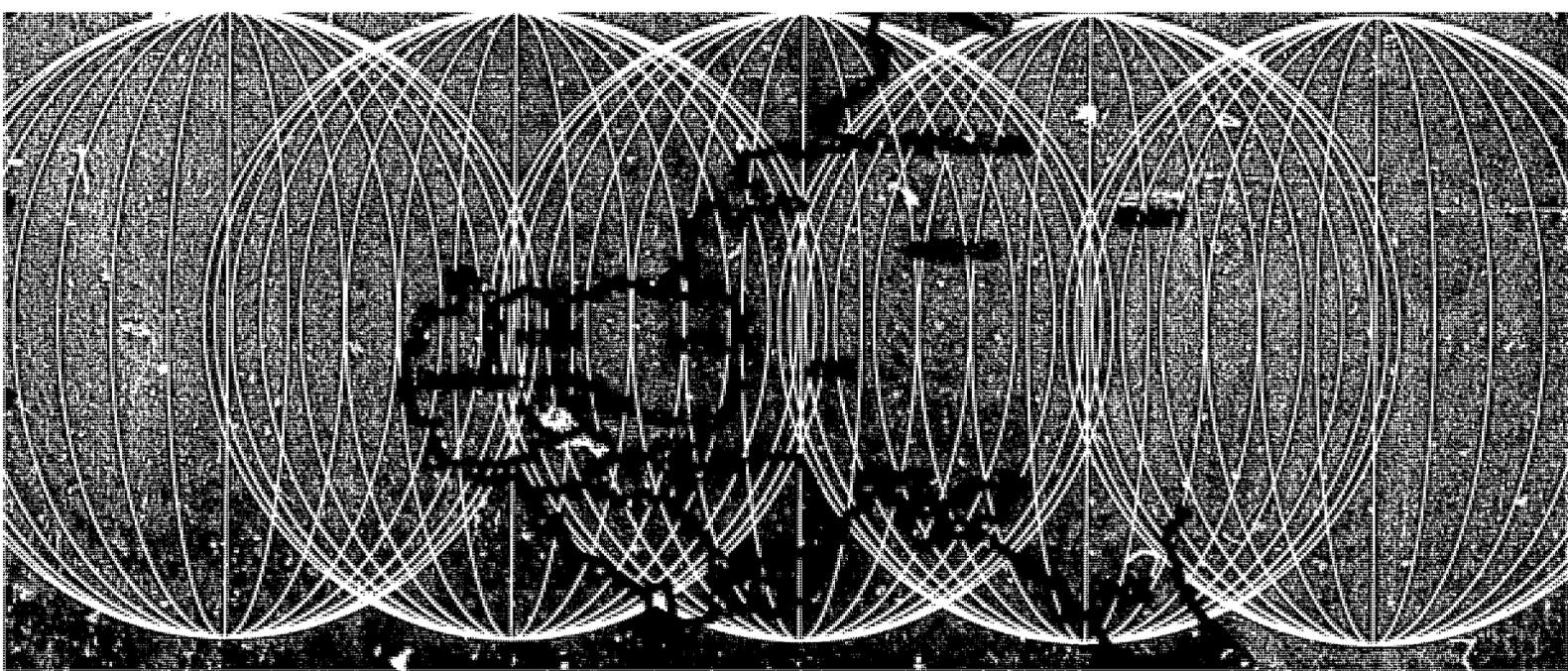


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FROM PLANNING TO MARKETS
HOUSING IN EASTERN EUROPE



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HUNGARIAN LAND USE POLICY
IN THE TRANSITION TO A MARKET ECONOMY
WITH DEMOCRATIC CONTROLS

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INTRODUCTION

Land use and building patterns and regulations can have significant impacts. They can be central determinants of the level of economic development, infrastructure requirements, the quality of urban life, life-styles (urban or suburban), the degree of integration or segregation of economic classes, and patterns of consumption.¹ In Hungary, land policies and regulations may have dramatic impacts on the future of some of its most valuable resources, including the special beauty of its cities and countryside.

It is particularly difficult to design systems of land use and building regulation that work well.² In democratic societies with market economic systems planning involves consideration of the competing interests of:

1. insuring democratic control,
2. "due process" and "rule of law",
3. preservation of the rights of property owners,
4. environmental protection,
5. historic preservation,
6. orderly development,
7. preservation of the rights of the poorest groups³

Now Hungary faces the issues associated with adapting its system of land use regulation to a market economy with democratic controls. To some extent, pressure for reform in land use regulation in Hungary has been diminished by the fact that construction levels have been low since the start of the transformation to a market system.⁴ The government has largely withdrawn from its role as builder and provider of mortgage subsidies. At the same time high inflation rates (20 to 30

¹ Debates over local land use decisions may take on a great deal of importance at the local level, especially if households perceived such decisions as having critical impacts on the values of their dwellings.

² Some widely respected urban planners believe that urban planning has done more harm than good.

³ These interests may compete in various ways. For example, the majority within a jurisdiction may not want to permit construction of new housing for low income groups or it may want to avoid expensive compensation requirements associated with a desired project. Groups in favor of a project may not want to afford extensive time for "due process" thereby enabling opposition groups to organize and express their views.

⁴ From 1981 through 1986 residential construction levels were in the range of 69,000 to 76,000 units per year. In 1990, 43,771 units were constructed. In 1991, approximately 32,000 units were constructed.

percent per annum) have made conventional private real estate mortgage financing infeasible.

Currently, major revisions of the national building and planning law are being prepared by the Ministry for the Protection of the Environment and Land Use Development. In April 1992 the Ministry issued a report which sets forth concepts for a new law.⁵ Until September it received comments on the concepts. Now, it will prepare legislative proposals for consideration by the parliament.

This report describes and comments on the Hungarian system of land use regulation. The author interviewed chief architects of cities, private architects, academics, foreign planners, and staff members of national ministries, municipalities, and districts.

While the author is American, it is not his thought that U.S. land use regulations should be used as a model.⁶ Rather, U.S. experiences (as well as European experiences) are useful information sources for thinking about building and planning laws in democracies with market economies. Land use planning may be seen as a question of procedure, concerning how land use decisions are made, as well a question of substance, concerning the physical content of the planning. Knowledge about alternative experiences of democratic societies may be valuable, even though the physical character of their urban and regional plans differ very substantially.

This discussion is subject to the caveat that a more complete review of the building and planning procedures was beyond the resources available in the preparation of this report. The author was not able to review all of the laws that have an impact on the current system of land use regulation, although the principal laws were reviewed.

⁵ Ministry for the Protection of the Environment and Land Use Development, National Building Office, Professional Concept of the Law on Planning, Development, and Protection of the Built Environment. (Budapest, April 1992).

(Környezetvédelmi és Területfejlesztési Minisztérium, Országos Építésügyi Hivatal, Az épített környezet alakításáról, fejlesztéséről és védelméről szóló törvény szakmai koncepciója (Budapest, 1992, április hó))

⁶ Some interviewees stated that primary consideration should be given to land use policies in effect in other East and West European nations as models because their experiences were more applicable. However, other interviewees felt that the U.S. experience may be closer to the future experience in Hungary than West European experiences, since Hungary has moved in the direction of decentralization of power over land use planning that is comparable to U.S. levels.

II

LAND USE AND BUILDING REGULATION IN HUNGARY

The current legal guidelines of the Hungarian urban planning system are substantially the same as those that were in effect prior to recent political transformations. They have required that building and development must conform with local zoning restrictions and take into account environmental concerns. Since 1964, public hearings have been required before plans may be approved. Both the old and new systems have required the input of government agencies that are involved with a broad range of technical and infrastructure concerns in the review of building permit applications.

While the legal structures of the old and new systems are substantially similar, there are major differences between the two systems in their modes of implementation of urban planning. Under the former system the government was both the planner and developer, with the exception that a substantial portion of owner occupied units were privately developed. The government's accountability to the general public was of an informal and uncertain nature.

In the past, land use plans were prepared by planning institutes, subject to the influence of national ministries and communist party directions. While local councils had the legal authority to adopt or reject zoning plans, sometimes their discretion was limited by party pressure. At times localities were forced to accept projects that were unpopular.

In the 1980's the planning process became more sensitive to public opinion and the party played less of a role. There was increasing public debate over development issues. Opponents of projects appeared on television and lobbied principal actors in the planning process.

The degree to which plans prepared under the former system addressed local conditions and/or political desires varied among cities. Some interviewees indicated that the plans for their cities were not in accord with local needs and conditions and sometimes were completely infeasible. Other interviewees indicated that the plans represented the work of professional planners who were responsive to local conditions. Usually, urban plans and land use arrangements were not a critical concern to the central government or the communist party as long as their economic and social development plans were not affected.

Now, although local land use planning is subject to national guidelines, it is largely independent of national government control. Instead, it is locally controlled by a multiparty democracy. Development is undertaken by private individuals or companies. Market forces and local political desires have become central to land use

planning. Formerly the state and the developer were one. Now they are different parties which may have similar or competing interests. Under the new system, planning consists of the interplay between public regulation, the private market as developer, and democratic controls.

Now, as national economic participation in local development has largely ceased and national powers over local plans have been drastically diminished, national control over the substance of local plans has been largely eliminated.

Another very significant change has been the reform of compensation requirements. Formerly, the state could institute construction bans without paying compensation. Now only three year bans are authorized.

A. THE DETAILS OF LAND USE REGULATIONS

Land use plans have consisted of the general zoning plan - *Altalanos Rendezesi Terv (ART)* - and the detailed plan - *Reszletes Rendezesi Terv (RRT)*.

The detailed plan (RRT) is a plot plan which includes the sizes, locations, and heights of the specific buildings on a plot. The formulation of this type of plan (RRT) by the public authority constitutes the undertaking of a role that is traditionally undertaken by owners and developers in market economies.⁷ It requires that the owner/developer build according to a particular building plan rather than formulating his/her own plan within a range of permissible schemes.

Local communities are required to adopt a general zoning plan (ART) which establishes zones where specific classifications of land use are permitted.⁸ The zoning classifications and their regulations are set forth in the national code.⁹ But, localities may adopt more detailed regulations for the various classifications. The classifications are: (a) residential, (b) recreational, (c) institutional, (d) industrial and storage, (e) traffic and transportation, (f) green areas, (g) forest areas, (h) agricultural, and (i) other.¹⁰

Within the residential classification there are subclassifications, including multifamily, two family, detached, row, and group.¹¹ Within these

⁷ Germany seems to be an exception to this rule.

⁸ Act # 2 of 1986 (as modified, 1990, Act.#1, Section 1).

⁹ *Id.*, Sec. 1 (1).

¹⁰ *Id.*

¹¹ 1990, Ministry of Environmental Protection and Construction, Decree #1, Secs. 20-23.

subclassifications, there are categories with differing minimum lot sizes, widths, depths, allowable lot coverage ratios, and allowable heights. Maximum lot coverage ratios range from 10 to 40% except on corner lots where lot coverage ratios range up to 75%.

A broad category of uses is permitted within residential zones including buildings that provide "essential services for the inhabitants", "small workshops", "gas stations", "carwash and car repair shops", and "garages".¹² The effect of these provisions is that shops and other commercial services may be established in residential neighborhoods.

Several interviews commented that there are inadequate controls over the types of non-residential uses that may be introduced into a residential neighborhood. Frequent references were made to the fact that a pub could be placed in a residential neighborhood without the approval of the neighbors. There were also comments that an auto repair shop may be placed next to residential buildings. However, it was also commented that there no land use category where car repair shops are permitted.

While there was concern about the lack of controls over uses in residential neighborhoods, there were also expressions of concern over the fact that the regulations for other types of districts are too inflexible in the sense that only one type of use (e.g. industrial) may be permitted in a zone.

The law contains virtually no guidelines governing the details of uses within non-residential zones (e.g. density, lot coverage, height, and setbacks). The lack of specific regulation of non-residential uses is consistent with the fact that until 1989 non-residential construction was almost solely a state activity which the state had no interest in regulating, while residential construction had become substantially privatized.

One interviewee suggested that zoning standards should only consist of performance standards govern height and lot coverage and environmental impact, rather than designating the particular types of uses (e.g. residential, commercial, or industrial) that are permitted and that the present system of dividing areas by uses is not the best method of planning.

In addition to regulating types of uses, the national land use law requires adequate infrastructure as a condition to the right to build. This includes the

¹² Ministry of Environmental Protection and Construction, 1990, Decree #1, para. 19 (modifying decree #2 of 1936).

In contrast, under local zoning laws in the U.S., strict segregation of residential and non-residential uses is common.

provision of potable water, electricity, and the draining of sewage and precipitation.¹³

The national code also requires that new building meets the following very general standards regarding the environment, historic preservation, and the maintenance of public views:

- "the characteristics of the state of the general environment have to be maintained;"¹⁴
- "buildings should ... match their environment;"¹⁵
- "historical monuments have to be preserved;"¹⁶
- "the view from public places has to be preserved;"¹⁷

The former regulations also included national standards governing the percentages of land that had to be designated for particular types of uses. For example, there were obligatory land use ratios for schools, hospitals, and basic commercial units.¹⁸ Probably more critical than the fact that the national government had legal authority over local plans was the fact that it provided the funding for local projects, thereby by giving nearly total de facto authority over local planning.

Pursuant to (cityscape) concerns the building authority can regulate the placement and size of buildings, the type of use in the ground floor, the facades, and the landscaping.¹⁹

¹³ Ministry of Environment and Construction, 1990, Decree #1, para. 15.

¹⁴ Id. Para. 3, Sec. (1).

¹⁵ Id. Para. 3, Sec. (3).

¹⁶ Id. Para. 3, Sec. (4).

¹⁷ Id. Para. 3, Sec. (5)

¹⁸ One chief planner indicated that a park had been required in an area where people had their own gardens and were not interested in park.

¹⁹ Supra note 13, Para. 4, Sec. (2).

BUDAPEST

In Budapest, the city has the power to adopt and amend the general zoning plan (ART). However, pursuant to the decentralization of recent years, districts have been given the power to adopt specific plans (RRT). Presently, there is a dispute over the relative powers of the districts and the capital authority in regard to zoning powers, because it does not clearly indicate which types of plans must be approved by the city, as well as the districts,²⁰ and there is no strict delineation over the relative detail that may be set forth in the general zoning plan (apparently subject to city control) and the specific plans (only subject to district control).²¹ One outcome of the unclear division of powers may be that the city will draft an ART which includes details that were normally reserved for RRT's in the past. Furthermore, the law is unclear as to what happens if Budapest does not approve a district's change in its zoning regulations.

BUILDING CODE STANDARDS

Discussion of the substance of building standards is beyond the scope of this report. However, it should be noted that there is a national building code. The code governs some matters, including setbacks, that are also governed by the land use code (thereby leading to uncertainty in instances where there two codes contain differing standards governing the same requirements).

B. PROCEDURES FOR THE ADOPTION OF A LAND USE PROGRAMS AND PLANS AND ZONING REGULATIONS AND THE APPROVAL OF PROGRAMS AND PLANS FOR SPECIFIC PROJECTS

The adoption of a general zoning plan and the approval of specific projects involves a three step process including a survey, the preparation of a written program, and the adoption of the actual plan (map).

A survey for a general plan or for a large project proposal has to be approved by the building official of the city.²² A proposal for a general plan program has to be submitted for review by the subcommittees of the capital and county councils. The

²⁰ See 1991 Law #20, Paras. 74-75.

²¹ Apparently, the city may frustrate the power of the districts by refusing to record zoning changes adopted by the districts.

²² Ministry of Construction and Settlement Planning, Resolution #7, paragraph 4 (1983).

general plan program has to be approved by numerous technical authorities, as well as the local council.²³

Under the former regime, state urban planning companies (operating on a county level) had a monopoly on the preparation of local as well as regional and national plans. Now, the local process of selecting planning companies is competitive.

An organizational committee has to set up a meeting for presentation of comments by the technical authorities on general programs and plans and specific programs and plans for development proposals.²⁴ Then it has to prepare a report on the meeting. The organizational committee also has to present these planning documents to social and professional organizations, and it has to set up a public hearing. Under the Communist authorities, hearings were organized by the National People's Front. Today, they are organized by the municipal mayor.²⁵ In practice, some local governments appoint council subcommittees to review the applications, before they go to the council.

In cases where project proposals are rejected, written reasons must be provided.²⁶ Also, responses must be given to written comments from the public which are not followed.

On the level of specific project review, one critical characteristic of the socialist regime was that plans for specific projects (RRT's) were formulated by an architect appointed by the public agency, because the state was the investor/developer. Then a builder was sought to undertake the project. Because the state was the developer, financial feasibility was not an issue.

In some cases, local governments have continued to appoint an independent architect to provide specific project plans (RRT's) without consulting investors and their architects even though the role of development has been transferred to private developers. In other cases, the city appointed architect consults with the potential investors or the city permits the investor to present plans.

²³ 1983, Resolution #7, Appendix 2 contains a list of the authorities.

²⁴ 1983, Ministry of Construction, Decree #7.

²⁵ 1991, Law #20.

²⁶ 1991, Law #20, para 75 (6)

Review for conformance with the general plan (ART) and specific area plans (RRT) has been subsumed within the building permit review process and was made by the building authorities.²⁷ The law states that:

In the process of the permit process, the building authority acts as a technical authority which determines whether the building plans conform with the building code and the local general plan.

In the past, minor RRT's could be approved by the building official.²⁸ (The term "minor" was not defined.) In 1991, decision making power over RRT's was transferred from the building officials to city councils.²⁹ Neither ART's or RRT's may be appealed to the courts.

While the building permit review process is rapid, there is no time limit on how long a jurisdiction can take to approve a specific plan (RRT). As a result a developer can effectively be blocked from undertaking any construction for an indefinite period. Interviewees mentioned several cases in which the review process was not completed within a year.

Several interviewees indicated that as a practical matter formerly the building officials had substantial controls over the development and application of land use regulations. One method was through their selection of the consultant who would draft the plan.

COMMENT ON THE RRT CONCEPT

Presently, there is widespread discussion among planners over whether RRT's should be continued. The RRT is now seen as inappropriate in a situation in which construction of projects is dependent on the decisions of developers. According to this view, it makes more sense to have the developer present a plan for public consideration than to have a local government prepare an RRT independent of any developer and then wait for a developer who will carry out the very specific plan set forth in the RRT. In some sense, RRT's may have become superfluous, because developers will propose new RRT's when they wish to undertake a particular project.

²⁷ Ministry of Construction and Settlement Development, 1986, Decree #12 Para. 2, Sec. 2)

²⁸ 1983, Decree of the Ministry of Construction #7, Appendix #1.

²⁹ 1991, Law #20, paras. 74-75.

OVERALL COMMENTS ABOUT THE PUBLIC REVIEW PROCESS

In addition to specific comments about the planning and building permit process there were comments about the overall nature and operation of the system. One was that cities are so desperate for funds that they will accept any type of development at the expense of planning and zoning concerns. This is especially true if development involves the purchase of city owned land. A few interviewees commented that district councils do not have the expertise to intelligently review proposed RRT's.

PROCEDURES FOR OBTAINING A BUILDING PERMIT

The procedures for obtaining building permits are set forth in a national government decree of 1986.³⁰ As a condition to obtaining a permit a builder has to obtain permits from the appropriate authorities for required utilities and infrastructure. Applications must be ruled on within 30 days after they are handed in.³¹ In the event that an application for a permit is denied, the decision may be appealed to the government commissioner. Permits become invalid after two years, unless construction is in process.³²

The grant or denial of a permit by a city may be appealed by either the owner or owners of adjacent plots to the government commissioner within 15 days after the decision is issued. The commissioner has 30 days to rule on the appeal. An appeal to court may be made within 30 days after the decision by the commissioner. Typically such appeals are heard within four to five months.³³ In fact, the scope of such appeals is limited to technical code issues. However, the appeals may be used in order to delay a project.

A preliminary building plan can be submitted by anyone, even without the building owner's consent. This process enables a potential investor to obtain information about the development potential of a plot before contacting the owner. The required scale for such plans is 1:200 as opposed to 1:100 for the final building plan. If the preliminary plan is approved by the building official, then a final plan that conforms with the preliminary plan must be approved.

³⁰ Ministry of Construction and Settlement Development, 1986, Decree #12, Para. 6(4).

³¹ 1986, Decree #12, Para. 4 (6).

³² 1986, Decree #12, Para. 20 (1).

³³ Interviewees described such delays with outrage and described them incredibly long. By American standards they would be almost unbelievably short.

The interviewees were virtually unanimous in the view that the building code review procedure is not an obstacle to construction and that the thirty day limit on construction plan review was followed.³⁴

However, interviewees commonly stated that in cases involving medium sized or large projects, building officials will require an RRT or a revision of the existing RRT even if the proposal is consistent with the current (RRT) in order to avoid exposure to criticism for approving a project. One interviewee stated that sometimes building officials use their discretion in evaluating whether or not plans conform with the building code in order to force applicants to obtain an RRT review for their project.

Criticism of the actual construction review process addressed the question of lack of control, rather than the issue of too much control. One interviewee stated that inspections of construction are inadequate thereby permitting the completion of construction that is of poor quality and/or does not comply with the plans.

One interviewee commented that in some instances, it is impossible to know what building rules apply because there are conflicts between the building and zoning codes in regards to matters relating to building location and setback requirements.

ARCHITECTURAL REVIEW

Pursuant to a 1985 decree, architectural review committees were formed. These committees reviewed plans prior to their submission to the building official.³⁵ The building official were not legally bound by the opinion of the committee, but usually were members of the committee and would usually follow its opinions. The committees were dissolved by decree in 1990. Now local authorities have the power to appoint such committees, but cannot afford the expenses associated with their operation. Presently, localities are more likely to employ an expert to critique major projects.

HISTORIC PRESERVATION REVIEW

Under the prior regime, historic building authority approval was required for alterations of historic buildings.

³⁴ From an American perspective such speedy review seems like a dream that could only exist on a distant planet.

³⁵ One interviewee indicated that such committees would standardly reject plans that were prepared by architects who were not from the locality.

Now, the historic building authorities have been dissolved. However, a national board governs thousands of designated buildings and localities can appoint historic building boards. Up to this time only Budapest has taken this step.

C. COMPENSATION STANDARDS

A state may or may not require public compensation for its expropriations of privately owned land for public uses. Compensation standards are central to any planning scheme. They determine the cost of planning which requires the appropriation of properties in order to achieve its ends.

Hungarian law has consistently authorized appropriation for a broad range of public purposes, including the carrying out of urban plans, construction of public buildings, construction of state owned flats, use for cooperatives.³⁶ It has included the concept of providing land in lieu of cash as compensation for appropriation.

Under the 1976 law,³⁷ compensation could be made in the form of a new plot instead of cash if the party whose land was expropriated agreed to land in lieu of cash.³⁸ Market value was the guide for compensation; however, the law also directed that the owner's purchase price be taken into consideration if the property was purchased within the past ten years.³⁹ Commonly, compensation was often at nominal levels, rather than at market value. However, in cases where owners appealed to the courts they obtained compensation at market levels.

As previously indicated, until 1991, the authorities had the power to prohibit construction pursuant to the objectives of a general plan, without paying compensation. Under the 1991 law, bans on construction have to be as short as feasible.⁴⁰ Furthermore, compensation has to be paid for bans for more than three years. Compensation may be proportional to the reduction in value due to the ban. The law does not indicate the timing or the method for determining the amount of the compensation payment.

Compensation for "regulatory" takings as well as physical takings has been a central concept under the planning schemes of some nations. Regulation may accomplish public purposes and virtually appropriate property, even though there

³⁶ 1976, Law #24, Para. 4.

³⁷ 1976, Law #24.

³⁸ 1976, Law #24, Para. 13, Sec. 1.

³⁹ 1976, Law #24, Para. 10, Sec. 4.

⁴⁰ 1991, Law #20, Para. 77(1).

has been no physical appropriation or appropriation of title. (For example, a regulation that only permitted open space use would accomplish such a result.)

While the concept of compensation for total construction bans is included in the law, there are no provisions relating to restrictions that permit some construction, but are virtually confiscatory. (For example laws that only permit types of construction which are not feasible for private owners.)

III

COMMENTS AND DISCUSSION

1. PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT

Laws cannot guarantee good planning. But they can help construct a process that is accepted as legitimate by the community and secures the widest possible input.

This author believes that an essential element of planning is an open and democratic process. The present law requires public notice of planning proposals but does not contain specific guidelines for the notice and hearing procedures. Vague guidelines as to notice requirements provide opportunities for abuse and leave public officials open to criticism on the basis that the particular type of notice that they provided was not reasonable. They also create uncertainty as to the what the notice procedure should be.

The national act could contain specific time periods of required notice for all types of land use hearings and could set forth requirements as to what type of notice shall be made (e.g. in the newspaper and/or posted on signs at specified locations) and when reports will be available to the public. Alternatively, the law could state that localities have to adopt specific guidelines regarding specified steps in the notice procedure. The latter approach would enable localities to tailor their notice requirements to the local situation.

Typically in U.S. jurisdictions staff reports to the zoning board have to be released to the public at the same time they are provided to the Board members. A packet of the reports for a periodic meeting is usually made available to the public at a specified time before the meeting. Notice of public hearings has to be provided in a newspaper and has to be mailed to property owners within a specified distance of the proposed project (e.g. 100 meters).

The notice provision of the Oregon law is included as an Appendix to this report. The author does not intend to suggest that it should be used as a model; rather it is provided in order to provide an example and illustrate what types of issues are addressed in one state's standards.

2. CREATION OF A SEPARATE ZONING BOARD

In jurisdictions where a substantial amount of hearing time is required to consider land development applications the establishment of a separate zoning board should be considered. Such boards may develop considerable expertise in land use

matters over time and they may be more accessible to the public than city council members who must deal with a multitude of types of issues.

3. DIFFERING REVIEW PROCEDURES FOR SMALL AND LARGE PROJECTS

If councils have to approve all RRT's, the work load may become staggering. Land use laws in other countries commonly delegate the review of small projects to administrators, based on objective criteria. This approach was also authorized in Hungary until the adoption of the current law in 1990. In the event such an approach is adopted the law should include clear criteria for determining what size projects are subject to a public hearing.

4. THE SCOPE OF COMMENT AT PUBLIC HEARINGS

Comment at hearings on particular proposals should be limited to the scope of the issue before the hearing body. (Several interviewees indicated that speakers at hearings on specific proposals addressed totally unrelated issues.)

5. COMPENSATION STANDARDS

The present law provides for compensation for physical takings, but not for "regulatory" takings. In the absence of compensation requirements for regulatory takings, localities may try to circumvent compensation requirements by adopting regulations that effectively force the property owner to use the property for a public purpose.

While the principle of compensation for "regulatory" takings is easy to adopt, it is difficult, if not impossible to establish clear definitions for regulatory takings. In the U.S. questions of regulatory takings have been delegated to the courts, which in turn have had great difficulty with such issues. The present standard is that compensation must be paid if an owner is denied all "economically viable" uses of the property, with the circumstances of each particular case being determinative.

Substantial reductions in value are not considered sufficient grounds for requiring compensation. If they were sufficient grounds, the public's power to plan and zone would be drastically reduced. On the other hand, unlimited regulatory power of land use may make investment overly risky and unfeasible.

Schemes for compensation for "regulatory" takings from other nations should be examined.

6. PUBLIC COMMITTEES

In some instances in the U.S. citizen committees with representatives of different types of concerned interest groups will be created to evaluate planning proposals. Such boards act only in an advisory rather than a legal capacity. This approach allows for a broader perspective in consideration of proposals and may lead to results that reflect a consensus. Also, a board of this type may be more accessible to the public than an official body.

7. TIME LIMITS ON THE PREPARATION OF RRT's.

As previously indicated, there is no limit on the amount of time that a jurisdiction can take to prepare an RRT. Such a time limit would increase certainty about the length of the review process. However, it should also be noted that as a practical matter if a public body wants to take more time, it can use its potential power to vote against a project in order to obtain consent to time extensions.⁴¹

⁴¹ California law prohibits the use of public review power in this manner; however, it is virtually impossible to prove motivations for public actions. The public body can always find legal reasons for its conclusions, especially when applying laws that give substantial discretion.

IV

FURTHER PARTICIPATION IN REVIEW OF THE PLANNING AND BUILDING PERMIT PROCESS

Clearly, a great deal of writing and research could be conducted about each of the issues that this report addresses. Also, this report does not address the very large issue of how the substance of actual zoning plans need to be improved.

Other issues that need to be addressed include the following:

1. The operation of just compensation principles. Research and discussion should include consideration of the compensation principles of West European nations.

2. Consideration of the interplay between fiscal and planning issues. Simultaneous with the transition to a market economy, there has been a drastic reduction in national funding of local development.⁴²

These changes require consideration of the impact of land use policies on local expenditures and revenues. Research and discussion about alternate land use strategies and their strengths and weaknesses from a fiscal perspective would be valuable.

3. Local revenue strategies. Interviewees and public officials in extension classes taught by this author indicated that new local taxes were inevitable and that discussion of the details of various types of local taxation would be useful.

⁴² Currently, localities receive a share of their residents' income tax payments to the national government and they receive normative allowances based on their various characteristics of their population, including the number of school children. At most, these funds are just adequate to maintain existing service levels.

APPENDIX A

**OREGON LAND USE PLANNING CODE
(OREGON REVISED STATUTES)**

**197.763 Conduct of local quasi-judicial land use hearings;
notice requirements; hearing procedures**

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the board shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised with sufficient specificity so as to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

- (a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
- (b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (c) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

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- (3) The notice provided by the jurisdiction shall:**
- (a) Explain the nature of the application and the proposed use or uses which could be authorized;**
 - (b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
 - (c) Set forth the street address or other easily understood geographical reference to the subject property;**
 - (d) State the date, time and location of the hearing;**
 - (e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;**
 - (f) Be mailed at least:
 - (A) Twenty days before the evidentiary hearing; or**
 - (B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;****
 - (g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;**
 - (h) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**
 - (i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and**
 - (j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.**
- (4)**
- (a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time notice provided in subsection (3) of this section is provided.**
 - (b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178.**
- (5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:**

197.763 / MISCELLANEOUS MATTERS

- (a) Lists the applicable substantive criteria;
 - (b) States that testimony and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
 - (c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.
- (6) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428 or 227.178.
- (7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
- (8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- [1989 c.76. §10a (enacted in lieu of 197.762). Note: 197.763 was enacted into law by the Legislative Assembly in lieu of ORS 197.762 which was not added to or made a part of ORS chapter 197 or any series therein by legislative action.]

APPENDIX B

21

REGULATIONS OF THE GENERAL PLAN OF CITIES AND VILLAGES
(1986 as modified in 1990)

Land Use

General Land Use Regulations

1.

(1) The administrative territories of the cities and villages have to be divided into the following categories:

- a) residential,
- b) recreational,
- c) institutional,
- d) industrial and storage,
- e) traffic and transportation,
- f) green area,
- g) forest,
- h) agricultural,
- i) other territories

(2) The categories (units of land use) and their boundaries are defined either by a general or complex plan or in the absence of either of these by a decree of the municipality. In the process of formulating a decree the municipal authorities should comply with the regulations pertaining to the coordination of land use plans.

(3) These units of land use should be designed so that they are in compliance with environmental protection standards.

The Internal and External Territory

2.

(1) The internal territory of a settlement includes residential, recreational, institutional, industrial, warehouse, and green areas.

(2) The agricultural areas belong to the external territory of a settlement.

(3) The transportation, forest, and other territories areas can belong to either category.

(4) The administrative border of the internal territory of the settlement is defined in the general plan or by a decree of the municipality on the basis of regulations.

(5) In an external territory an individual:

- (a) can build residential housing on an established farm,
- (b) cannot build a weekend house.

Town Architecture, Settlement Environment

3.

(1) During construction, the commencement of agricultural cultivation, or the development of a water system, the organic relation of the settlements, as well as the natural flora has to be maintained.

(2) The location or siting of new construction and building complexes should take into account and enhance the settlement's characteristic structure, and the architectural character of the historic sections of the settlement.

(3) Construction should be undertaken so that it matches its environment.

(4) Historically important features of a settlement (i.e. buildings, monuments) have to be protected and their environment has to be developed and maintained accordingly.

(5) When deciding on the land use and when locating and constructing a new building the view from the building site and from the building on it, which includes natural scenes or views of important structures or complexes of structures and the townscape as seen from public places (lookouts), has to be preserved.

(6) In areas protected by special laws because of their scenic, natural, historical, or archeological values, etc. using the land or altering a section of land or locating or constructing a new construction should be carried out in a manner that takes into consideration these values and the decrees that declared the area a protected area have to be complied with. If there was no decree then the individual regulations set by the concerned authorities have to be complied with in each case.

4.

(1) During the development of the structure of settlements, the renewal, modernization, and establishment of a part of a settlement,

- a) The natural and historical values have to be kept,
- b) the view of the settlement has to be preserved,
- c) the unfavorable environmental effects have to be eliminated

on the basis of the general plan or the decree of the municipality.

(2) In order to create a more favorable cityscape or for the protection of the cityscape, the building authority, within the framework of the building code, can prescribe:

- a) the placement and size of the buildings,
- b) the type facades and roofs of buildings,
- c) the ground floors of buildings along public areas (i.e. shops, arcades, etc.),
- d) the finish of walls of buildings which can be seen from public places,
- e) the type of pavement, the structures, the buildings and the gardens, ornamental lighting, the billboards and advertising signs, and their supporting structures in public places,
- f) on parts of construction sites and construction areas that can be directly seen from public places, the type of fences, the landscaping, gardening, installing of fences and retaining walls.

(3) The building authority can direct the actual details involving [matters covered by] subsections a,b, and f of Section 2 [just above] for the sake of protecting the preexisting view.

(4) The protection of the preexisting view falling in the direction of the construction site cannot hinder the construction of authorized buildings.

The green areas of settlements

5.

In order to preserve and to improve the climate of certain settlements or groups of settlements, green areas, [and/or] forests within city limits, the planted sections of construction sites and areas should be formed and maintained so that they constitute a uniform green surface system.

General Plans and Their Application

6.

(1) A general plan, when a regulation refers to it, means a kind of settlement plan which includes local regulations concerning land use, the placement of buildings, and the arrangement of plots.

(2) The general plan within framework of the regulations contained in Section 11 subsection 1 can prescribe regulations that are different from the ones concerning use land categories that are in Sections 17 through 47 in order to:

- a) the renewal, modernization, reconstruction of the centers of settlements, or already existing parts of settlements,
- b) the preservation of natural and historical areas, the maintenance of the existing structural characteristics of the settlements,
- c) the protection of national parks and preserves.

Prohibitions on Changing of Plot Shapes and Building and Restrictions on Building

7.

(1) For the sake of assuring the appropriate use of a part of a settlement, the general plan can institute building prohibitions or changes in the shapes of plots.

(2) A prohibition until the termination or until the occurrence of a designated condition has to be ordered if:

- a) if a change occurs or there is a danger that a change can occur that will interfere with the desired use of the land or that will endanger that lives and property (i.e. ground movement, increases or decreases in the ground level, increase in water level, harmful radiation or chemical or biological effects).
- b) it is required by the interest of the archeological preservation, or the protection of nature or of monuments or of the environment.

c) the area contains raw materials or is situated inside the border of a mine and the prohibition is required by the competent minister or the manager of the mine.

d) a separate regulation requires it.

(3) A prohibition can be ordered for a finite time, not longer than five years,

a) if in order to decide the desired use of an area a general plan has to be made or amended,

b) if the prohibition is needed to secure the land for siting a structure the site of which has been established by a decree of the authorities,

(4) A prohibition valid for a finite period -but for a maximum of 10 years - can be ordered if:

a) it is necessary for the realization of the general plan

b) it is necessary for the appropriate use of the territory or for the conditions needed to fulfill the requirements of the regulations of a land use category.

(5) The prohibition has to be ceased if the reasons for ordering it are eliminated.

8.

(1) On a territory subject to a restriction which forbids construction - if the decree forbidding construction does not provide otherwise - the only construction which is permitted is the construction described in subsections 2 and 3 [of this Section].

(2) In case of a ban on construction, until the ban is repealed or until the occurrence of the condition [removing the ban] the following work can be undertaken:

- a. construction work which serves to avert a dangerous situation,
- b. construction which serves to protect natural, monumental, and architectural interests,
- c. construction which protects or maintains the condition of a building.

(3) In case of a ban on construction valid for a fixed period (five or ten years) the following works can be undertaken [notwithstanding the ban]:

- a. work which aims at averting waste or danger to life, health, safety, or the condition of a building;
- b. construction or demolition which is essential to stop the deterioration of the townscape
- c. construction which is necessary for monument protection
- d. in rental units, construction of pressing necessity if it is chargeable to the landlord,
- e. maintenance or modernization of residential buildings, which does not enlarge a flat by more than 25 sqm. (Only one enlargement can be made.), subject to the condition that no demand can be made for compensation for such work and that subsequent alteration or demolition may be ordered.
- f. land preparation.

9.

(1) If under a long term plan, if no use is designated for the following ten years, but a use is designated which will commence after the ten year period, then a temporary land use permit must be issued.

(2) In cases described under subsection 1

- a. maintenance and renovation works can be done which are not excluded from compensation rights in an existing residential building which do not establish a new unit or enlarge a flat by not more than 25 sqm.
- b. in other types of structures on a residential parcel maintenance, renovation, modernization, and/or expansions can be undertaken, which are excluded from compensation rights,
- c. on a block of residential plots - where at least 75% of the plots are built up - a one-story house with a maximum of 80 sq.m which are not excluded from compensation rights can be constructed with a facade with a maximum height of 3 metres. Accessory buildings can not exceed the 20 sqm.,
- d. a new building can be temporarily constructed in an area that is mostly built up if it improves the basic infrastructure of the area. It is excluded from compensation rights,
- e. in an area not built up only temporary workshops and warehouses can be constructed.

Detailed description of the land use categories

Types of zones within land use categories

10.

(1) Residential and recreational areas have to be divided into zones.

(2) Concerning the other land use categories

- a) institutional, industrial, warehouse and the transportation areas can be divided into building zones,
- b) agricultural areas can be divided into zones,
- c) other areas can be divided into building zones or zones.

(3) The zoning categories within the land-use categories which are set forth in the general plan or by municipal decree have to conform with the Building Code and regulations governing the consistency of plans with each other.

Buildings that can be placed on the territories of the different land use categories

11.

(1) On the territory within every land use category those buildings can be placed which primarily match the principal function of that category. Buildings and main and accessory buildings and structures with different uses can only be constructed if:

- a) it does not hinder the appropriate use of buildings in the category and it does not have a bad effect on the health, and does not cause other buildings to deteriorate or is not caused to deteriorate by the other buildings,
- b) it fulfills the detailed regulations governing the zone [except for use] and it fits the neighborhood character,
- c) they conform with the minimum distance requirements between buildings.

(2) If a new building conforms with the regulations of the land use category but can not be constructed in accordance with the regulations of the Building Code because of the existing buildings, the new building can only be constructed by transforming, demolishing or changing the existing buildings.

(3) Subsections 1 & 2 govern in cases involving the transformation of existing buildings.

12.

(1) Under the conditions described in Sections 13 and 11 and the detailed regulations of the land-use categories the following buildings can be constructed in every land use category:

- a) public structures,
- b) public parks, parking places, roads (service roads, bicycle paths, pedestrians paths which serves the land use category,
- c) buildings for research and education (except for industrial type buildings),
- d) buildings of the military forces which serve for defense
- e) utilities, infrastructure buildings and equipment
- f) pipelines
- g) telecommunication structures
- h) water treatment
- i) public toilets, garbage storage units
- j) geodetical signs

(2) On watershores in all land use categories buildings can be set up for watersports and fishing within the conditions of Section 11 and the general plan.

Plots for Erecting Buildings

13.

(1) In every land use category building plots, building territories and territories can be formed which meet the zoning prescriptions and suit the characteristic function of the land use category.

(2) For the placement of buildings including main buildings, accessory buildings, weekend houses, and campsites building plans have to be prepared; for buildings for military purposes and for tracks, building territory plans have to be submitted; for public parks and woods within settlements, plans have to be submitted which are in accordance with detailed regulations of the land use categories and zones.

(3) Building plots or building territories do not have to be created in cases involving:

- a) construction of public equipment
- b) pipelines, tracktype structures under or above the ground
- c) temporary buildings

(4) A building plot has to be formed - according to the general plan and the regulations of the Building Code - so that a main building and its outhouses could be placed on it. According to this

- a) an individual plot has to be formed to place a main building
- b) a block of plots has to be formed to place more main buildings with similar or complementary functions.

(5) The conditions of forming the building plots and building territories are defined by the general plan or - in the lack of it - by the building authority, in the frame of the regulations of the Building Code.

(6) A block of plots can only be formed and buildings can only be constructed on the basis of the general plan which covers the part of the settlement which includes the plots in question.

14.

(1) The building plots and the building territories have to be connected into public roads - at least into an own service road. The week-end gardens can be connected into private roads too.

(2) If the building plot can not be formed in any other way the connection can be assured with a three meter wide continuation of the plot. However the plot has to be as big as the regulation prescribes it without the continuation too.

**The conditions of building on a building plot
and a building territory**

15.

A building - according to the detailed regulations of the land use categories - can be established on a building plot or on a building territory if there is:

- a) the provision of potable water, electricity, industrial water if necessary,
- b) the draining off the sewage and the precipitation,
- c) the transportation or the innocuous placement of the garbage can be assured.
- d) the building does not effect harmfully the level, the movement and the cleanness of the underground waters.

The level of infrastructure services

16.

In case the Code prescribes the level of the infrastructure concerning the zoning of the land use categories the formation of building plots and territories and the placement of the buildings, the following categories are defined:

a) the infrastructure provision is complete if it includes:

- electricity
- the potable water from a pipesystem
- the draining off the sewage by a public pipe system
- the draining off the rain-fall by public channel system or by covered trenches can be assured.

b) the infrastructure level is partial if at least:

- the electricity
- the potable water provision
- the draining off the sewage
- the draining off of the rainfall is assured

Residential area

General prescriptions

17.

(1) A residential area serves - first of all - for the construction of residential buildings.

(2) The residential area - on the basis of the type and rate of the built-up area and the level of infrastructure - has to be divided into building zones.

(3) The individual zones have to be divided further more on the basis of the method of the building-up and the use of the building plots.

Building Plots and Their Method of Development

18.

(1) In a residential area both individual plots and blocks of plots can be formed - in accordance with the zoning regulations.

(2) A main building on an individual building plot can be placed (in accordance with the zoning regulations):

- a) independently
- b) at the side border
- c) semi-detached
- d) in unbroken rows
- e) in groups

Main buildings in groups can only be placed on the basis of the general plan.

(3) On a block of plots in residential areas buildings can be erected with the minimum permitted distance among the buildings and with 14 square meters garden per sitting room.

Permitted Accesory Buildings

19.

(1) In a residential area in accordance with the zoning regulations, the regulations of Sections 11,15 and the above mentioned in Section 12 the following main buildings can be constructed:

- a) hostels
- b) communal service buildings
- c) small workshops and stores
- d) service stations, car wash and maintenance shops
- e) garages
- f) in a residential area where both residential and week-end house buildings are characteristic: week-end houses in accordance with the existing character of the area.

(2) In a residential area - in accordance with the zoning regulations and the regulations of Section 11 - the following accessory buildings can be attached to or constructed independently from the main building:

- a) garage
- b) wash-house, drying room, pantry
- c) stys, roost, kennel, pen
- d) retail shops, handicraft workshops
- e) back houses
- f) boiler houses

(3) Other structures that can be constructed in a residential area:

- a) garden structures, pool, fountain, fireplace etc.
- b) structures for plant cultivation
- c) underground structures
- d) garbage storage units
- e) shop windows
- f) structures for utility connections
- g) structures substituting for utilities
- h) oven, ice-pit, meat-smoking facilities,
- i) corrals, silo, dung storage

(4) The building authority can define the front height of the main building differently from the front height of a residential building if the main building on a building plot has got other functions.

(5) A separate accessory building or structure described in Section 3(b) can be a maximum of 3 metres high at the front and can have a maximum 4.5 meters high close-wall.

The building zone I

20.

(1) The zone serves for placing multi-family residential buildings with at least 12.5 metres front height.

(2) The zone has to be provided with all the necessary infrastructure.

(3) Both individual plots and blocks of plots can be developed on the territory of this zone.

(4) The minimum sizes of single plots, the maximum lot coverage, and the maximum front heights of main buildings are set forth in the following table.

individual plots						
type of building	zone symbol	minimum			maximum lot coverage %	minimum and maximum height m - m
		width m	depth m	plot area m ²		
detached houses	1-SZ-1	25	35	900	25	12,5-22,5
	1-SZ-2	35	45	1800	25	22,5-33,0
attached houses	1-Z-1	20	30	700	45 75°	12,5-22,5
	1-F-2	25	40	1200	45 75°	22,5-33,0

* only on corner plots, connected buildings excluded

(5) If the general plan permits, residential buildings with a front height of more than 33 meters can also be erected.

(6) On the building plots in this zone

a) garages can be placed if the regulations under Section 4 do not exclude them

b) other structures can be erected like:

- garden-
- underground structures
- garbage storage unit
- shopwindow
- structures for connecting utilities

(7) In blocks of plots in this area, garages have to be created under the main buildings underground.

Building zone II

21.

(1) The zone serves for putting separate or group of residential buildings with a faced not higher than 14.5 metres and with maximum two flats.

(2) The regulations defined in zone I have to be applied in this caes too except for the height of the faced, the % of the built-up area and the minimum size of the plot which are defined by the next table.

Individual Plots.						
type of building	zone symbol	minimum			maximum lot coverage %	minimum and maximum height (H) m - m
		width m	depth m	plot area m ²		
detached houses	II-SZ-1	20	30	700	20 ⁰⁰	7,5 - 9,5
	II-SZ-2	25	30	900	30	9,5 - 14,5
	II-SZ-K	16	25	450	30	K
zero lot line	II-0-1	18	30	700	30	-6,0
	II-0-K	14	25	400	30	K
semi-detached	II-1kr-1	18	30	700	30	6,0 - 7,5
	II-1kr-K	15	25	400	30	K
attached houses	II-Z-1	10	30	360	40 75 ⁰⁰	7,5 - 9,5
	II-Z-2	15	30	500	40 75 ⁰⁰	9,5 - 14,5
	II-Z-K	10	25	300	40 75 ⁰⁰	K
cluster	II-C _s	RT	RT	100	75 ⁰⁰	-6,0

R = physical plans necessary
 K = only in developed areas, height has to be fixed according to the existing situation
 RT = physical plans necessary
 ** Connected buildings excluded
 * only on corner plot, connected buildings excluded

Building Zone III

22.

(1) The zone serves for erecting residential buildings with a facade which is not higher than 7,5 meters.

(2) The zone has to be provided with at least partial infrastructure.

(3) In this zone individual plots can be formed.

(4) The following table designates the minimum size of the plots, the maximum height of facades and the percentage of the built-up area [lot coverage].

Individual Plots						
type of building	zone symbol	minimum			maximum lot coverage %	Minimum and maximum height m - m
		width m	depth m	plot area m ²		
detached houses	III-SZ-1	18	30	700	20 ⁰⁰	-6.0
	III-SZ-2	18	40	900	30	6.0-7.5
	III-SZ-K	16	35	600	30	K
zero lot line	III-0-1	18	40	900	30	-4.5
	III-0-K	14	35	550	30	K
semi-detached	III-Ikr-1	18	40	900	30	6.0-7.5
	III-Ikr-K	13	35	550	30	K
attached houses	III-Z-1	10	40	550	35 75 ⁰	-7.5
	III-Z-K	10	35	400	35 75 ⁰	K
cluster	III-Cs	RT	RT	180	75 ⁰⁰	-6.0

(for notes - see table in section 21)

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(5) On the plots in this zone:

a) accessory buildings can be erected if the regulations set forth in the table in subsection 4 do not exclude them, except for stables for cattle and latrines

b) separate structures can be erected.

Building Zone IV

23.

(1) The zone serves for erecting residential buildings with a facade not higher than six meters.

(2) The zone has to be provided with at least partial infrastructure.

(3) Only separate plots can be created in the zone.

(4) The minimum plot size, the maximum plot coverage, as well as the maximum front height of residential buildings in the zone can be determined by using the table below.

Individual Plots						
type of building	zone symbol	minimum			maximum lot coverage %	minimum and maximum height (H)
		width m	depth m	plot area m ²		
detached houses	IV-SZ-1	16	50	900	30	-6,0
zero lot line	IV-0-1	14	50	900	30	-4,5
	IV-0-K	14	50	800	30	K
semi-detached houses	IV-1kr-1	16	50	900	30	-6,0
	IV-1kr-K	13	50	700	30	-6,0
attached houses	IV-Z-1	10	50	700	35	-6,0

← (see table accompanying section 21)

(5) On the plots all kinds of accessory buildings and structures can be erected.

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Recreational Area

General Regulations

24.

(1) The area serves first of all for erecting week-end houses and campsites.

(2) The area has to be divided into building zones on the basis of the characteristics and level of development of the area as well as the level of infrastructure in the area. of the level of infrastructure.

(3) Every building zone has to be divided further according to the type and the percentage of the built-up area of the individual plots.

Building Plots and the Type of Built Up Plots

25.

(1) In recreational areas both individual plots and group of plots can be formed.

(2) Buildings on individuals plots in recerational areas can be erected

- individually
- detached
- in groups

Semi-detached houses can only be erected in areas where this type is characteristic. Groups of houses can only be established on the basis of the general plan.

(3) Buildings on group of plots within recreational area can only be put by keeping the following conditions:

- the minimum distance between the buildings
- the minimum degree of sunny facade
- a garden with a minimum of 60 sq.m per room

**Main Buildings and Accessory Buildings Permitted
Within Recreational Areas**

26.

(1) Within the framework of Sections 11 and 15, the following buildings can be constructed in recreational areas, as well as those defined in Section 12:

- a) hotels, hostels, pensions
- b) residential buildings for employees
- c) basic institutional service and supply structures
- d) facilities for water sports (including boating houses, boat storage, boat docks and fishing cottages,
- e) garages for cars,
- f) gas and car wash stations,
- g) and residential buildings in areas where there is a mixture of weekend and residential buildings.

(2) Accessory buildings cannot be erected

(3) The following accessory buildings, belonging to main building can be erected in this type of area:

- a) garden structures, trellises, sandboxes, swings, slides, swimming and other pools, fountains, fireplaces, and other play and recreational facilities,
- b) green houses not higher than 2.5 meters, occupying a maximum of 10% of the lots,
- c) underground structures, individual cellars, garages, or other storage rooms,
- d) grabage storage units,
- e) shopwindows,
- f) structures for connecting facilities,
- g) stuctures substituting for utilities

(4) In case of the construction of a main building with a different function the allowable height may be different than that authorized by either the general plan or by the building authority.

Building Zone V

27.

(1) The zone serves for erecting multi-unit week-end houses with a minimum facade height of 10 meters.

(2) The zone has to be provided with full infrastructure.

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(3) On the zone only block of plots can be formed

Building Zone VI.

28.

(1) The zone serves for erecting multi-unit week-end houses units with a maximum facade height of 10 meters.

(2) The area has to be provided with complete infrastructure.

(3) Both individual plots and blocks of plots can be formed in the zone

(4) The minimum sizes of the individual plots, the maximum lot coverage, and the maximum height of the front facade are defined in the table below.

Individual Plots						
type of building	zone symbol	minimum			maximum lot coverage %	minimum and maximum height m - m
		width m	depth m	plot area m ²		
detached houses	VI-SZ-I	20	50	1100	10	6,0-10,0
	VI-SZ-K	16	25	700	10	K
semi-detached	VI-Ikr	14	25	360	15	-6,0
cluster	VI-Cs	RT	RT	180	50	-6,0

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Building Zone VII

29.

(1) This zone is for week-end houses with a maximum facade height of 6 meters and for camp sites.

(2) The zone has to be provided with full infrastructure. The draining off of the sewage can also be solved by using closed sewage tanks - where there are no sewage pipes.

(3) In this zone only individual plots can be formed. For camp sites blocks of plots can be formed according to the regulations under Section 161.

(4) The minimum sizes of the individual plots, the maximum lot coverage, and the maximum height of the front facade are defined in the table below.

Individual Plots						
type of building	Zone Symbol	MINIMUM			MAXIMUM lot coverage %	MINIMUM and MAXIMUM height m - m
		width m	depth m	plot area m ²		
detached houses	VII-SZ-1	14	25	550	15	3,0-6,0
semi-detache.	VII-lkr	14	25	360	15	3,0-6,0
cluster	VII-Cs	RT	RT	180	15	3,0-6,0

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Building Zone VIII

30.

(1) This zone is for the construction of one unit week-end houses with facades with a maximum height of three meters.

(2) The zone has to be provided with at least partial infrastructure.

(3) Only individual plots can be formed.

(4) The minimum sizes of the individual plots, the maximum lot coverage, and the maximum height of the front facade are defined in the table below.

Individual Plots						
type of building	Zone symbol	minimum			maximum lot coverage %	minimum and maximum height m - m
		width m	depth m	plot area m ²		
detached houses	VIII-Sz	14	25	550	15	-3,0
semi-detached	VIII-Ikr	14	25	360	15	-3,0

Different regulations concerning residential and recreational areas

31.

(1) The building authority can permit the formation of plots with sizes differing from those authorized by the regulations of the zone only if the block had already been divided into

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individual plots and only in accordance with the regulations concerning the minimum distance between houses the type and the degree of the built-up areas.

(2) In the case of an empty individual plot - in a mostly built-up area the building authority can permit the construction of a house if it fits the function of the other surrounding building but could not be built according to the zoning regulations. In this case the ratio of the lot coverage can exceed the defined level by not more than 5%.

Institutional Territories

General Regulations Concerning the Area

32.

(1) This territory is for the placement of institutional buildings of higher than basic level (administrative, social, health care, scientific, architectural, and service institutions).

(2) The territory can be divided into building zones if useful combinations of institutions with different functions make it necessary or the plots in question are subject to different zoning regulations.

The Building Plots

33.

(1) Both single plots and groups of plots can be created in institutional areas.

(2) Buildings can be placed on plots in accordance with the regulations concerning minimum distances between buildings and minimum portions of sunlight surfaces on the facade.

(3) The territory has to be provided with full infrastructure. The disposal of sewage can be handled through the use of a closed sewage tank until completion of a drain system.

Buildings That Can Be Placed on the Territory

34.

In the area, the following types of buildings can be placed, in addition to those described in Section 12, under the conditions described in Sections 11 and 15.

- a) buildings of the basic infrastructure,
- b) residential buildings and lodging,
- c) public institutions which have gardens like zoos, botanic gardens, arboretum, cemeteries etc.,
- d) garages,
- e) service stations, car wash, and car maintenance workshops,
- f) other buildings which assure the appropriate use of the institutions.

Industrial and Warehouse Territories

General Regulations Regarding the Territory

35.

(1) This territory is for the placement of factories, warehouses of industries, energy supply systems, building industry, settlement development.

(2) The warehouse territory can be divided into building zones if:

- a) their effect on each other or on the environment is harmful.
- b) the differing kinds of warehouses need different kinds of transportation facilities, energy supply, or security systems.
- c) the useful grouping of buildings, their division or the different regulations for the construction of the sites makes it necessary.

(3) Separate building zones have to be created for tanks and factories containing or producing harmful or dangerous materials or sewage, animal protein works, infectious, or exploding materials.

Building Plots

36.

(1) Both individual plots and blocks of plots can be created in the territory.

(2) Plots have to be created in conformance with the regulations concerning the minimum distance between buildings, taking into consideration harmful effects on the environment and development necessities.

Buildings That Can Be Placed on a Territory

37.

The following can be placed in the territory in addition to that authorized in Section 12 or within the framework of Sections 11 and 15.

- a) buildings of research institutions,
- b) buildings for providing services,
- c) buildings of local communal infrastructure and basic institutions,
- d) factories for mining,
- e) service apartments and lodgings,
- f) transportation facilities,
- g) production lines,
- h) protective woods and their structures,
- i) service stations.

Traffic Territory

General Regulations Concerning the Territory

The territory serves for placing national motorways, main local autoroutes and their junctions, national railways and the structures for road, railway, air, and water traffic.

Building Territories and Building Plots

39.

(1) In traffic territories:

- a) in cases of track type structures, building territories have to be established,

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b) in cases of railway stations, ports, airports, storage sites, and other allowable works in the area, building plots have to be created,

(2) Building plots do not have to be created for structures placed on the territory of track type structures.

(3) In internal territories, building territories for track type structures have to be created on the basis of the general plan.

(4) For the placement of public roads, the minimum widths of the territories are the following:

- | | |
|--|-----|
| a) in the case of motorways or autoroutes | 60m |
| b) in case of second class long-distance roads | 40m |
| c) in case of first class long-distance roads | 30m |
| d) in case of collecting roads | 22m |

(5) Building sites for airports and helicopter stations can only be created in territories not susceptible to fog, dust, surface, windstorms, artificial and natural blockages. The draining off of sewage and rainfall and water supply should be solved where possible with double security independent from other structures.

(6) Helicopter stations can also be placed above waters and structures where appropriate.

Buildings that Can Be Placed on the Territory

40.

In traffic territories, in addition to the ones defined in Section 12, under the conditions described in Sections 11 and 15, the buildings of communal infrastructure can be constructed which provide services for those who work or live there. These are:

- a) service apartments or lodgings,
- b) structures of institutions,
- c) other structures.

Green Territory

General Regulations Regarding the Territory

41.

(1) The green territory is a public park in the interior of a settlement which is covered with plants and does not belong to any other land use categories.

(2) Public parks have to be accessible by public roads. If the facilities have to be closed to the public, building plots have to be created.

(3) The following structures can be placed on territory in addition to the ones defined in Section 12, under the conditions described in Sections 11 and 15.

- (a) structures for relaxation and individual training (walking path, courts for gymnastics, playgrounds etc.)
- (b) buildings for catering services (except for lodgings)
- (c) buildings for education
- (d) structures for maintaining the area

(4) In public parks, the territory occupied by buildings cannot exceed 2% of the area, the territory closed from the public cannot exceed 20% of the area.

Forests

General Regulations Regarding the Territory

42.

(1) A forest is a territory with a minimum of 1500 sq.m. covered with trees and bushes in the exterior or interior area.

(2) The territory can be, according to the major function of the forest:

- (a) economic (forestry),
- (b) protection,
- (c) welfare, and
- (d) other uses

(3) For the structures on the territory, building plots have to be created if it is necessary to separate them from the territory of the forest.

(4) In the territory, the following structures can be placed in addition to defined in Section 12, subject to the regulations set forth in Section 11 and 15.

- (a) structures matching the function of the forest,
- (b) residential buildings and lodgings, forester's lodges and their outhouses,
- (c) public hunting lodges,
- (d) structures for transportation and traffic,
- (e) production lines

(5) In a forest with welfare functions, the following structures can be placed in addition to the ones defined in subsection 4:

- (a) structures which serve relaxation,
- (b) training and tourism (tourist hotel, shelters, catering facilities, gymnastic courts, courts for water sports),
- (c) buildings of healthcare services that require conditions provided by forests,
- (d) campsites and weekend camps

Agricultural Territory

General Regulations Regarding the Territory

43.

(1) The agricultural territory serves for plant cultivation and animal raising, including the structures for storing and processing (agricultural production) on the external territory of a settlement.

(2) The agricultural territory can be divided into:

- (a) closed garden zones,
- (b) territories outside the closed gardens.

(3) In this territory structures described in Sections 44 and 45, in addition to defined in Section 12, subject to the regulations set forth in Section 11 and 15. The placement of the structure has to be defined by the general plan or, in the case of the absence of a general plan, in accordance with the regulations concerning the minimum distance between buildings and taking into consideration the harmful effects on the environment and the regulations of the different technical authorities.

Closed Garden Zones

44.

(1) In this zone:

a) In the vicinity of Lake Balaton and on the territories of environmental protection plots of land smaller than 1500 sq. m. cannot be created.

b) On other territories, plots of land smaller than 800 sq. m. cannot be created.

(2) The minimum size of plots can be determined by the general plan, or in the absence of one by a decree of the county or Budapest, but:

- a) it cannot exceed a maximum of 2,000 sq.m.,
- b) and a minimum of 720 sq.m.

(3) On the plots described in subsections 1 and 2 the owners or those who lease the land can build one story structures with a maximum area of 30 sq.m., with a maximum facade height of 3.5 meters, and a maximum roof height of 5.5. meters, which serve the cultivation of the land and temporary residences (e.g. storage units and presses.) The attic of the structure can be occupied. On the plot, cellars, greenhouses, and stables for animal breeding can also be placed.

(4) The cellars and structures for animals can be separated from or attached to the main building. Multiple structures for animals have to be put in one block and covered, so that they appear as one building. The maximum height of these structures cannot exceed 3.5 meters.

(5) If the total size of the earlier created neighboring plots equals the sizes authorized in subsections 1 and 2 only together the owners or those who lease the land can place one common unit. On plots which exceed 500 sq.m., or in territories under subsection in excess of 800 sq.m. cellars and stables can be placed separately.

(6) In territories where the general plan defines a different future function or in territories where a different utilization is expected, the regulations in subsections 1 through 5 can be applied with the condition that the buildings can only be temporary and that the owners have to remove them without compensation.

(7) Individuals can only place structures other than those described in subsections 3 through 6 on the basis of the general plan.

Territories Outside Closed Gardens

45.

(1) In this zone, the following structures can be placed:

- a) structures for agricultural production and for local communal services,
- b) administration buildings, residential buildings, and watchhouses which belong to agricultural state farms
- c) structures for relaxation, tourism, catering services (tourist hostel, etc.),
- d) structures for transportation and traffic,
- e) product lines,
- f) structures for sewage filtering,
- g) tanks for temporary storing of dangerous materials

(2) If the structures have to be separated from the agricultural territory, for their placement separate building plots have to be created.

(3) If the territory is owned or leased by natural persons and the minimum size of the plot is 1500 sq. meters, the structures described in subsections 1(a) and 1(c) and Section 44, subsections, 3,4, and 6 can be placed under the conditions described therein or under the general plans. On previously created plots with a size of not greater than 1500 sq.m., but more than 800 sq.m. cellars, stables for animals and structures mentioned in subsection 1(a) can be created.

(4) In areas with an earlier established system of farms, residential buildings can also be created, which are not for agricultural use, with a maximum roof height of 4.5 meters. Accessory buildings can also be created if:

- a) it is necessary for agricultural production,
- b) can be approached with a vehicle,
- c) potable water and electricity can be provided,
- d) essential infrastructural services can be provided