



ENFORCEABILITY OF THE LAND USAGE FOR THE TOWN-PLANNING PURPOSES IN UKRAINE

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SUMMARY

The publication is dedicated to the study of enforceability peculiarities with regard to the land usage in Ukraine for the licensed town-planning purposes. To efficiently use land for the licensed town-planning purposes it is important to locate housing, public, utility, industrial and other units environmentally sound, so that it will not result in the increased anthropogenic load on the natural environment. The article shows significance of the town-planning restrictions and conditions of the land development in the cities.

Key-words: lot land, building, town-planning limitations and terms, possible town-planning necessities, town-planning document.

REZUMAT

În articol sînt cercetate particularitățile securității juridice a terenurilor pentru construcții urbane în Ucraina. Pentru folosirea eficientă a terenurilor în dezvoltarea urbană este necesar de a determina locul de amplasare a spațiului locativ ecologic, a planifica proiectele industriale astfel încît să fie minimizată acțiunea umană asupra mediului. Autorul demonstrează importanța limitării construcțiilor urbane și a condițiilor de dezvoltare a domeniului bunurilor imobiliare.

Cuvinte-cheie: terenuri, construcții, limitarea construcțiilor urbane, necesități probabile ale construcțiilor, act de construcție urbanistică.

Problem definition. A land-use pattern becomes one of the most significant criteria of the urban development and a correlation device in the system of social relations in the cities. It is down to the fact that, on the one hand, land is a multi-purpose resource meant for the various usage categories, and on the other hand, it is characterized by restriction within the city lines. On the land allocated for the town-planning purposes, the licensed construction parameters are defined in the town-planning documentation, and the specific types of the land use (planned construction parameters) are chosen by the land-users at their own discretion. Thus, one of the most important conditions for the land-use regulation in cities is to implement a reliable and effective legal system in the field of the land usage.

Topicality. The enforceability problems regarding the efficient use and land care in Ukraine have been studied by such famous legal scholars as V.I. Andreitsev, G.I. Balyuk, V.K. Gurevsky, A.P. Getman, I.I. Karakash, P.F. Kulinich, A.M. Mirishnichenko, V.L. Muntyan, V.V. Nosik, V.I. Semchik, N.I. Titova, Yu.S. Shemshuchenko, M.V. Shulga and other researches. But the regulatory matters concerning the land-use for the licensed town-planning purposes have not been subject to a dedicated study.

This fact determines the increased actuality of the topic of choice.

The aim of the suggested publication is to study the enforceability peculiarities with regard to the efficient and reasonable land usage in Ukraine for the licensed town-planning purposes, and to disclose the role and appraise significance of the town-planning restrictions and conditions of land development in the cities.

Main text. A fundamental step on the way to improve the land-use legal regulation for the licensed town-planning purposes is emergence in the Ukrainian town-planning legislation of the notion “zoning”. It defines functional purpose of a land plot, requirements to the development and area landscape organization. Zoning allows the participants of the construction activities to determine the permitted forms of housing, and to identify the town-planning and infrastructure restrictions on a certain territory. Moreover, from now onward, introduction of zoning is a mandatory requirement to allocate land for the urban development.

The inhabited territories and cities in particular are complex natural and social aggregates including not only the objects of natural occurrence and completed structures, but also the traffic arteries, electric power plants, defensive constructions, telecommu-

nication networks, etc. So, in order to provide for the environmental safety of the population, all the stipulated conditions of the town-planning shall be met [1, p. 54].

Recent period of the urban development exhibits a serious concern on the land resources effective and economical use, and problems of the fast building-up of the city territories [2, p. 39]. Rise of the social and economic community performance efficiency is the reason of the territorial concentration of urban population, continuous growth of the urban area engineering and technical design level, and urban development, that is creation of a modern infrastructure capable to provide for the functioning, social and economic development of cities, maintaining the adequate ecology level for the population and industry [3, p. 24].

In accordance with Article 5 of the Law of Ukraine «On the fundamental principles of town-planning» of November 16, 1992, when carrying out the town-planning activities it is required to provide for the efficient land and territory use, upgrading development efficiency and using land plots for the other purposes [4]. Elaboration and implementation of the town planning documentation amid the variety of types of the land ownership should give consideration to the na-



ture and application both of a single plot of land and of a city territory as a whole. The land property character in cities and other populated areas is determined by the land availability itself as a spatial operational basis for the social, economic and urban development. Actually, a landholder uses not only his plot of land, but also the units of engineering, transport and social infrastructure raised by the local government at its own cost and expense [5, p. 194].

In the contemporary context, it becomes vital for the residential development to allocate the land plots, not used to design purpose, of the above norm area [6, p. 32]. Due to the land resource deficiency, existing peculiarities of buildings and facilities construction amid the compact urban planning are agreed [7, p. 223]. Besides, the urban development participants in many cases seek different goals, which often results in the undesirable deviation from the predetermined concept and general town planning scheme, inefficient use of the urban territories, change of the urban land purpose and deformation of the historic buildings [8, p. 124].

In accordance with part 1, Article 33 of the Law of Ukraine «On regulation of the town-planning activity» of February 17, 2011, a comprehensive territory development is aimed to ensure realization of public interests and implementation of the land use planning and management, construction of external engineering and transportation networks, community facilities, residential buildings and other construction projects, as well as the site improvement. A comprehensive territory development may be conducted by one or more investors by renovating the blocks (housing complexes) of the over aged housing resources [4]. In accordance with Article 39 of the Land Code, use of land under residential and public development shall be consistent with the general settlement layout, town-planning documentation, the plan of land and economic arrangement keeping to the construction rules, national standards and codes [9].

General conditions of legality regarding the land use are those that the land holder complies with the requirements to duly register his rights and maintain the land target purpose [10, p. 16]. In accordance with Article 25 of the Law of Ukraine «On regulation

of the town-planning activity», the development schedule of the area allocated for the town planning is specified in the general settlement layouts, zoning plans and detailed area plans. The development schedule of the area allocated for the town planning is obligatory for record when elaborating the land use documentation.

The development schedule of areas allocated for the town planning beyond the populated area lines is fixed by appropriate district state administration, and in case there is no such administrative district – consequently, by the Council of Ministers of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol municipal state administration. Coordination of issues related to development of the territories allocated for the town planning in the cross-border regions is effected based on the appropriate agreements and showed at the arrangement plans of such territories and general settlement layouts. Making a development schedule of areas allocated for the town planning does not involve termination of a property title or right to enjoy the land plot, change of the administrative-territorial boundaries prior to withdrawal (or redemption) of appropriate plots of land [4].

Building development of cities and other populated areas covering increasingly more area concerns not only the developers' private interests, but also interests of the citizens. That is why legal regulation of the land usage for the town-planning purposes has a nature of permit. Practically, it means that building lease is restricted by the land legal status. However, provisions for the protection of civil rights in the legislation are made regarding by no means all the ways and stages to impose such limitations. In terms of the natural and legal persons' right limitation, land redundancy and withdrawal rules for the town-planning purposes are of significant importance. Also, establishing order for the territory and land plots allocation for the town-planning purposes.

Use of the natural resources is always connected with the public and private interests. This is the reason why solving the state objectives should be in agreement with the population public interests, private rights of citizens and legal entities exercised in the course of the land development.

The public interests lie in the

protection of rights of citizens for a healthy natural environment and accomplishment of the state objectives. Modern value of the land resources as a primary national wealth allows talking about the three main types of the public interests: economic, environmental and social. The developers' private interests lie in maximizing their profits from use of the land allocated for the development. Therewith, the above mentioned public and business interests often do not match. Balance between the public and private interests may be achieved through legal regulation of such institutes as the territorial planning and town-planning zoning, through the state environmental expert review, public hearings and land tenders. Coordination of the developers and urban population's interests is provided through legislative regulation of relations with respect to the land allocations for construction, and subsequently, through setting standards to limit the land use as a special legal object [11, p. 3].

Regulation brought by the urban land-use planning system for the most part has a limiting character. Planning provisions predict the results of progress, but do not guarantee onset of the desired results. When elaborating the general plan, it is required to make full assessment of the restrictions necessary to realize various types of the land use. But the general plan information is not publicly available, so just a few investors may get access to review the list of prescribed planning restrictions. The main objective to introduce the town-planning restrictions and grant appropriate permissions for the land use and development is to ensure that the development of a single land plot is in compliance with the approved area development plans.

Under limitation of rights regarding the land use for the town-planning purposes one should understand limitation, based on the legislation in effect, of the landholder and land user rights for the land plots allocated to them due to the necessity to ensure the public interests (pecuniary, financial, nature-oriented, town-planning, improvement and others). Limitation of a land title covers all types of the ownership (private, state and communal) and types of the land-use. However, in practice, more meaningful limitation of the ownership and use rights are imposed against the private land plots, and relative to the commu-



nal or state-owned land, as a rule, the right of disposal is limited.

An important means in the land development in cities is the land-use encouragement by way of setting exact parameters of land usage, simplification of procedure to get a development permission, which significantly enhances the land investment potential and contributes to the efficiency of the town-planning activities [12, p. 14]. According to cl. 1.2 of «the Procedure for creating the town-planning conditions and restrictions on the land development» approved by order № 109 of July 7, 2011 issued by the Ministry of Regional Development, Construction and Communal Living of Ukraine, the town-planning conditions and land development restrictions is the document comprising a variety of planning and architectural requirements to design and construction with regard to the number of storeys, building density, setback of buildings and facilities, site boundaries, its landscaping, as well as other requirements to the building projects established by legislation and the town-planning documentation. The town-planning conditions and restrictions shall be valid till the work is completed. In case the ordering party changes its intentions providing that they comply with the town-planning documentation, such party shall obtain the updated town-planning conditions and restrictions [13].

To use the land area for the licensed town-planning purposes efficiently, the developers are obliged to satisfy the requirements of the land and town-planning legislation, sanitary and construction standards and rules. They should also consider the public opinion in order to ensure the environmental quality favorable for life and health, and sustainable development of cities and other populated localities.

Conclusions. The study pursued allows making a conclusion that legal regulation of the land-use for the licensed town-planning purposes should be considered as regulatory confirmation and a procedure for the land designation and selection for the town-planning purposes, as well as enforceability of their rational use in order to ensure efficient functioning of cities and other populated areas. It is achieved through setting the town-planning conditions and restrictions for the land development in the order

foreseen by the town-planning, land, environmental and other legislation, and regulatory legal acts adopted by the local authorities.

Under the rational land-use for the licensed town-planning purposes one should understand design, location and upkeep activities related to housing, utility, communal and other units within the populated area lines, which are carried out in compliance with the land and town-planning legislation, sanitary and construction standards and rules with due account for the public opinion in order to ensure the environmental quality favorable for life and health, and sustainable development of cities and other populated localities.

The goal of the efficient land-use for the licensed town-planning purposes is to locate housing, public, utility, industrial and other units environmentally sound, so that it will not result in the increased anthropogenic load on the natural environment, will not create a threat of exceeding the harmful environmental, life and health impact standards foreseen by environmental legislation. This goal may be achieved through imposing the town-planning conditions and land development restrictions upon both, public, local authorities, the landowners and land users, as well as obligations to take the environmental protection measures. Therefore, land usage for the town-planning purposes goes hand in hand with the land protection. A distant view for further academic research on the theme may be disclosure of peculiarities of the state supervision over the land use and development for the town-planning purposes.

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