

Munich Model of „socially fair use of land“

Urban development contracts as an instrument for the creation of affordable housing

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Key words: affordable housing, public-law contract, 'socially fair land use'

SUMMARY

The creation of cheap and affordable housing as well as healthy and sustainable living conditions is a central task of all municipalities. In order to fulfill this task, a procedure was developed 25 years ago in Munich in which private owners and the public sector work together to create building rights. One of the core elements is that the private owners contribute financially to the planning burdens. This means that they bear part of the costs for the necessary transport infrastructure and social facilities, such as kindergartens. This procedure is based on legal regulations that make it possible to conclude public-law contracts between the owners whose land is being developed into building land and the municipality as the planning authority. The model has been adapted and updated several times over the past 25 years. This has ensured that it has been accepted and embraced by owners and the building industry at all times.

SUMMARY

Die Schaffung von günstigem und bezahlbarem Wohnraum sowie gesunden und nachhaltigen Lebensverhältnissen ist eine zentrale Aufgabe aller Kommunen. Um diese Aufgabe zu erfüllen, wurde vor 25 Jahren in München ein Verfahren entwickelt, bei dem private Eigentümer und die öffentliche Hand gemeinsam bei der Schaffung von Baurechten zusammenwirken. Eines der Kernelemente ist, dass die privaten Eigentümer sich finanziell an den Planungslasten beteiligen, d. h. sie tragen einen Teil der Kosten für die notwendige Verkehrsinfrastruktur und die notwendigen sozialen Einrichtungen, wie zum Beispiel Kindergärten. Grundlage dieses Verfahrens sind gesetzliche Regelungen, die es ermöglichen öffentlich-rechtliche Verträge zwischen den Eigentümern, deren Grundstücke zu Bauland entwickelt werden, und der Kommune als Planungsbehörde zu schließen. Das Modell wurde im Laufe der letzten 25 Jahre mehrfach angepasst und fortgeschrieben. Dadurch wurde sichergestellt, dass es zu jeder Zeit auch von Seiten der Eigentümer und Bauwirtschaft akzeptiert und angenommen wurde.

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1. STARTING POINT

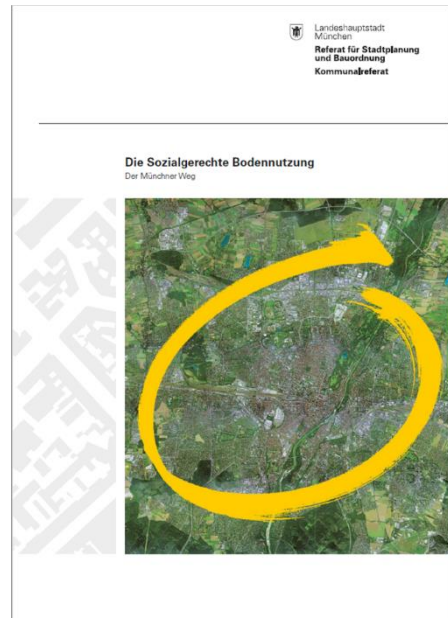
The city of Munich has long been concerned with the question of how affordable living space can be created. One tool that the city uses to create affordable housing in cooperation with private builders and project developers is the model of 'socially just land use' or 'SoBoN' [sozialgerechte Bodennutzung], for short. Introduced in 1995, the SoBoN has developed into a successful model in 27 years, which is now also used by many other cities in Germany.

At the beginning of SoBoN, the focus was not even on the creation of housing, but on the fundamental problem that the city could no longer pay the costs that were triggered by building law creation and the creation of building permits by on its own. In fact, at the beginning of the nineties, municipalities were in such a difficult situation financially that building land developments stopped for the simple reason that there was no money for the follow-up costs.

Specifically, it was about the costs of the necessary infrastructure such as roads, green spaces and the like, but also kindergarten places and schools. On the other hand, the creation of building rights led to a great increase in the value of the land, which remained entirely with the owners.

However, since a standstill was neither in the interest of the municipalities nor in the interest of the land owners or the project developers and the building industry, new ways of cooperation were sought.

Out of this situation and on the basis of newly introduced legal regulations in the Building Code, the 'Munich SoBoN' was developed.



2. CHRONOLOGY OF THE SOBON

At the beginning of the nineties of the last century, as already mentioned, many municipalities were faced with the problem that building land could no longer be developed to the desired extent. This prompted the legislator to enact an - initially temporary - Investment and Housing Land Act in April 1993. On this basis, the Munich City Council was able to pass the first basic resolution on socially just land use in March 1994. The second SoBoN resolution in July 1995 described the procedural principles. About two years later, in December 1997, the third SoBoN resolution was passed. On the basis of an experience report on the implementation in the two preceding years, the SoBoN was again slightly modified and made permanent. The basis for this was also that the regulations on urban development contracts were included in the Building Code as permanent law.

In the following years, the SoBoN was further developed several times. In March 2001, for example, the city council took further decisions on a social housing programme for the City of Munich. In July 2006, with the fourth SoBoN decision, the procedural principles were modified again and the contents from the decisions of 1997 and 2001 were continued. In the same year, the city council confirmed the different funding quotas and funding models to be applied to newly enacted development plans in a similar resolution entitled 'Housing in Munich IV' [Wohnen in München IV].

Further adjustments were made in 2012, particularly with regard to the handling of already existing building rights. It was already becoming apparent that, in addition to the creation of new building rights, the conversion of commercial building rights into residential building rights would also become increasingly important. Another major adjustment took place in July 2017 when, on the one hand, further funding models were introduced and, on the other, regulations were implemented to accelerate the procedure. In summer 2021, there was another comprehensive amendment of the procedural principles. Here, a so-called modular model was introduced to take into account the changed framework conditions on the Munich real estate market.

3. THE SOBON MODEL - AN OVERVIEW

3.1. Description

There is no strict, legal definition for Munich's SoBoN.

The model can best be described as a cooperative, partnership-based development of building land, the aim of which is to achieve socially just land use.

The core idea was, and still is, that private landowners share the burdens and costs, thus relieving the burden on the municipality and making it possible to create rebuilding rights. In concrete terms, this means that a public-law contract is concluded between the municipality and the owner before a development plan comes into effect. Based on the building rights to be created, in this public-law contract, the burdens to be borne by the owner are regulated.

While the municipality agrees to create the building rights, the owner undertakes to assume part of the burdens and to bear them out of his surplus value of the land. Among other things, this means that he must cede land free of charge for the construction of roads, green spaces and further development, as well as contribute to the financing of kindergartens and school places. In addition, they must commit themselves to designing a certain proportion of the newly created residential building rights as affordable housing. This means that flats will be built that are not intended for the free market, but will be made available to certain population groups as subsidized flats at reduced rents or reduced purchase prices

3.2. Scope of application

The SoBoN is applied whenever a planning project, i.e. the creation of building rights, directly requires and necessitates infrastructure measures and at the same time leads to a not inconsiderable increase in the value of the land. Infrastructure measures are above all transport infrastructure, children's and youth facilities as well as schools. But it also includes green spaces and recreational areas or centres for the elderly and much more.

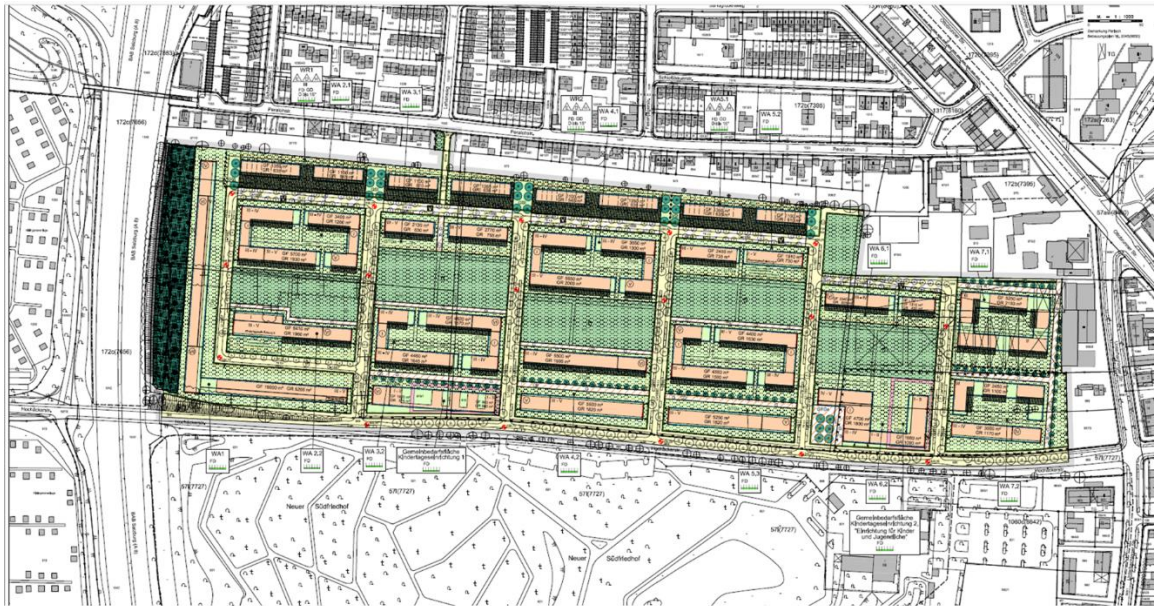
3.3. Participants

Strictly speaking, the participants in the SoBoN process are only the property owners on the one hand and the planning municipality on the other. In practice, however, there are more actors: depending on the actual ownership and property situation of the affected area, there is a partnership between the municipality, the building industry and the property owners. The building industry is regularly represented by project developers from the residential and commercial construction sectors.

4. OBJECTIVES AND PRINCIPLES

4.1. Goals

Although the SoBoN was driven by financial considerations in its early days, its objectives are much comprehensive and more detailed. The focus is on the idea of social and sustainable urban development. The needs and requirements of housing creation are to be taken into account as well as the needs of social infrastructure, open space and greenery, including a contemporary transport infrastructure. Based on the respective actual and political circumstances, the focal points on which the SoBoN was based have also changed over the years. Particularly in the most recent amendments, there was a special focus on the creation of more affordable housing. Of course, this means for the owners or project developers that they have to take on more burdens, i.e. make a higher contribution in the process



example: development plan

4.2 Procedural principles and legal framework

4.2.1 Formal procedural principles

In order to ensure that this procedure is also accepted by the private parties involved, so-called procedural principles have been established. A distinction must be made between procedural principles in the broader sense and procedural principles in the narrower sense. While the procedural principles in the broader sense concern all formal regulations and organizational issues, the procedural principles in the narrower sense refer to core issues of the partnership and the legal framework.

These procedural principles in the narrower sense have remained unchanged since the beginning of the SoBoN.

They are: Equal treatment, transparency and calculation certainty.

Equal treatment means that all planning beneficiaries in the urban area must submit to the same SoBoN regulations if they want their land to be over planned. This also applies to municipal companies and, of course, to land held by the city in inventory as a reserve for the purpose of land development. The clear and uniform requirements of the procedural principles also ensure equal treatment of all planning beneficiaries in a procedure. This is particularly important in procedures involving many property owners.

Equally important is the idea of transparency. The procedural principles in the broader sense are public. They can be inspected at any time by all parties involved, but also by any other interested party.

Moreover, since the procedure takes place in cooperation between the planning beneficiaries on the one hand and the planning authorities on the other, there is a regular, intensive exchange about the respective key points of the plans as well as the associated contractual regulations. Because the respective contracts are drawn up jointly between the parties, the contents of the regulations and especially the burdens are known at an early stage.

At this point, the connection to real estate valuation is also given. Even if from the outside this seems to be only a small part of the process, it is one of the core elements due to its economic importance.

The question of the initial and final values of the properties and the planning requirements to be derived from them have a direct impact on the parties involved, because the burdens to be borne are determined from these data. It is therefore important that all parties involved know as early as possible what amounts are to be expected here.

It is equally important that these amounts are determined neutrally and objectively.

In Munich, this is done by the municipal property valuation.

On this basis, the parties involved can be assured of a reliable calculation, so that the key points of the project development can be determined at an early stage.

4.2.2 Substantive procedural principles

In addition to the basic procedural ideas just outlined, there are three material ideas in particular that make the SoBoN procedure a fair transparent procedure: the ban on coupling, the necessity of causation and the examination of the appropriateness of the contractual services.

The prohibition of coupling is understood to mean the prohibition of bringing other interests of the municipalities not related to the development plan procedure into the contract. For example, the municipality should not accept promises from an owner that he will provide services that have nothing to do with the specific plots of land and the planning in order to obtain the building rights. It would be conceivable, for example, for the municipality to demand that an owner who has a business elsewhere pursue a specific labor market policy in that business. This would not be permissible, however, as it would have nothing to do with the specific building project and the planning.

The requirement of causality ensures that the beneficiaries of planning only have to participate in such infrastructure measures and development plan determinations, i.e. have to bear the burdens for them, which have also been caused by the planning.

This is to be illustrated by the example of a kindergarten. In order to run a kindergarten sensibly and economically, a certain size is necessary. This applies to both the group size itself and the number of groups. For example, a canteen kitchen can only be operated

sustainably from a certain capacity. Therefore, the municipality would like to have a kindergarten with, for example, 100 places. However, from the number of newly created dwellings, a need of only about 40 places can be derived. Then only these 40 places are causal. The municipality must bear the costs for the remaining 60 places. It is then part of the contract design to regulate how this is implemented. It is conceivable, for example, that the owner builds the entire kindergarten and is then reimbursed 60 % of the costs. Likewise, he then receives compensation for the required areas in the same proportion.

Finally, the procedure examines whether the services that the planning beneficiary has to provide are appropriate. In Munich, a rule of thumb has emerged that the planning beneficiary must retain at least one third of the planning profit.

This is also where property valuation is involved.

First, the initial and final values of the properties must be determined. Initial values are the values that the land in the planning area has before overplanning. These are typically agricultural values or values for land awaiting construction, but also values for low-value residential or commercial.

The next step is to determine the final values, i.e. the values that result after overplanning. The difference between the final values and the initial values can then be used to assess appropriateness. After deducting the burdens, which must also be expressed in monetary terms, it can be calculated whether the owners, i.e. the planning beneficiaries, will be left with one third of the planning profit.

In addition, it can be determined which compensation payments are to be made. As a rule, this applies above all to the non-causal shares of the social facilities. However, it can also be a matter of determining compensation payments for the fact that the city cannot build certain social facilities in the planning area and therefore has to buy up land elsewhere. The background in such cases is that not all necessary infrastructure facilities can be represented on the site.

In theory, this so-called SoBoN calculation sounds simple and quick to carry out. In practice, of course, very often time-consuming and labor-intensive peculiarities arise.

This concern, for example, the assessment of certain planning conditions and the determination of initially existing building rights. In addition, the SoBoN process is an ongoing procedure with regular changes. Therefore, it is sometimes difficult to make certain value assessments.

What is decisive, however, is that the results of the SoBoN calculation have a direct financial impact on those involved. Accordingly, there is a strong interest on the part of the stakeholder owners to arrive at the lowest possible values when setting the burdens. Depending on the procedure, this part of the process may therefore require many discussions and negotiations.

4.3 Procedure

In its course, the SoBoN procedure follows the legal requirements of the planning procedure. This means that after the planning decision by the municipality, which is often initiated by the owners or project developers, initial discussions take place, at the end of which the so-called basic approval is given. With this, the parties involved determine that they basically recognise the procedure and want to apply the principles of the SoBoN.

After that, the concrete plans are developed. And in this context, the infrastructural needs that will be triggered must also be determined. This concerns, for example, the question of how many kindergarten places will result from the newly created residential building rights. Or what traffic requirements will be triggered by the new uses, whether residential or commercial. Before the plans are finalised by statute, the corresponding urban development contracts are concluded, in which the burdens are then fixed. The respective amounts were determined during the negotiations and finally agreed with the parties involved.

After the corresponding development plans have been approved, i.e. after the building rights have been created, the contracts are implemented and, if necessary, further specified.

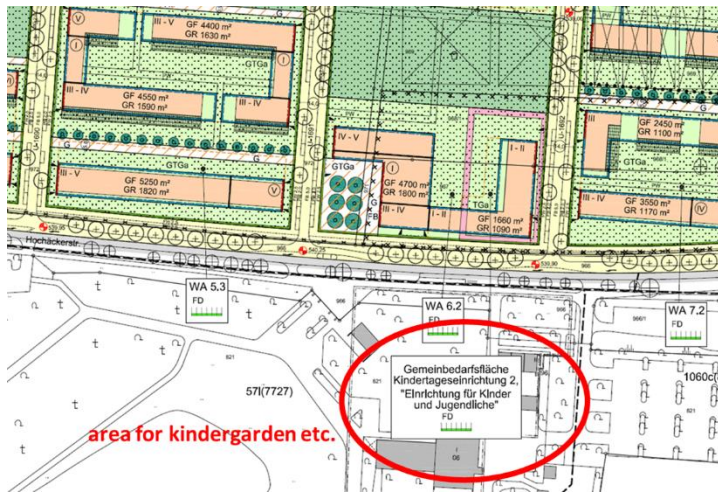
5. ACHIEVEMENTS

Using the SoBoN, a total of around 175 legally binding development plan procedures covering an area of around 1,500 hectares were completed by 2020.

A total of around 5.3 million m² of floor space for residential building rights was created. In addition, there is about 2.3 million m² of floor space for industrial building rights and another 3.5 million m² of floor space for residential-friendly businesses.

At the same time, just over 5 million m² of space was ceded free of charge for infrastructure measures. This includes, for example, about 1.5 million m² for public traffic areas, about 440,000 m² for footpaths, cycle paths as well as open spaces for kindergarten areas and playgrounds, about 100,000 m² for social infrastructure facilities and about 450,000 m² for common use areas. In addition, there are about 3.2 million m² for public green spaces and compensation areas.

In this way, around 3900 crèche places, around 9300 kindergarten places, around 1800 day-care places and around 3600 primary school places were made possible.



example: area for kindergarden in a development plan

In addition, the planning beneficiaries have assumed costs for the construction of infrastructure measures. For example, about € 285 million was paid for the construction of public transport areas, about € 160 million for public green spaces and compensation areas, about € 270 million for the financing of children's facilities and about € 65 million for other services.

6. AMENDMENT IN 2021

Over the last 27 years, the regulations and contents of the SoBoN have been adapted several times to current market developments and the respective urban planning conditions. The last major adjustments were made in 2017 and 2021.

The topic of "cheap housing " was a key element of these two amendments in particular. The quotas of affordable housing to be built were increased in each case

6.1 Changed framework conditions and new objectives

In recent years, the focus and objectives have changed both on the part of the property owners and on the part of the City of Munich.

While in the past project developers used to focus mainly on the construction and sale of condominiums, there are now more and more portfolio holders who do not want to resell the properties they have built. As a result, for example, the ban on subdividing larger blocks of flats is no longer a real burden for some of the owners. The willingness to build mixed-use properties has also increased again in the recent past. This enables the accommodation of

small-scale commercial units, such as those required for daily local supplies or the on-site medical infrastructure.

On the municipal side, the need for affordable housing has clearly come more important. This concerns both the question of the share of subsidised flats and the question of how long these flats are tied to. Accordingly, the commitment periods and housing quotas have been increased.

Finally, it has also become apparent that the SoBoN is increasingly being applied in so-called conversion cases. Conversion means that already existing building rights are either no longer needed or have to be restructured. Typical examples are former industrial areas or military facilities.

6.2 Modular model

With the last amendment in 2021, therefore, not only were the quotas for affordable housing increased, but at the same time an attempt was made to develop a model that responds more flexibly to the respective situations of the owners or project developers and their economic goals. The needs of an owner who wants to hold and manage the properties himself after the project development are clearly different from those of a project developer who wants to resell the properties after the project realisation.

A flexible modular system was developed for this purpose. Starting from a basic framework, which must always be provided, the project developer can now co-decide how he wants to contribute the encumbrances.

6.3. Components of the modular model

The model is made up of four basic components:

Basic component one is the subsidy rate, which means the proportion of apartments that are passed on to the population at reduced rents.

SoBoN 2021: 100 Punkte-Baustein-Modell

Anl:

Punkte	5	10	15	20	25	30	35	40	45	50
Grund-Bausteine										
Quote EOF/MM/PMB in % des neu geschaffenen Wohnungsrechts	20/20/0 40% (nur, wenn 40% Verkauf an LHM)		20/20/5 45%		20/20/10 50%		20/20/15 55%	20/20/20 60%		20/20/25 65%
Schuldrechtl. Aufteilungsverbot bzw. Aufteilungsbeschränkung in WEG-Pakete bei gemischten Vorhaben, in % des neu geschaffenen Wohnungsrechts, mind. in der Höhe der Förderquote	50-55 %	60%	65%	70%	75%	80%	85%	90%	95%	100%
Bindungsdauer		40 Jahre								
Sozialer Infrastrukturkostenbeitrag in Euro/qm GF (sofern ursächlich)	100 Euro (oder Spitz- abrechnung)	125 Euro	150 Euro	175 Euro	200 Euro	225 Euro	250 Euro			
Sonder-Bausteine										
Verkauf an LHM in % des neu geschaffenen Wohnungsrechts (EOF: 375 Euro/qm GF, MM: 675 Euro/qm GF, PMB- Stadl: 1200 Euro/qm GF), Min. 2000 qm	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
Verkauf an Genossenschaften in % des neu geschaffenen Wohnungsrechts	10%	20%	30%							
Einheitslasten Sonderlasten wie bisher ohne Bepunktung										

Grundmodell in orange:

60% EOF, 20% Quote (20% EOF, 20% MM/20% PMB)

80% Aufteilungsverbot

100 Euro sozialer Infrastrukturkostenbeitrag

175 Euro sozialer Infrastrukturkostenbeitrag

Sonderlasten wie bisher

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Module two concerns the extent of the prohibition on apportionment. The aim is to ensure that as many of the flats as possible remain as rental flats and are not sold individually to capital investors.

The third building block, which by the way is always fixed, includes the commitment period for the subsidy quotas, which is now uniformly fixed at 40 years.

The fourth component is the payment of a social infrastructure cost contribution, which in turn pays for the expenses of social facilities.

Since the city has a great interest in ensuring that as many flats as possible are either owned by the municipality itself or by cooperatives, two further special building blocks were introduced. These are the sale of land or finished flats to the municipality itself or, alternatively, to cooperatives.

Each of these building blocks is presented with with various alternatives and the associated numbers. This means that the share of subsidised housing can rise from 60 % to up to 100 %. It is also conceivable that the infrastructure contribution could be increased from 100 € per square metre of floor space to 250 € per square metre of floor space.

Depending on which alternative is chosen, the owner receives more or fewer points. In total, he must always reach 100 points. Now, while for the existing owner the choice of a high subdivision prohibition is largely unproblematic, a classic property developer who wants to resell the flats will tend to opt for a higher infrastructure cost contribution. Likewise, it may be interesting for some owners to keep subsidised flats, i.e. flats with lower rental income, in their portfolio if they fit in well there. For these companies it will be less interesting to sell such flats to the city or cooperatives. This is different for pure project developers who ultimately only moderate the process of creating building rights and whose business model ends after the newly built apartments have been sold.

In summary, it can be said that the model, with its different options, is better suited to meet the different needs of the owners than the one before. However, no procedures have yet been carried out in the new model. It remains to be seen whether all ideas can be implemented in practice in the way that is currently imagined.

7. OUTLOOK

In the last 25 years, the SoBoN has developed into a successful model. The individual success data of the city of Munich have already been presented. In the meantime, other large cities such as Berlin, Hamburg, Cologne and Frankfurt have adopted the model.

But smaller municipalities, such as Münster or Freiburg, each with only about 300,000 inhabitants, are also applying the SoBoN. Of course, all municipalities have adapted the model to their respective characteristics and particular needs.

Other cities that should be mentioned in this context are Tübingen and Ulm. They should be mentioned because their number of inhabitants is even smaller and thus it becomes clear how flexibly the instrument can be used.

In any case, from the experience of the city of Munich, it can be said that this is a model that can be used to create affordable housing.

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BIOGRAPHICAL NOTES

Albert Fittkau studied law at the Ludwig Maximilians University in Munich. He has been working for the city of Munich since 1999. After having worked in the cultural department and the department for work and economics, he has been in the real estate appraisal office since 2006. He is managing director of the expert committee of the township of Munich.

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