006); (Baştürk, et al. 2006); (Fleischmann, Mundl 2006)

Many of the impressions and observations which led to the proposal of this paper came from personal on site experiences during the project and interviews with local university members. Most of the input came from Assoc. Prof. Dr. Zeynep Meray Enlil and Assist. Prof. Dr. Yiğit Evren. They are both from the department of city and regional planning of the Yildiz Technical University of Istanbul's faculty of architecture. Several conversations have been conducted during the time of project development.

Short Outline

The basic observation which led to the main idea of that paper lies within a nearly opposite land use policy in Istanbul and in Austria.

In Austria - and of course many other Western European countries - most of the soil is in private hands. Much of this soil is used for its designated purpose. There is also a noteworthy amount of land that is just used as an object of financial speculation. It is kept more or less as a "soil share" to reduce the quantity of available pieces of land to raise its value especially in times and places of high demand for living space.

In Beykoz or actual in most parts of Istanbul this land use situation is nearly contrary. The historic so called gecekondu settlements of Istanbul are using the land which is mostly in the hands of public authorities for desirable land use purposes such as living, working and recreating. So there is rightfully owned land which is often misused for undesirable or no settlement purpose at all on the one hand and illegally claimed land which is used for preferable settlement purposes on the other hand.

Controlled legalisation of that unique and preserve worthy land use situation will be necessary within the next decade or even better years. It is important to give legal certainty as a motivation for quality improvement to the house owners. It is furthermore very important not to give away the rare opportunity of ongoing public soil control by just giving the title of private ownership to the house owners. Long term land use, so called super edifice contracts between the land owning authorities and the land claiming parties have to be instituted. With such contracts it is possible to guarantee further quality settlement development through private investments in housing quality without giving away the rare opportunity of public soil control.

Furthermore an observation of many recent illegal developments which have to be dealt with in a different way has been made. This paper proposes methods of resolution mostly by reinforcing the rather weak law enforcement by creation of awareness. Awareness for valuable goods those are at stake and against developments that consume valuable urban and natural environment or basically bring disintegration and social segregation to the city.

Claim of the paper

Most of the ideas and observations root from personal experience I gained on the topic and the region during the final university project as well as from conversations and interviews with local university and municipality members. The institutional methods of controlled legalisation, the tactics of active training and marketing of awareness as well as all the further accompanying measures shown in this paper do not claim to be ready for implementation in the actual state of detail.

They do not take all facts, especially the details concerning Turkish law and jurisdiction into consideration yet. Furthermore it would be necessary to study tendencies in housing, population development and marketing impacts in the studied region. They need to undergo further scientific studies - e.g. in an extent of a master or doctoral thesis - before being ready for actual implementation.

But the paper shows an idea, a possibility to cope with the problems many metropolis, cities and even small municipalities face in their task of sustainable providing a liveable space for people of all classes.

Problems such as

- availability of affordable and minimum standard quality soil and housing
- soil misusing and withholding speculation activities in general
- counteracting illegal settlement developments especially in the presence of potential and powerful investors and the absence of powerful enough laws and enforcement
- destruction of natural environment for private benefit and low density soil wasting settlement structures like single family housing "monocultures"

Point of departure

A situation of 80% buildings built on 3rd party's soil is a big problem at first glimpse. A situation of mostly illegal settlement structures poses a noteworthy threat to a healthy structure of a city. Since house owners have no certainty of keeping their houses for at least their own or their children's generation, motivation is rather small to upgrade or basically create the homes in an adequate building quality. A bad state of the building structure is most of the time a problematic result of this.

On the other hand a situation where 80% of the building land is still in the possession of public authorities can be a very big chance and possibility for a sustainable and social acceptable city development. Public authorities have much more possibilities of creating a liveable living space for everybody since public interests are more easily to be enforced over private interests.

This means that within one of Istanbul's most specific characteristic and problem also lies one of its biggest strength and opportunity. Istanbul could be a worldwide example for a municipality with a revolutionary soil policy of public land control. In most of the European and many other 1st world cities a model of major public soil control is - for there most of the suitable building land is in private hands - either accompanied by unaffordable expropriation processes or by revolutionary socialisation processes like it recently happens in Bolivia (Callinicos 2006). In Istanbul such a situation can be accomplished comparable easily.

Private land ownership vs. public soil control

This delicate and often discussed topic is also one of the basic idea of this work. Ongoing and intense discussions concerning particular advantages and disadvantages have been conducted by many scientists and philosophers throughout the last decades.

Two property philosophy adversaries of their time were Friedrich August Hayek (1944), who wrote about property as a guarantee of liberty, and Hans Bernoulli (1946) who wrote about private property as an obstacle to urban planning. Their works are substantial to the ongoing discussion of pro and contra private soil property and therefore - to some extend - private soil control.

From my point of view a general public soil control could look like an extended function of allocation of the public authority. It provides besides technical infrastructure like streets, sewage canals or drinking water supply also the soil for residential, commercial or recreational purposes. This function should be conducted on a national economy basis instead of a business economy pattern.

Short history of illegal housing in Istanbul

Historical outline taken from Baştürk, S.; et al. (2006)

1923-1935 - Strong industrialization

The industry which attracted many people to the city and therefore created a steadily raising demand for living space was built mostly along the waterfront

1930-1950 - Urban planning

Many planners were coming from Europe to help shaping the city after the fall of the Ottoman Empire. They focused only on the historical peninsula, the central district Katkoy and the Beysgur region. There was a significant lack of planning in the regions outside the central districts. In the absence of fundamental urban planning the first illegal and uncontrolled growing settlements arose.

1950-1980 - Fast growth and changing laws

1966 – The so called Kat Mülhyet Law - possibility of building extensions - more or less created the fundament for the classical gecekondü illegal settlement structure. Most of the wooden houses were torn down and had been replaced by concrete apartment houses.

1975 – Meetings to discuss the protection of Bosphorus houses from the fast growing illegal settlements had been conducted because the number of those houses was rising fast and steadily.

1983 – The last time a strong rule of protecting the Bosphorus region was implemented. A special law for the Bosphorus area, nature protection and stopping the illegal settlement process was passed.

1985 – The general law out rules the Bosphorus law – Again thousands of illegal settlements were built in the back land of Bosphorus.

1987 – The courthouse cancelled the „un-protecting“feature of the general law and the Bosphorus law became again the protection law

1990-Today - Stronger social segregation and gated communities

1990 – In the 90ties Gated Communities were built on a small scale.

1999 – After the earthquake many high income people wanted to move to the north-eastern parts of the Bosphorus coastline, because of the geological stability of that region. The pressure on the settlement was rising continuously from then on and many large scale settlement structures were built in the forests of Beykoz.

Terms of illegality

This work tries to deal with different forms of illegal settlements in the Beykoz district of Istanbul. The phenomenon can be observed in the whole area of the officially 7th largest city of the world. The work's focus lies on the gecekondü area of Beykoz and the main institutional idea of establishing legal 3rd party land use contracts between the municipality and private house owners to create a sustainable legal base for sustainable city development.

Illegal through building on someone else's soil

„Gecekondü“means in its classic definition and translation building a house over night. This happened mostly for the reason of urgent demand for living space during the time of massive industrialization and migration to the Bosphorus coastal industry zones. Additional reasons for illegal building were the absence of planning service and overextended authorities in these days. An old customary right reaching back to the Osman Empire forbids demolishing houses that were built over night. Conflicts between public authorities and the land claiming parties are often to be seen though. (Wedel 2004)

Illegal through violating building and protection restrictions

Especially in the forestall protection areas density regulations for building single family house gated community structures have been and still are violated. Before that the nature protection laws have already been violated.

It can be observed that especially in the 3rd zone of Bosphorus law regulation height regulations (e.g. multi story office buildings) are violated.

(Coastal area Management in Turkey 2005)

Illegal only de jura

Gecekondus are built on someone else's soil and thus are illegal, but life is running „pretty normal" though. For example taxes are paid for infrastructure usage, the infrastructure itself is provided by the municipality. To sum it up, most of the settlements are legal by condition, but not by law. Though everything is working out somehow the condition of the settlement structure has to be improved by means of the quality of supply infrastructure as well as the quality and quantity of social infrastructure (especially education, health care).

There is a small minority of illegal built houses on private property. Most of these houses became demolished after the landowner realized the illegal claim of his soil.

To sum up in an abstract way, illegal building on public soil is more or less a municipal soil allocation function for building residential houses but without any permission, contract or legal security.

It is vital to the concept of controlled legalisation that the advantages of the illegal settlement structure such as the vivid structure or the social cohesive neighbourly help are conserved.

(Wedel 2004)

Super edifice contracts

The main feature of the super edifice contract procedure is to give the house owners, already living on the soil the legal right to **use the land**, rebuild the houses on it, enhance and improve them within the possibilities and restrictions of the building and settlement laws but **not to own it**. Basically to give them the right of building on 3rd party's soil.

These land usage rights are tradable but only on approval of the municipality and on continuation of the designated land use. Deviation from the agreed terms of land usage are forbidden and can lead in cases of heavy deviation to a termination of the contract with the possibility of applying pressure by contractile agreed demolition of the house. (A possibility which conversion into an obligatory contractual clause has to be audited very carefully before)

Bequeathing of the rights is of course possible. The municipality or federal authorities do not need to approve that beyond matters of laws of succession. Bequeathing and selling the building fabric is - since it is private property of the contracting party - possible to the extent of a correct parallel land use right transfer.

Examples of super edifice and similar methods

This method has been implemented in Austria and Germany in several different scales and land value ranges, but as far as I have gained knowledge on this, never for nearly a whole district of medium soil value. (A large scale super edifice contracting strategy for low rise residential buildings)

Most of the known examples of such a building right on 3rd party's soil or building lease are used in high to extremely valuable central city districts, high rise business complexes or on the opposite side of the value scale for allotment gardens on the city borders.

The methods can be adapted but will most likely have to undergo changes in the complexity of the contract conclusion process in order to be suitable for mass-implementation.

Simplified, standardised but nevertheless incontestable procedures for a straightforward mass-implementation have to be developed for a successful realisation.

Further there are also examples given for essential accompanying steps like public-private contracting.

99year real estate usage contracts in Vienna central districts

This method is often used in areas with very high soil value and no horizontal - and in case of building height or townscape preservation restrictions also vertical - expansion possibilities. The real estates can be used, renovated and rented out very long time - mostly 99 years or 3 generations - but the owning authorities or private owners (banks, real estate agencies, or else) can preserve their ownership on the object.

Land use contracts for allotment gardens in Vienna

This is an example for low value soil super edifice contracts. The contracting parties are here private individuals and the entity of the allotment garden union instead of a public authority. There is no possibility of subletting the easement. The buildings are financed and built by the renting party. Subletting of buildings as well as bequeathing the land use contracts - and of course the building fabric, as it is owned by the private person - is possible. Selling of the building fabric and the land use contract is possible but has to be approved by the union. The leasing party has the right of proposing a successor in case of termination of contract. (Federal State of Vienna 2006)

Hereditary building rights in Germany

This right of possessing a building on a 3rd party's land is one of the oldest legal frameworks concerning this matter. In many ways this right to build is handled similar to having actual property rights on a piece of land. For example it is possible to mortgage it. Normally contracts are placed for a period of 99 years - equivalent to 3 generations and therefore basically attractive for altruistic quality improvement investments. The leaseholder pays a monthly fee to the owner of the soil which often is a municipality trying to provide affordable soil for persons willing to build a residential building. After the contract expires the former leaseholder gets a reimbursement for the building fabric. Options for a prolongation in case of no public interest in an alternative usage of the land can be enclosed as a contractual clause. Speculation is basically impossible because the leaseholder has the obligation of actual building in due time. Violation of that obligation leads to termination of contract. Selling the property and the lease contract requires approval of the land owner. (Federal Republic of Germany 2006)

In the case of this work the main aim is not to provide affordable building land - in fact most of the land is already used for residential purposes - but to give legal security to the house owners and retain public soil control. Wages for land usage should not exceed prime costs of communal land provision. Here one of the main advantages of public soil control makes an impact on the settlement development. Public authorities in contrast to private land owners do not necessary need to make profit out of providing living room. Sometimes they are even required by law not to make profits from their public duties.

Treaty land use regulation Salzburg

This very innovative but abolished law of the Austrian federal state Salzburg was one of the first regional planning frameworks which allowed the municipalities to draw up contracts between public authorities and private persons concerning building land dedication and appropriate usage. The law was abolished because of too severely interfering with constitutional positioned property rights. In its altered version it still allows the municipality to dedicate building land under specific contractual conditions of proper and timely land use. If those conditions are failed to be met, the dedication expires. The main idea behind this method was to counteract speculative intention of land owners who gained private profit out of public providing of infrastructure. (Scherer 1996)

Contracts securing soil for public needs

Many Austrian federal states have authorised their municipalities to include contractual clauses to building land dedication processes in order to secure suitable land for future

expectable public needs like roads, education or recreational facilities. Such clauses could be included in legal 3rd party land usage contracts as well. (Federal state Carinthia 2001)

Advantages of super edifice solutions

Preserving public soil control and counteracting acts of speculation

One major advantage of the super edifice solution in contrast to giving the title of ownership by amnesty is the fact that the soil stays in public hands. In that case the authority still has the possibility of strongly influencing settlement development. A vital strength many European municipalities have given away a long time ago by privatising most of the land ownership. Public interests are often hard to be accomplished because of private interests in holding back land without using it in its originally designated way.

Nevertheless the aims of people willing to use the land properly are not compromised by the super edifice solution. They still have the unrestricted possibility to use the desired land in its designated way, but not in a counterproductive way like misusing it as a speculative stock.

Stronger hold on legal agreements

Another major advantage of such contracts is the long term power of control remaining in public hands. Precepts can be enforced more efficient and public needs are easier satisfied. It's also easier to penalise violations of contracts - or breach of law in cases of private property. Contracts can be declared get void rather easily on illegal usage of soil. Since access to private property is constitutionally rather hard, on private soil results of violated building restriction often remain as they are. Especially in the absence of powerful building law enforcement as it unfortunately can be often observed in Istanbul.

Planning tactics

There is also an approach of tactical planning involved in this method. Since the public authority is the owner of the soil the private land user and house owner is not able to sell the land to potential developers of undesirable non sustainable projects by himself alone. Selling the house is only possible if he also sells or hands down the land usage right. This is only possible on public approval. On the other hand the public authority is not able to easily sell the land to such persons for they have the legally binding contracts with the house owners. Some sort of stalemate situation is created between the possible protagonists of a problematical soil transaction especially in cases of generous investor offers.

Creating development motivation

Giving legal security to the house owners will most likely be an incentive for improving the private owned houses former standing illegal on public soil. Further the possibility of earning money from the owned houses by legally renting out flat or apartments can lead to private investments in developing and improving the settlement structures. The very fabric of the settlement structure has to be improved parallel to sustain the incentives of private improvement undertakings. The structure of Beykoz or any other settlement entity needs to be developed and improved in a way everybody stays motivated and confident in future enhancement of the living quality. Examples for such an overall concept can be found in the Beykoz development project the I was involved. (El Khafif, et al 2006)

Awareness for the own living place

An ongoing motivated - accompanied by municipal settlement quality improvements - development process can create an impulse of awareness creation for the newly originated qualities of the people's living space. Strong denials against undesirable developments should have it easier to come to existence and then help counteracting undesirable, unsustainable projects.

Additional continuative concepts

For the solution of the problems as well as for the preservation of the gecekondu area's strengths the super edifice measures are a good fundamental concept. The following measures of additional awareness creation can give further support to the new measures and the actually moderately efficient law enforcement structure.

When it comes to the illegal settlements in the forestall area under natural protection the weak law enforcement can not directly be influenced and reinforced in a pure institutional way by measures of private public contracting.

The approach through awareness creation and establishing strong denial against undesirable developments is the main instrument in this special case.

The main idea is to bring several disadvantages of both the low urban quality of these single family house chains and the social segregation through gating the settlement to all the people's attention regardless of their social class. Beneficiaries as well as affected persons should be aroused in an equal way.

If potential investors are able - for what reason ever - to bypass laws of nature protection, building height or density restrictions, it is necessary to outsmart them instead of trying to outlaw them rather unsuccessfully. Otherwise such private stakeholders are able to implement whatever project they want to. Regardless of the negative external effects they cause and they are not forced to compensate.

Such outsmarting efforts could be undertaken by counter marketing their projects in order to reduce the demand for their products. Products like:

- High rise office buildings in the middle of historic fabric substance
- Large scale single family house settlements (gated or not)
- Mass tourism buildings which require and pocket large areas inside the urban area.

This is quite necessary for otherwise further social segregation or at least the prevention of social cohesion will take place.

Definition of awareness based counter marketing

The contents should be professional and strong presentations of disadvantages and threats undesirable developments pose. The strategy must utilize common marketing strategies and psychological effective methods to create awareness for developments that are harming social and environmental structures. It is important not to rise the unfortunately more and more smiled at so called "ecological finger". It is necessary to counteract the developer's pro marketing campaigns with all professional methods trying to lessen the demand for and the attractiveness of unsustainable projects.

Further proposals

Some additional measures and proposals which possibly can support the core measures mentioned in this paper.

Educational awareness training

A method of teaching the population to appreciate and defend the settlement qualities and valuable natural and social resources those are at stake. This could begin in elementary school and going further to evening classes or adult education, workshops, radio and/or television broadcasts or excursions. It is important to bring the importance of stronger control in building laws to the people's attention.

Border Visualization

This is a small and at the first glimpse eventually rather strange looking method of creating awareness. The problem is the absence of the people's knowledge on the existence and spread of protection areas. Therefore often violations against the protection laws are not even noticed by parts of the population. It would be wise to make borders of different restriction- and especially nature protection areas more visible by setting up signs or simply painting lines in the streets.

Earthquake proof building fabric approach

Further medium to long term measures can be general efforts in improving the earthquake resistance of more central situated quarters in order to regain security and attractiveness of these areas. An accompanying measure could be to establish a competence centre for earthquake proof building in Istanbul by pushing university study courses. A positive side effect of such a measure would be a rising level of education and social welfare. (El Khafif, et al. 2006)

Pushing archetype inner city quarters

General marketing processes for renovated earthquake withstanding quarters have to be a logical sequel to the measure mentioned above. Even gentrification measures as a means to an end could pull the extreme settlement pressure of the geologically rather stable regions in the Beykoz back land forest. A huge problem of such an approach has to be outlined though. Gentrification in this special case can be the solution of an extremely big problem. The negative side effect is that one has to accept a problem of nevertheless big but - in my personal opinion - lesser magnitude. It is the proverbial expelling of the devil with demons help but a good chance of reversing the ongoing exodus of financially well situated persons since the severe Istanbul earthquake in 1999. It is an exodus to a secure land and is about to destroy the microclimatic very important and fragile forests.

Gentrification

Gentrification (deduced from the English word "Gentry" which means lower nobility) describes a social process of restructuring within city quarters.

Most of the times this process can be traced in originally low flat quality, low flat cost and old building fabric districts situated near attractive sites like water surfaces, recreational green spaces or vivid inner city areas. In the period before the process starts a majority of socially disadvantaged persons are living in these areas.

The nevertheless good spatial situation combined with low living costs attracts so called district pioneers. Mostly students, artists and members of various sub cultures form this group which often upgrade the quarters by introducing an attractive and vivid flair in the area. During the next step of the gentrification process successful artists and young academics bring capital to the quarters followed by an ongoing demand for upgraded flats. First houses and flats get renovated, attics get converted into attractive lofts and higher income bars and clubs are established. The steadily rising rents and sometimes even rude expelling methods of greedy house owners are responsible for a continuous expulsion of many original inhabitants. New wealthier clientele settle in the quarter and bring along new, higher standards of living. Real estate agencies often use this chance for profit by renovating more houses, producing more luxurious flats thus attracting more wealthy persons. The quarter's alternative, multicultural and social diverse character undergoes an alteration and often is lost. This from a perspective of sustainable urban planning very problematic process can be influenced by city planning or even being supported for reasons mentioned above.

Suggestions and examples for marketing of awareness

Last but not least I would like to show some personally created examples for advertisements or short information clips. These are general proposals for marketing posters, video clips or adequate advertisements.

The sequences and slogans shown in the following figures are only an example of how such marketing of awareness could look like and work. They have to catch a broad attention by a strong message and/or strong images that remain in the minds of the people. Important is that they do not get too polemic nor to arouse the people too much. They must not "incite revolution" or in other words must not incite different social classes or affected and beneficiaries against each other. They should always address all parties.

Compare recent efforts of creating strong images, short advertisement movies or even long documentaries. One rather popular example is Al Gore's "An Inconvenient Truth" which tries to create the necessary awareness for valuable social goods and environmental issues in order to probably initiate a rethinking of "bad" social habits.

Very important in this context is not to focus mainly on the social phenomenon of upper income people wanting to enjoy life behind secured gates in order to be protected from the tensions of more and more diverging living standards. Making a stand against this from my perspective very problematic and undesirable development is not the major aim of this work. Maybe such marketing of awareness strategies can support struggles against social segregating settlement forms in a very small amount. The major goal of this marketing strategy is to pinpoint the waste of valuable natural environment by lowest density building structures and bring it to people's attention. To the ones who are only affected by the negative effects of such structures as well as the ones who benefit - maybe without realizing the overall consequences of the creation of their homes - from living in a single family house gated community.

A possible outcome I could imagine is a more vivid and dense structure behind the gates of social segregation. In this scenario at least significant further damage to the forest would be prevented.

The following chapters contain a choice of prototypical ideas concerning marketing of awareness and do not have the claim to be ready for implementation at this grade of development. Professional marketing agencies should be assigned with the full realisation of such campaigns.

Approach 1 - Value of the natural resources

The primary message here is to show the people the importance of their local natural resources and the way these resources are consumed for private profit and unsustainable settlement forms.

In this case the similarity of the bark beetle's - a vermin responsible for damage to forests - destruction of the vital organs of a tree and the developer's destruction of the vital organs of the city - the green lung forest - is suggested. The undesirable possible outcomes of both actions are displayed next to each other at the end of the message. It's a dead tree on the one hand and a city coughing in smog on the other.

The illustration is self created using aerial photos of an intact forest environment and the compromised natural environment after realisation of a large scale single family house settlement.

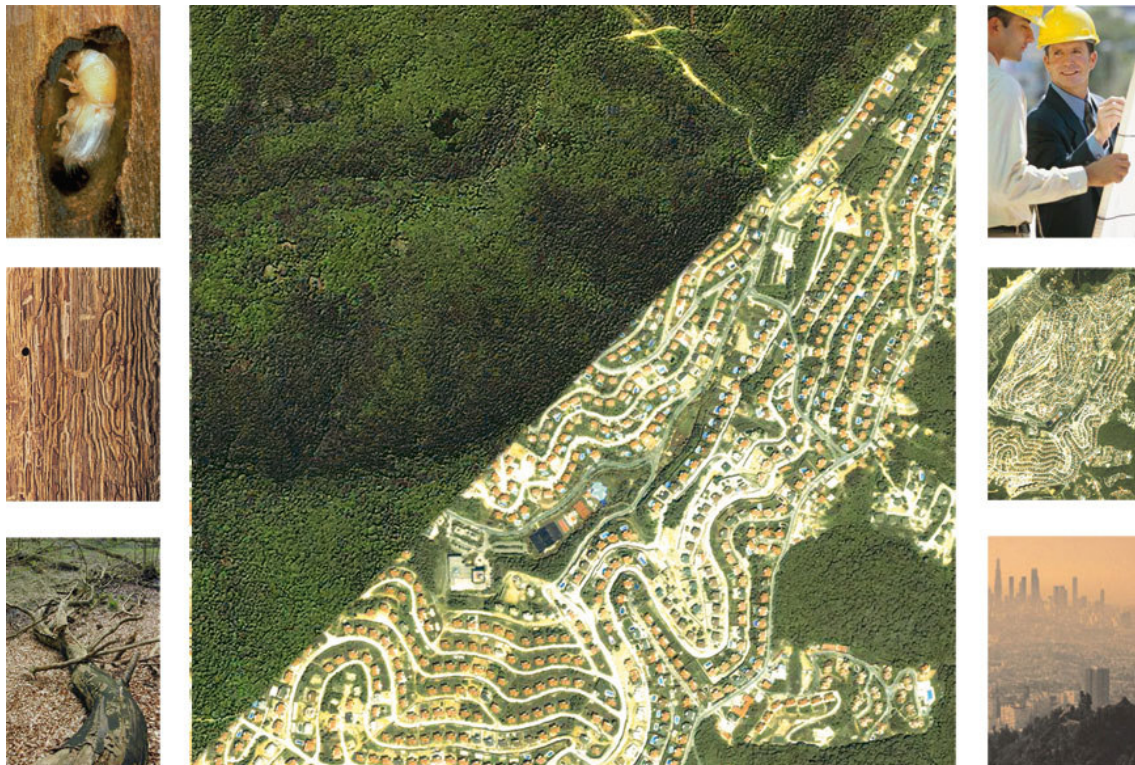


Figure 1: Suggestion for an approach to address to the value of nature resources
(Source: own illustration)

Approach 2 - Raise demand for exclusivity and individualism

Here the message concentrates on counter marketing advertisements pro single family, low density - gated or not - settlement structures. Its aim is to reduce the demand within the potential clientele. This approach has to be launched parallel to providing attractive inner city quarters for the same clientele buying gated communities in the forest area of Beykoz.

The following illustrations show a possible preproduction model of such advertisements. The illustrations are also self created using associative images from a very well known movie. The implementation should be conducted by creating short video clips leading to the final message.



Figure 2: In this prototypical release of the series the eligible individual housing form of typical single family gated community houses is compared to the pretty good known scene from Matrix. In this scene the protagonist is being released from his individual consciousness inside the Matrix and has to realise that his eligible individuality is defined by endless repeating habitats. (Source: own illustration)

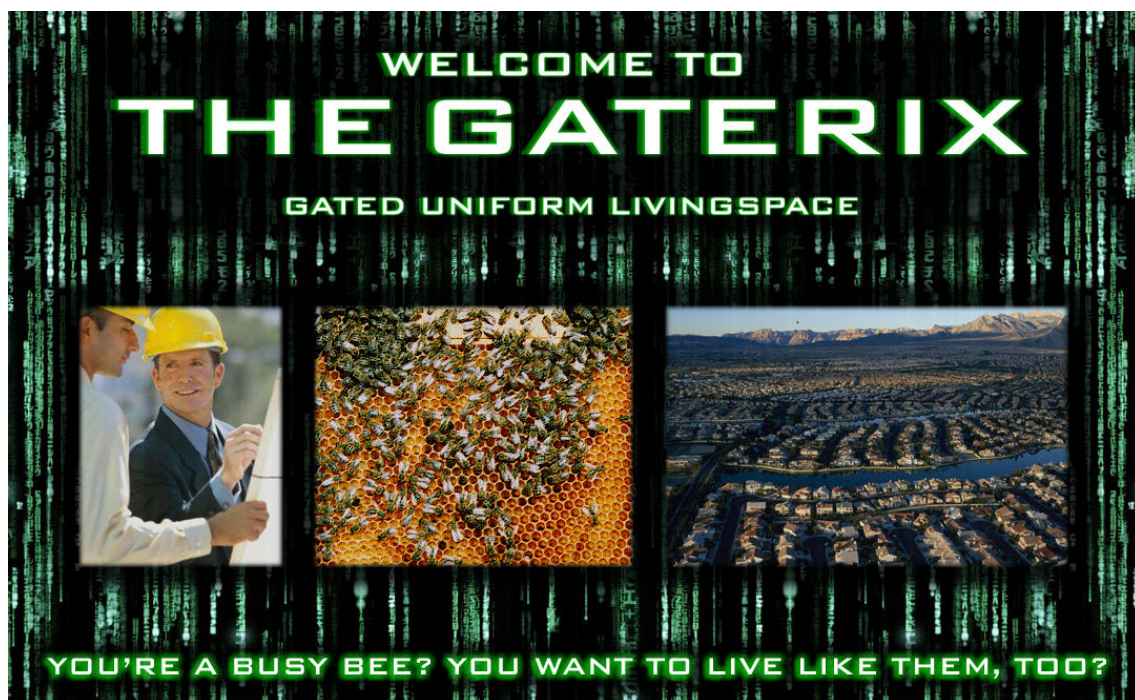


Figure 3: In this prototypical release of the series the demand for individual living space of hard working, successful persons - the primary clientele for single family gated community houses - is being addressed. (Source: own illustration)

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