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URBAN LAND-USE LEGISLATION IN A POST-SOCIALISTIC PERIOD. EXAMPLE OF RUSSIA

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At this time Russia along with other countries formed in the territory of the former Soviet Union is undergoing the difficult transition from socialism which negated market-based relations to a system built on these very relations. This report describes specific aspects of this transition with respect to land-use legislation and town-planning.

First of all, one should understand that until recently Russia had no land-use legislation and did not need such legislation. The reasons for this seemingly paradoxical situation are simple. For a long time all land was owned by the state. A solitary owner does not need laws, because these laws regulate the relations of different and equal parties. The state acted as one "supreme" ruler and thus relations in connection with land use had the nature of orders and subordination. This arrangement did not need any laws and was based solely on administrative command methods. Decisions took the form of multiple government resolutions, departmental instructions, norms and orders but not a single law on land use was in place.

With the appearance of a variety of land owners, including local governments and private individuals, the need for land-use laws became necessary. The first town-planning law was passed in 1992 to be later succeeded by the Town-Planning Code of the Russian Federation in 1997. Currently, several draft laws in this area are being reviewed.

Analysis of the current transition phase shows that the central problem is a conflict between understanding and interests: understanding what should be done and how to do implement efficient reforms in the interest of the entire society, and the narrow departmental interests of administrations which attempt to preserve and expand their authority and thus block and distort the essence of reforms.

Our discussion of the specific features of this transition will address three key questions:

- 1) Where are we going? And what inheritance of the socialistic period do we have to leave behind?
- 2) What different opinions exist in the understanding of town-planning reforms? (The "what" and "how" questions.)
- 3) What are the prospects of town-planning regulation in Russia?

Where are we going? And what inheritance of the socialistic period do we have to leave behind?

The non-market system of town-planning regulation inherited from the socialistic period differs from a market-based one in several key characteristics (Fig. 1). Transformations in Russia have to cover the distance

from a situation when the state (represented by state departments and organizations) is a solitary owner of land to a multitude of owners represented predominantly by private parties;

from a situation when the state is nearly the only source of finance for construction activities to a situation when these activities are financed predominantly by independent private parties;

from a situation when real property rarely changed hands and thus its actual value could not be learned and no adequate value-based taxation is possible to a reverse situation when all this basic elements of the market are in place;

from a situation when cities have next to no economic incentives to improve land use and transform the urban environment (e.g. by removing industrial polluters from the most valuable city territories) to a reverse situation when such incentives are created through legal zoning and adequate taxation system which promote improvement of the city environment;

from a situation when use of real estate is governed by individually determined "designated purpose" which, once established, may not be changed for a given property to a situation when use of real estate is determined by legal zoning which allows for changes within the established frames promoting more efficient use of the property;

from a situation when land may not be mortgaged to obtain a construction loan to a reverse situation which promotes private investment in urban development.

The transition process is obstructed by the inertia of the former system which continues to replicate itself and gives rise to many post-socialistic town-planning problems. The most important of them are:

Lack of legally important public information for investors on permitted uses and parameters of construction projects in different parts of a city.

Subordination of land to improvements on it, as indicated by the land allocation process. Investors in construction projects can obtain long-term rights to land (ownership or lease) only when construction is complete rather than at the beginning of the project.

Cumbersome bureaucratic process of agreements and permits, in which the functions and authority of different administrative agencies give them monopoly and opportunity to charge fees for the preparation, conciliation, and expert examination of required documents. Strong adherence to obsolete methods is evident: some specialist do not understand, and others do not want to utilize new methods (e.g. legal zoning) and market-oriented approaches.

Opposition of certain administrative structures which understand the essence and the need for new methods (in particular, legal zoning) but, nevertheless, obstruct their introduction, correctly seeing them as a threat to their inflated importance and opportunity to earn money in the old convenient way, i.e. by making decisions at the discretion of the bureaucrats. This opposition is manifested in the so-called "departmental laws" intentionally intended to protect the interests of these structures.

Shortage of positive examples which could convince local administration that legal zoning is necessary and will bring real advantages (e.g., evidence of dramatic increases in budget revenues from real estate). At the same time, some negative examples of land-use regulation are perceived as positive, and many cities follow their misleading advice, further aggravating the situation in localities.

What different opinions exist in the understanding of town-planning reforms? (The "what" and "how" questions.)

In the most general sense, any town-planning system may be described by the relationship between its two basic components (subsystems):

(a) a subsystem of grounds for decision taking (regulatory acts and zoning documents) which defines **what** may be done or built on the land plots;

(b) a subsystem of decisions making procedures which defines **how** to implement what is permitted by the legal zoning law.

these subsystems have an explicit bond: clear and understandable legal determination of what may be done supports a clear and better organized process of obtaining agreements and permits which involve less time-consuming administrative procedures, smaller number of bureaucratic agencies, and ultimately, more reliable guarantees for the applicants that their development plans will be realized in the desired time. And, conversely, lack of clarity is “compensated” by a higher number of administrative and mediator agencies, approvals and time required to obtain these approvals, stronger corruption and criminality of the business, higher investments risks and, as a result, lower investment volumes.

Two types of relationship between the “how and “what” may be identified (Fig. 2):

Relationship of the first type is characteristic of the current post-socialistic period and is demonstrated by:

- a) “what”: individual approach to the determination of rights for use of land and other real estate;
- b) “how”: long-term rights to land (ownership or lease) are granted at the end of the investment process (when construction project is completed).

Relationship of the second type is emerging in several cities of Russia which have adopted legal zoning regulations and is typical for a market economy:

- a) “what”: zoning approach to the determination of rights for use of land and other real estate (these rights are established by legal zoning regulations on permitted uses and construction parameters);
- b) “how”: long-term rights to land (ownership or lease) are granted early in the investment process (prior to the drafting of project designs or to the beginning of construction).

At present, Russian cities are faced with the choice between different ways of organizing these subsystems. The choice is conditioned on adequate understanding of the essence of legal zoning and town-planning regulations which establish it. Appropriate provisions are contained in the RF Town-Planning Code. In practice, however, two conflicting interpretations of the law are in place.

The first approach understands town-planning regulations as certain characteristics attributed to a zone as a whole (without specification for particular land plot in the zone) or individually for each land plot in the zone so that these characteristics may differ among neighboring land plots. Evidently, this interpretation of town-planning regulations entails a multi-stage and long process for developing such regulations (Fig. 3): (1) when the master plan is designed; (2) when the master plan decisions are applied to particular zones established by the plan; (3) when zonal designs are applied to particular districts within the planning zones; (4) when district designs are applied to local zones within the districts; (5) when local zonal designs are applied to particular blocks with these zones; (6) when block designs are applied to land plots within the blocks. Several comments are appropriate here:

- Legal ambiguity with regard to permitted uses of all land plots in a city will last (fixed as a legal reality) over the indefinitely long (several years, as a minimum) period of developing the regulations. As a result, investment in the city will be barred and few investors will dare to cross the barrier. Most will go where no such obstructions exist.

- the greatest paradox of this approach is that legal ambiguity will survive even after the regulations are finally established: things will remain the way they used to be because such regulations are similar to establishing “designated purpose” and individual construction parameters for each particular plot of land. All they say is “this is how it is now and should be in the future” but are completely silent on what may be

changed. An investor seeking an answer to this question will need to obtain new permitting documents tailored to his investment plans for a selected land plot despite the formal availability of laboriously produced town-planning regulations.

Another paradox is that these regulations and procedures reduce the legal act of zoning to a technical activity which de facto implements the old individual approach to town-planning which is counterproductive and unsustainable in a market economy.

Apart from the above, this approach constitutes an open contradiction of the provisions of the RF Town-Planning Code.

The second approach rests on the provision of the RF Town-Planning Code (Article 39(4)): "Legal regime established for each territorial zone by the town-planning regulations shall be equally applicable to all land plots and other real estate objects in that zone". From the above it follows that the concept of "town-planning regulations" is based on three fundamental features which unambiguously distinguish them as legal regulations from some other interim surrogate of the planning technology: (1) the regulations are assigned to all land plots and other real estate objects within a zone, and for this reason are binding on all users which are able to understand them unambiguously without any interfering "interpreters"; (2) "equally applicable" means that no different regulations may exist for land plots in one and the same zone; (3) when legal regulations are said to be established for a zone, it does not mean that the regulations are assigned to a given territory per se, but a method of assigning regulations by means of a homogeneous zone. The above features determine the composition of town-planning regulations and distinguish them from planning standards and construction rules applied to a particular construction project.

Evidently, the first approach directly violates the law by permitting different requirements for land plots within one and the same zone. This means that the concept of "town-planning regulations" is distorted turning them into auxiliary benchmarks bureaucrats use to resolve the fate of each particular land plot individually with each investor.

Speaking of procedures for the allocation of land for development purposes, they may be described as follows:

- (1) the currently used procedures are excessively cumbersome, long and expensive;
- (2) these procedures solidify the "topsy-turvy" situation when long-term rights to a land plot may be acquired only at the end of the investment construction process (Fig. 4);
- (3) experience proves that these procedures may be revised and simplified only by means of legal zoning regulations which provide a list of permitted uses for the real estate.

Cities which have implemented legal zoning regulations are able to (Fig. 5):

- (1) reduce the number of administrative structures and other agencies involved in the process of issuing permits to 10-12 against the current 40 or more instances;
- (2) reduce the time period for the execution of permits (which precedes the development of project designs) from 1-2 years to 2-3 months;
- (3) reduce the costs of these permits from 10 percent to 3-4 percent of the total project costs;
- (4) reduce the number of official charges investors are required to pay administrations and other agencies from 70 to less than 30.

What are the prospects of town-planning regulation in Russia?

The difficult process of reforms in Russia was launched almost ten years ago. At the initial phase urban planning reforms were overshadowed by priority legislative undertakings. By this time, however, the need for these reforms is gaining the attention of law-makers at the federal, regional, and local levels as a priority task.

Early in the transition the efforts of law-makers were focused at privatization of state property, i.e. legal regulation of possession and disposition of real properties. Issues of use - a component of real estate rights with the strongest independence from its subjects - were moved to the periphery. Impossibility to use outdated socialistic land use standards gave rise to the appearance of local standards and procedures in the form of development rules, town-planning charters, and other documents at both regional and local levels. Most of these documents increased the confusion in land allocation and construction permits procedures contained in the federal-level legislation and further obfuscated them with the rights and powers imposed by the regional and local authorities. Thus private property owners, developers and investors in construction projects fell the victims of federal inattention and excessive zeal of the local authorities. Local land allocation and construction rules establish a long list of compulsory agreements, expert examinations, and permits to be obtained from agencies assigned such authority by departmental laws and regulatory acts. Multiple initiatives to simplify these from the top and grassroots levels failed because none of the agencies involved in the process is interested limiting the scope of its authority within the effective administrative system. Moreover, state and local agencies make every effort to expand and commercialize their authority in land use and construction issues. The new rules make it use, possession, and changes in real estate highly problematic and burdensome. This concerns every component of the process: from acquisition of a land plot to construction and registration of rights to the property. The consequences are obvious - the intentions and endless talks about favorable investment climate and simplification of the conciliation process are obstructed by a monolithic block of barriers created by the effective law. The importance of changes in the current management system in land and town-planning relations became evident to all participants.

Despite the long list of unresolved issues, positive trends are emerging at both the local and national levels. A limited number of cities started to develop and implement town-planning regulations based on legal zoning - Land Use and Development Rules. The examples here are Veliky Novgorod, Kazan, Khabarovsk, and Samara. A growing number of cities follow their example, including Cheboksary, Perm, and several others. Cities which have adopted these regulations are observing many positive changes.

- Legal information is now open and accessible to all interested parties, including investors. The Rules (attached with the legal zoning map and town-planning regulations for every zone) are available in mass edition. In several cases, the information is also available through Internet, expanding the range of potential users of this information for the purpose of starting a business or making investments in the city.

- Serious improvements have occurred in town-planning discipline. It is no secret that reversion of earlier decisions fixed in town-planning documents is a common practice in many cities of Russia. By contrast, in cities which have enforced the Rules actions not provided by the Rules or violating it have become simply impossible.

- Citizens now take a more active position on town-planning issues. they have the opportunity to participate in public hearings which city administrations are obliged to conduct. Appropriate procedures are set forth in the Rules.

- Investors are able to acquire long-term rights to the land prior to the start of construction in a much simpler procedure.

- City administration have stepped up activities in getting land plots prepared for conveyance to investors. As a result, city budgets obtain higher revenues from sale of lease rights to the land to domestic and foreign investors.

The federal government is developing and adopting regulatory acts furthering reforms in the urban planning system:

- amendments to the federal law on capital investment;
- presidential decree on legal zoning procedures and respective law;
- regulations simplifying the procedures for state expert examination of project designs.

Further development of this body of legislation will depend on several factors:

- private sector activity in promoting the interest of property owners through legislative initiatives;
- political will of the federal government to pursue the reform course in developing the necessary regulatory acts and reorganizing the administrative structure to improve efficiency and contain the bureaucratic apparatus;
- activity of city administrations in utilizing existing opportunities for the urban planning reforms at the local level;
- success stories to attract a growing number of Russian cities to the reform process.

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FIG. 1. COMPARISON OF THE SOCIALIST AND MARKET-ORIENTED URBAN PLANNING SYSTEMS

Selected Features	Socialist System	Market-Oriented System
1. Owner of land	The state (represented by different departments and organizations)	Predominantly private parties
2. Source of finance for urban development	Dominating role of the state budget	Dominating role of private capital, including mortgage loans for construction secured by land or other real estate
3. Free transferability of real estate, real value of land, and value-based taxation	No	Yes
4. Economic incentives to improve land use and urban environment	No	Yes
5. Methods used for defining the purpose of land and other real estate	Determination of "designated purpose" for selected properties on an individual basis; no changes permissible.	Legal zoning, which allows for changes in the types of use and parameters of real estate within the established frames.
6. Availability of bank credit for construction against the collateral of land or other real estate	No	Yes

FIG. 2. THE “WHAT” AND “HOW” RELATIONSHIP IN THE TWO SUBSYSTEMS

	“what” is permitted to do with real estate	“how” land plots are allocated for construction
First type , post-socialistic period of town-planning regulation	Individual approach to the determination of uses of land and other real estate.	Long-term rights to land plots (ownership or lease) are granted at the end of investment construction project.
Second type , market-oriented system of town-planning regulation	Legal zoning approach to the determination of uses of land and other real estate.	Long-term rights to land plots (ownership or lease) are granted at the beginning of investment construction project.

FIG. 3. CITY REGULATION OF USE OF REAL ESTATE

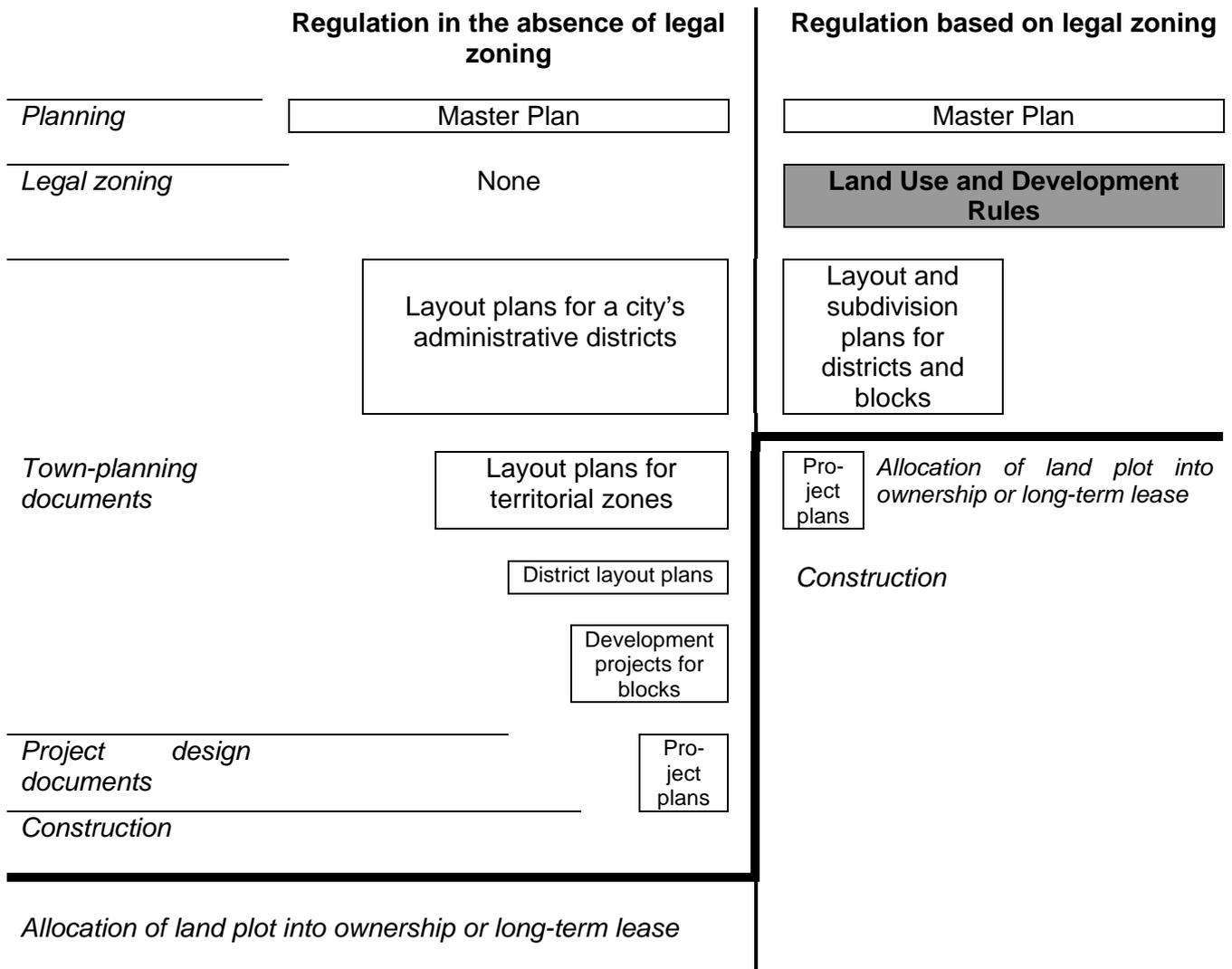
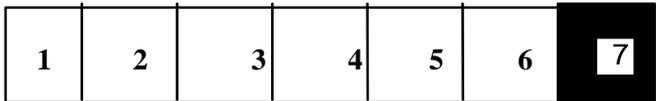


Fig. 4. Acquisition of long-term rights to land under different regulation systems

Current system in Russia

Phases:

1. Application for allocation of a land plot for the project design period; development, conciliation, and approval of an act on preliminary allocation of a land plot for targeted use; permit for design works; lease of the land for the project design period.
2. Formulation of the architectural and planning assignment for the project.
3. Development, conciliation, and approval of design estimates; application for allocation of the land plot for; approval of the application.
4. On-site marking of land plot boundaries; conclusion of lease agreement for the construction period; issue of construction permit.
5. Construction
6. Commissioning and registration of the constructed object.
7. **Execution of documents on the right of long-term possession of the land plot.**



Legal zoning system in market economies



Phases:

1. **Acquisition of title or long-term lease of a land plot through an auction, tender, or otherwise.**
2. Zoning conciliation of construction project.
3. Conciliation of the project and issue of construction permit.
4. Construction.
5. Commissioning and registration of the constructed object.

**Fig. 5. ? OMPARISON OF THE CURRENT AND LEGAL ZONING SYSTEMS
(allocation of land plots, development and conciliation of project designs,
construction and registration of right to constructed objects)**

Indicator	Current System	Legal Zoning System
1. Administrative agencies and other organizations involved in the conciliation	over 40	not more than 10-12
2. Time period for executing all agreements and permits before design works for the construction project could begin.	Depends on the type of construction project: 1 year, 2 years (or more)	Depends on the type of construction project: 2-3 months or within 6 months
3. Number of officially established charges an investor or developer has to pay to administrative and other agencies.	over 70	under 30