

Restrictions of Land Use in Ukraine

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Key words: urban planning, restriction, urban land use, permit system.

SUMMARY

The efficient and rational use of land resources in Ukraine is regulated by different kinds of plans from national to local levels that represent “the ideal model” for development of urban systems. Advisable integration of public and private interests in the process of optimal organization territories is the key issue of the present-day. The complexity of the problem can be explained by no experience of solving tasks like this. Both the citizens’ rights for social and public utilities, clean environment and owners’ rights for the most effective use of their land are fixed and protected by legislation. The interests often arouse conflict. The balance between public and private interests is achieved by various lawful tools. The most significant of these tools are legal and spatial planning restrictions of land use. The legal restrictions include right and planning limitations that define possibilities for land use and construction on this land in natural and engineering conditions. The limitations are based on social and history- cultural standards, sanitary-hygienic regulations etc. Factually, land use restrictions are state interference in property rights. But it is a justified act with relation to guaranteeing of equitable free access to nature and public benefits. The various restrictions prevent possible negative consequences from unsuitable community land use.

REZIME

Ефективне та раціональне використання земельних ресурсів в Україні регулюється різними містобудівними планами від національного до місцевого рівня, які створюють «ідеальну модель» для розвитку урбанізованих систем. Доцільне поєднання громадських та приватних інтересів, в процесі оптимальної організації територій, є надзвичайно актуальним питанням сучасності. Складність проблем обумовлена відсутністю досвіду вирішення подібних задач. І права громадян і права власників є зазначеними в законодавстві і захищені ним. Між цими інтересами часто виникають конфлікти. Баланс між громадськими та приватними інтересами досягається завдяки різних методів. Найбільш значними з яких є правові та планувальні обмеження землекористування. Правові обмеження стосуються прав а планувальні визначають можливість використання та забудови в існуючих природних та техногенних умовах. Ці обмеження обумовлені існуючими соціальними та історико-культурними стандартами, санітарно-гігієнічними та іншими вимогами. Фактично обмеження землекористування є втручанням держави в права власності, але це є обґрунтована дія відносно забезпечення гарантії вільного доступу до всіх природних та соціальних ресурсів.

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1. BASIS FOR RESTRICTION OF URBAN LAND USE

Urban land use system may be considered as a spatial basis for social and economic development. Urban systems represent different epochs and their historical, social, cultural and material values which have been accrued from ancient cities to contemporary ones. The value of territory reflects a period of city existence. But at the same time not only length of city existence determines the value of urban territories. There are other factors which influence it, like nature conditions, peculiarities of some buildings and their concentration, the level of community facilities, use of overground and underground area etc. Factually land owners use their not only a land plot but also all common facilities which have been financed from municipals budgets at other times. In contrast to land plot developing costs, capital inputs for common facilities are much bigger and longer. A city aggregates large quantity activities, both private and common which are jointed and mutually dependent. They organise a territorial integrity, so changing one of them without taking into account possible consequences can lead to negative results. It explains complicated structures of urban territories and generates a necessity to protect some areas and buildings from negative consequences of urbanization.

In the Soviet period the foreground task of planning was location of industry. Residential areas, social service and other consumer services were located depending on large-scale industry. Small-scale and middle-scale businesses were not at all. All land use was initiated by government and realized by government too. Every regulation was considered and observed in the process of planning.

Property right accepting made changes approaches to urban planning. Intensive development of small-scale and middle-scale businesses has taken place during the last decade. It increasingly complicates the issues priority of public interests over private ones. Restrictions of land use aim to protect citizen's interest and keep the uniqueness and the integrity of urban land. Analyzing the state of the problem, some reasons which aggravate existing situation should be marked:

- Psychological inability of some land owners to give preference to public goods;
- Public undervaluation of how important is keeping existing nature recourses and historical and cultural heritage;
- Public unawareness of the necessity to develop the infrastructure for future city evaluation.

Based on the foresaid it is obvious that restrictions of property right have both morally social bases and economical foundations.

2. PROPERTY RIGHT RESTRICTIONS

In Ukraine a constitutional definition of property rights to land includes three obligatory components: right to possession, right to transfer and right to use. Property right is total when owner is in possession of all the three parts. In other case a property right is impaired.

Based upon a legal definition of property rights to land all restrictions may be attributed to either one component or some of them: right to possession, right to transfer and right to use.

Restrictions of possession define a possibility to get land from state for communal or private property depending on land category. Land category determines activities which are attributed to the land, for example agricultural, industrial, and dwelling land etc. These restrictions are established by the Constitution and the Land Law and are controlled by the State Land Committee. Examples of such restriction are: a moratorium on private possession of agriculture land, a prohibition to have some kinds of reserves and historical building in private property.

Restrictions of property right transfer can be considered in two ways:

- As result of open commitment by owner with respect to another owner;
- In the case when an owner has an impaired right.

These restrictions are controlled by Land committees, notary's offices and courts.

Land use restrictions limit use and building possibilities.

Restrictions of first and second types are established by law and are known previously. The third one is settled by different plan and a lot of regulations. They may be cleared up in a long communication process with various authorities which are responsible for urban planning and permit system. These restrictions which are more multifarious and complicated are analysed and described in the article more detail.

3. URBAN LAND USE RESTRICTIONS

3.1. Role of urban planning for limitation of land use

An analysis of the variety of the existing limits on land use independent of the land the whereabouts gives a possibility to define the main reasons for their acceptance. The next principal reasons can be presented:

- Conservation of resources;
- Protection of cultural and historical heritage;
- Preservation of the environment;
- Security and improvement of social life conditions for population.;

Consider some examples.

Conservation zones are set for particularly valuable land and around them. Such zones are established for agricultural land, forest reserve and water land and certain types of land use in these areas are prohibited. In the water conservation zones which are made along rivers, seas and other water bodies key recreational activity is allowed. Resources conservation is forwarded to keep nature resource and is regulated by the great account acts of legislation and is controlled by the State and Local committees in different sector of the national economy, such as land, urban, ecology, sanitary, water, forest and other committees.

Protection zones are organized around cultural and historical heritage aiming to avoid negative influence from new construction and to keep their singularity. Buildings and areas which have legal status as historical heritage are defined in “Historical Heritage Law” and other regulations. There are some protection zones which provide to greater or lesser extent limit possibility to use and construct land:

- Zone for protection for separated historical building;
- Zone for protection for a complex of historical buildings;
- Zone for protection for historical landscape;
- Zone for protection for archaeological layers.

The level of limits is depended on the category and historical significance of the protected object and is controlled by the State and Local committees of historical protection.

Preservation of the environment supplements tasks of resource conservation and aimed to keep a state of air, soil and water (including underground water), improving of hygiene and sanitary conditions for living of population. Depending on land plot location some kinds of activities and construction cause the negative consequences for state of close areas. It relates to industry, wholesale trade, parking etc. For this purpose various zones are accepted:

- Buffer areas;
- Sanitary control areas.

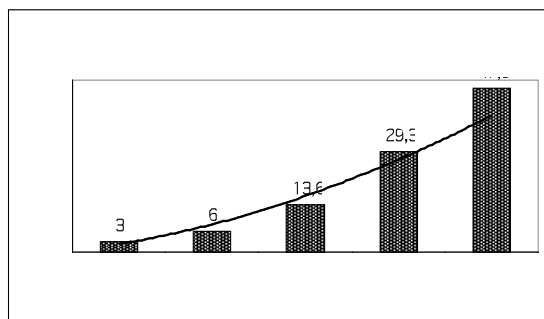
Buffer area is organised around objects which cause the negative influence to environment and helps to reduce this effect. Between industrial and dwelling areas or other social buildings must be buffer area which may be used only for specific activities.

Sanitary control areas, on the opposite, is organised around object such as a water supply point and waterworks which are in need of preservation from any negative man's impact. The dimension and order of these zones are depended on productive capacity of protected object, regulated by various state rules and standards and controlled by the State and Local sanitary, urban and ecology committees.

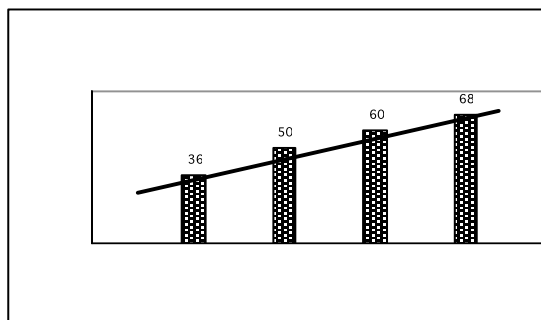
Security and improvement of social life conditions for population includes transports service, schools and kindergartens, hospitals, green areas etc. Integrity of planning structure and predesigned perspectives of development are provided for general and other plans. These plans include the decisions about the location of resident districts and industry areas, construction of roads, green areas composition, engendering constructions and other public areas. For providing these decisions into practice land should be reserved otherwise a compulsory purchase must be used. As it is intricate social and economical question it should be avoided. Therefore land plots are located on the land for future public facilities mustn't be given for private needs forever, only for rent with limited term of lease. The example: the “red line” is established for future roads development. The line is bound where construction is allowed. A owner of a land plot that is located beside road must take into account requirement “red line” and “line for building up”. Engineering services like water supply, sewerage system, electric light strongly influence to a possibility of use areas around them. This type of restrictions is regulated by various state rules and standards and controlled by the State and Local land, urban, transport, social service and other authority committees.

Zoning, as a component of urban planning activity, includes a definition of area borders where statutory possibilities for future land use and rules for construction are determined and fixed. From foresaid it is evident than zoning is one of the important method to impose some restrictions on land use, however it doesn't solve all problems.

Urban territories have a lot of particularities that distinguish them from others. One of the most important is concentration of population. The dynamics of city population in the world in the last centuries is shown in Picture 1. The majority of world population resides in big cities thus organization of optimal conditions for community vital activity is one of the main



Picture 1: The tendency of city population in the world



Picture 2: The tendency of city population in Ukraine

tasks of the present day. In Ukraine approximately 70% population is resided in big cities so the problem of creation conditions for optimal living is very important too. The dynamics of city population in Ukraine is shown in Picture 2. It demonstrate significance these territories for future society development.

Urban territories are complex systems which are developing successfully in conditional of all different urban subsystems are closely connected and the integrity of planning structure is kept. So in addition to key reasons for providing the limits that are described above there are other particularities which cause the necessity to impose some extra restrictions on land use in big cities. Existent planning structure of territories and their composition is the reason for limitation of certain activities which can destroy ecological balance, work of transport and engineering system etc.

3.2. Role of permit system for limitation of land use

As a result of analysis the legally accepted restrictions of urban land use all they can be combined into the follow aggregative groups:

- Restriction of kinds of activity on land plot;
- Restriction of building parameters and construction conditions.

Questions which are not regulated by accepted plans and zoning are solved by the comprehensive permit system. The permit system is multilevel and very complicated. An owner has to submit project documentation for construction with different authority bodies. It takes a long time in condition of the legal ambiguity.

As key permits could be presented the follows:

- Permit for change of land use;
- Permit for building, reconstruction and demolition;
- Permit for joint of building to engineering systems and putting into operation of building.

Permit for changing of land use is need when a proposed by owner activity is restricted by urban plans. In this case an owner has to apply to the authorities for alteration of plan currency in law.

Permits for building, reconstruction and demolition, for joint of building to engineering systems and for putting into operation of building is obligatory in all cases.

Permits for building, reconstruction and demolition regulate: total area of building and its' location on a land plot, planning and architectural design, number of floors, capacity building etc. Other permits fix the requirements for servitude, joint to roads, electricity, central heating, sewerage system etc. It is obvious that they impose extra limits to right owner. Theoretically the system of restriction is universal however practically it not works efficaciously.

5. CONCLUSION

Analyzing a variety of land restrictions in Ukraine next conclusions can be presented:

- Comprehensive restrictions are set by legislation. Legally they cover all problems which are needed for successful development of the territories. Factually, the changing for the worse of the preservation of nature recourse and environment, protection of historical heritage and creation of social life conditions for population is existed in the most part of Ukraine.

- An order and a procedure of restrictions implementation is scattered among different acts of legislation which are related to different sectors of economy. Sometimes different regulations can be opposite to each other. On the one hand it makes very complicated for potential owner to find out completed list of limits for his/her land plot before the start of construction. On the other hand it creates a possibility for corruption of state and local officials. The black market of information about restriction is developing nowadays in Ukraine.

- Ambiguity of the legislation concerning restriction and restricted access to urban plans cause the non-observance and violation accepted regulation being not punished.

To change situation can be achieved by the follows:

- Concentration of the main regulations concerning certain category of land in special collections of regulatory or The Urban Code that generates all urban standards and regulations.

- To introduce into practice the new urban plan for obligatory implementation – “land use plan” that aggregates legal, spatial and normative decisions and prevents multiple-valued interpretation of predesigned use of land.

- To make both owners and officials responsible for non-observance and violation accepted restrictions and to make punishments for it more severe.

REFERENCES

1. Environment Protection Law, 2003, Kyiv
2. Land Code, 2001, Kyiv, Atika
3. Land Planning and Building up Law, 2000, Kyiv

4. Petrakovska O.S., 2007, Legal and normative zoning for restriction of urban land use, Urban and spatial planning, # 26, p.229-234, Kyiv, KNUCA.
5. Petrakovska O.S., 2007, Structure of property right to land and restrictions, Engineering geodesy, # 53, p 185-192, Kyiv, KNUCA.
6. Petrakovska O.S, 2008, Improvement of Legal Fundamentals for Land Development Plans Implementation in Ukraine, Integrating Generations. FIG Working Week 2008, Stockholm, Sweden 14-19 June 2008
7. Property right Law. 1991.
8. The conception of sustainable development of the inhabited localities in Ukraine, 1999, 15 p. Kyiv

BIOGRAPHICAL NOTES

Petrakovska O. graduated from Kyiv National University of Construction and Architecture as civil engineer. Petrakovska O. defended Ph.D. thesis and obtained the degree of candidate of science in speciality “Urban and spatial planning” in 1994. From 1994 to 2004 employed as assistant professor at the Urban planning department. Since 2004 has taken up a position of vice dean of faculty of GIS and land management. The thesis for a Doctor's degree was presented in 2006 the degree of Doctor of Science was obtained. Since 2006 she is head of surveying and cadastre department. Author of more than 50 scientific articles and 10 methodical books. Local coordinator in international project “MSc study programme in Land Management”.

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