

# **Improvement of Legal Fundamentals for Land Development Plans Implementation in Ukraine**

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**Key words:** urban planning, urban planning documentation, restriction of land use, building permit,

## **SUMMARY**

Ukraine has a great experience of spatial planning. However this experience was based on government monopoly of property rights to the land and real estate. It explains problems which exist in the implementation of plans, grant of construction permit and land use control, which are evident in Ukraine. Political, economical and social changes have taken place from the beginning 1990s to nowadays. It makes a necessity to adapt spatial planning instruments and land management mechanisms for new conditions. It is very important for cities, especially for big ones on urban renewal conditions. At the beginning 2000s, about 50% of the built-up land have been transferred to private property. There are new laws about land management, urban planning, organization of the land use, cadastre were passed at last ten years. But, these laws are weakly interrelated in questions of the implementation of plans in view of preservation of the environment and security land property rights. Conception of Urban Planning Code has been worked out in Ukraine in 2007 year. The aims of the conception are improvement of legal fundamentals for land development plans realization and simplification of permissive system for construction.

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## **1. MAIN REASONS OF NECESSITY OF IMPROVEMENT LEGISLATION**

Land reform has been continued in Ukraine for seventeen years. It is accompanied by reconsideration and improvement of land and urban legislation permanently.

The fundamental changes which make a necessity of improvement and adjustment legislation about land use for variable condition are:

- legal definition of new conception of property right;
- substitution of the only owner on means of production to unlimited number of owners and entrepreneurs;
- separation of right on land and building;
- monopolistic centralized system of financing of territory development from state budget turned to great of independent investors;
- declaration of local self-government rights transferred management mechanisms to local level and made relations between deferent levels of authority more complicated.

The spatial planning system in Ukraine is connected with administrative and territorial division which is established by constitution. The administrative-territorial system includes: Autonomous Republic of Crimea, oblasts, rayons, cities, districts in the cities and villages. System of spatial planning is connected with administrative and territorial division and is implemented at the national, regional and local levels. Ukraine is unitary State. But it should be noted that power of local government is accepted and guaranteed under the constitution.

## **2. URBAN PLANNING LEGISLATION AND DOCUMENTATION**

### **Urban planning legislation**

The spatial planning tasks are regulated under urban legislation. The first urban law (“About urban planning fundamentals”) was adopted in 1992. In general, it was oriented to delegation of responsibilities between authorities at the spatial and urban planning field. The next law “About planning and building up of territory” in 2000 determined frameworks of urban planning documentation at the other levels and tasks which are regulated by different plans in 2000. Also “The conception of sustainable development of the localities in Ukraine” (1999), defined the main directions of activities at the field of urban development. Simultaneously, a number of some questions of urban planning are also detailed by government standards, norms, and rules with these laws.

## Framework of Urban planning documentation

Under the legislation, urban planning documentation is adopted graphic and textual materials, which regulate planning, building and other using of territory. In accordance with legislation the urban planning documentation determine not only directions of land use and building but also general requirements and restrictions for territory development. It is worked at national, region and local levels and has a strict hierarchy. Every level decide specific targets and they are develop the tasks

Framework of urban planning documentation

Levels	Names of urban planning document	Scale*
National	General scheme of Ukraine territory planning (was worked out and accepted in 2001)	1:1000000
	Scheme of territory planning for extra-valuable land (by special decree of government)	1:500000
Regional	Scheme of territory planning of Autonomous Republic of Crimea	1:100000 1:50000
	Schemes of oblasts territory planning	1:50000
	Schemes of rayons territory planning	1:25000
Local	General plan	1:25000; 1:10000; 1:5000 (depending on city dimension)
	Detailed plan	1:2000
	Territory Division Plan	1:2000
	Building up Plan	1:500
	Urban Substantiation	1:2000

\* The scale show a possibility to make planning decision in detail and clear

### Urban planning documentation on national and region level

The main strategic document is General scheme of territory planning of Ukraine which includes comprehensive analysis of social, economical, ecological, epidemiological and sanitary conditions of territory development throughout the country. On the basis of this analysis the disproportions of territory development are cleared. It provides guidelines for the future spatial, social and economic development. The extra-valuable land is territory around Black and Azov Seas, international transport lines, frontier territories etc.

Scheme of territory planning at regional level provides decisions for realization of state policy taking into account historical, geographical, demographical, economical, ecological peculiarities, cultural and ethnic traditions.

## Urban planning documentation on local level

At the local level the General plan is the primary one. Other plans work out in detail the decisions which were approved by it. General plan integrates economical, environmental, cultural, infrastructural, housing and other aspects. But taking into account its scale, it is obviously that this plan solves only strategic tasks and does not give grounds for decision making concerning land properties small dimension. With the purpose of detailed elaboration accepted zoning Detailed Plan and Building up Plan are worked out.

Ukraine has a great experience of spatial planning. However, this experience was based on government monopoly on property rights on the land and real estate. It is very important to notice that General Plan, Detail Plan and Building up Plan existed at the soviet time and are kept practically without considerable modifications nowadays.

Ukraine has a “building heritage” like any post soviet country. One of its components – blocks which are built up with many-storied dwelling houses. Many dwellers privatized their apartment and became owners. But property right includes right for flat only, not for facilities outside and land. Ownership on land can be realized after creation “United Owner Association», like a condominium. Moreover, this association must be registered legally. During the process of association formation a lot of problems both legal and spatial are appeared. So we can not call the evolution this process progressive. As a result of absence of land property around many-storied dwelling houses – is the opportunity of building of new houses, this is reason of worsening of living conditions. That causes establishment of new kind of the urban planning documentation - Territory Division Plan. This plan is first among plans of urban planning which are directed to property questions. It did not have an analogue at Soviet time. The plan covers the land of microdistricts or blocks and delimitates land around dwelling houses and other buildings. Main aims are delimitate dimensions and boundaries of:

- land around existed and projected houses both residential and public;
- not built-up area, which can be used without worsening of living conditions;
- existed and projected servitudes.

The state norms and standards concerning green, rest zones etc. according to “Rule and procedure of housing block territory delimitation” (2001) are basis of dimensions and boundaries definition.

Also “Rules of territory building up” are defined for elaboration by legislation (hereinafter “Rules”). The “Rules” have status of normative-legal document but not urban planning documentation. Every urban plan is characterized by limited access for citizens but “Rules” are to include open information only. The main idea of this document is generalization of possible land use conditions and restrictions and popularization among population. This document contains textual part and zoning plans. The textual part contains a description of procedure and requirements for:

- planning, building up, reconstruction of city territory;
- land relation between participants during construction;
- getting of building permit;

- basic data for designing;
- elaboration, agreement, expertise and approval of project documentation;
- construction, reconstruction, renewal of buildings and infrastructure;
- putting of constructions into operation.

By means of zoning plans, areas with preferable use of land and especial conditions for use are determined. Common requirement and conditions are fixed for every area on the plans. They include:

- functional possibilities and priorities of land use between boundary areas;
- list of restriction of land use (urban planning, sanitary- epidemiological, nature-conservative, environmental, historical, cultural and engineering of them) and their meaning;
- marginal construction density, number of storeys or height of building;
- marginal distance between building, boundary of roads and boundary property, etc.

Putting into practice of the “Rules” would fundamentally promote creation of favorable investment conditions in Ukrainian cities. That could influence on decreasing of a shady market of information service. As they are to be financed from city’s budget the process of formation is very slow. At the same time a disinterestedness of some responsible authorities and officials breaks this process. Nowadays these “Rules” are accepted for six cities including Odessa, Poltava, Chernigov, Cherkassy, Sevastopol and Kiev (only downtown).

### **3. URBAN LAND MARKET**

The land reform and land policy are connected with a land market formation and development. At the beginning 2000s, about 50% of the built-up land have been transferred to private property. In Ukraine the main peculiarity of land market is existence of primary and secondary markets. The first one contains the state and municipal land and second – private land. State and municipal land turns to second market by privatization and selling. It is very important to notice that the first possibility of privatization of the land for commercial purposes appeared after 1995 only as a consequence of President’s Decree “About privatization and rent of land for entrepreneurship”. Later on that was developing with Decrees “About sales of non-agricultural land” (1999) and “About measures oriented to development and regulation of localities land” (2000). So in reality the city’s land market started to develop at the same time.

Analysis of the land price on first market show the dependence of land value on city size. Land value is increasing with the increasing of city size. The price of one square metre of land at the city with population less 100 thousand people is two times less that in the one with population 500-1000 thousand people and dozens times less than at the “city millionaire”. It explains higher investor’s interest in acquisition of the land in the big cities. Analysis of the land privatization for different kinds of land use gives evidence that most of them are privatized for construction of shops, offices, cafes, hotels, restaurants especially at the beginning of privatization. Often construction of buildings of that kinds don’t demand very big land plot. That provokes a wish of investors to possess the land with advanced infrastructure and in city centre.

Functioning of land market bring to the cooperation between its participants: state authorities, owners, lawyers, financiers, realtors, estimators, developers, etc. The State on the one hand provides the control at land use and environmental protection and on the other hand can be owner and investor. Control for land use has different features at the primary and secondary markets.

#### **4. MECHANISMS OF IMPLEMENTATION OF PLANNING DECISIONS**

Implementation of planning decisions is provided by using of permit system. In Ukraine ownership on land doesn't guarantee the right for building up of this land. Only owner has the right to get building permit. Superficies as category of right is not at practice in Ukraine.

The correspondence of land proposed to pre-arranged land use is verified on the next main stages:

- the agreement about land plot using;
- the agreement about change of land plot using;
- working up of the documentation for transfer state land property to private ownership;
- working up of the land lease documentation;
- getting of the permit for elaboration of survey and design works;
- getting of the basic data for designing (“Architectural-planning Assignment” and “Technical conditions”);
- agreement, expertise and approval of project documentation;
- getting of the permit for building works;
- getting of the permit for setting building into exploitation.

In the time when intergovernmental connections and practices relating to public services change constantly, one the largest problems for owners and investors dealing with the state machine is the complexity of the very process of communication with them and taking into account a pay character of several services, sometimes results in unreasonable material expenses. The governmental and local governmental authorities are represented by many various departments. Even the search of an authority which competence is the settlement of one or another issue may appear a complicated task and considering that the majority of them are organized vertically, there is often a necessity of complex process of approval of questions between these very departments and their subdivisions. This is further aggravated by unstable organizational structure and distribution of managerial functions between the industries which directly settle issues of land use – city building and land management and separated informational sources.

The unavailability of open access to the information of city-building documentation results in that actually only after the agreement and approval of design documentation, the land owner has information of full list of restrictions regarding the use and development of land. Furthermore, the expenses for the reproduction of target often significantly exceed the plan of investors before the registration of rights for land and rights of development which, in its turn, reduces the efficiency of investments.

It should be noted that the control of the use and development of ground areas differs considerably in the primary and secondary markets. In the first instance, there is a rigid control, in the latter, on the purchase of developed ground areas by civil-legal agreements, it is hard to follow the changes in the functional use and capacity of city-building objects which may lead to the aggravation of the conditions of environment and breach of city-building, construction and sanitary-hygienic norms.

The questions of ownership in the process of territory management, except the said laws, is also regulated by Land (2001), Civil (2006), Water and Forest Codes, laws “About Ownership” (1991), “About Land Management” (2003), “About Environment Protection”, “About Land Protection” (2003), “About Public Control of Use and Protection of Lands” (2003), “About Division of State and Communal Lands” (2004), “About Responsibility of Companies, Their Associations, Institutions and Organizations for Breaches in City-Building Sector” (1994), “About state registration of right on real estate and their restrictions” (2004), other laws and norms and regulations. It should be noted, that in some questions, they conflict with each other and this enables to use these ambiguities when passing unreasonable decisions. Regarding informational provision of the mentioned issued, In Ukraine, the law on cadastre is still not passed, and the status and objects of cadastre documentation is indefinite. An essential complicating factor of practical application of law in the matter of planning and use of lands is the unreasonable practical redistribution of important functions of city-building process regulation to adjacent sectors unspecified by law. All of the above explains an urgent necessity of passing city-building code which would clarify many undetermined problems

In 2007, the concept of code was developed and approved and it should be passed before end 2008. This document is aimed at the improvement and development of legal base in city-building sector, settlement of city-building documentation matters, determination of powers of national and local government in territory development, improvement and facilitation of permit procedures in placing, design and construction of facilities, strengthening of responsibility for breaching city-building documentation, raising of openness and transparency of decision-making. The city-building code is aimed to solve painful problems of present in implementation of city-building documentation and exclusion of a possibility to breach law in land use both on the part of owners and officials. These questions, however, may not be determined by this document; therefore, exists an urgent issue of passing laws “About Cadastre”, “About Property Formation”, unified approaches to the formation of restriction system relating to land use and development are determined and, which is important, the applicable law should be coordinated excluding a chance of its interpretation in different directions.

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## **BIOGRAPHICAL NOTES**

**Petrakovska O.** graduated from university Kiev Institute of Construction and Architecture (today it is named Kyiv National University of Construction and Architecture). Petrakovska O. defended Ph.D. thesis and obtained the degree of candidate of science in speciality “Urban and spatial planning” in 1994. She defended thesis for a Doctor's degree and obtained the degree of Doctor of Science in speciality “Cadastrе and monitoring of land” in 2007. The title of thesis for a Doctor's degree was “The methodology of management of land use system at urban territory”. Today she is vice dean of faculty of GIS and land management and head of land management and cadastre department in Kyiv National University of Construction and Architecture.

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