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Conference on National Legislative Reform in Ukraine

**Privatization of Land and Urban
Development in Ukraine**

**Kiev, Ukraine
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Foreword

The publication of this collection of papers by Ukrainian and foreign experts, prepared for the International Conference on Land Privatization and Urban Development held in Kiev in May 1993 on the initiative of the Governments of Ukraine and the United States, opens a new stage in preparation of the theoretical basis for economic reform in Ukraine, particularly land reform.

As emphasized at the Conference, the solution of land privatization problems, as also elaboration of legal framework for urban development are extremely important for the future of our state. Compliments go to the authors of the papers for including materials that are extremely useful for the land reform that is underway now as well as for the transformations taking place in urban development that will undoubtedly be utilized in specific recommendations for the new legislation and for national and regional political programs.

I really hope the cooperation will continue in the above spheres with the authors and conference participants.

Yuri Serbin
Minister of Construction and

Architecture
Government of Ukraine



Overview of the Conference

Urban land is one of the main national treasures of Ukraine, and its effective use is the necessary condition for urban development and the successful socio-economic transformation of the country. To advance this interest, the Ministry of Construction and Architecture, the State Committee on Land Resources, and the United States Agency for International Development held the "Conference on Land Privatization and Urban Development in Ukraine" in Kiev from May 11 to May 14, 1993.

The purpose of the conference was to explore how privatization of land could achieve more effective use and development of land in the interest of urban development. More than 150 persons attended, including officials from relevant government ministries, state committees, the Supreme Rada, the Cabinet of Ministers, the judiciary, and city and oblast governments, together with Ukrainian private entrepreneurs and lawyers, academic and project institute experts, journalists, citizens representatives, NIS high economists, and city planners with experience throughout the world in land use and urban development issues. The conference was divided into ten sessions and 24 presentations examining in detail all aspects of land privatization and urban development in Ukraine, and provided international experience for purposes of comparison. The 24 papers collected in this book reflect the presentations delivered at the conference. The book is published in the Russian language in order to facilitate broader distribution of its ideas and proposals throughout the New Independent States (NIS) and Eastern Europe.

The conference reached 10 key conclusions about land privatization and the development of land in Ukraine:

1. The existing legal framework for the use and development of land in urban areas, especially as set forth in the Code on Land and related law, is contradictory, confusing, and a fundamental impediment to Ukraine's transition to an economy based on market relations.

2. The current administrative system of land allocation in urban areas does not allow adequate access to land for many uses, such as commercial centers, retail facilities, and hotels that could materially contribute to the economic and social transformation of Ukraine.

3. The lack of a widespread system of private property in land severely inhibits the flow of investment and credit capital to productive uses and development of land. Only when investors and creditors have the assurance that they can collateralize their investments against land as a fixed and guaranteed asset will they be willing to make substantial investments for urban development.

4. Private land markets do not mean that private owners may do whatever they want with their land without regard to the impact on neighbors, the surrounding community, or the environment. Governments throughout the world regulate the owner's use of land in order to protect societal interests in health, safety, environmental improvement, social equity, and other

important goals. In conditions of privatization, the regulatory and planning functions of government become more important.

5. Private land markets may operate effectively with a large variety of private property interests, including freehold estates, long-term leases, and lesser property interests. But whatever the interest in land, it must be clearly defined; allow individuals relatively free use of the property; must be long-term (must be able to be bought and sold); may be taken by government only upon payment of fair compensation; and must allow for use as collateral or creditors.

6. The existing urban infrastructure is in serious need of improvement and development. The national and local governments do not have the money to pay for this. In order to tap new sources of money, especially from private investors wishing to construct new developments and willing to upgrade infrastructure as part of their development project, it is essential to introduce a system of private property rights in land that encourages such new development.

7. The alienation of land by village radas to owners of houses in areas with a common border with urban territories has created substantial barriers to the efficient and sensible planning, development, and expansion of urban areas. The random location of such houses creates an inefficient and costly pattern for the provision of infrastructure. Furthermore, if these areas are needed for the future expansion of urban areas, then compensation will have to

be paid to the owners of such land.

8. In implementing a program for privatization of land, consideration should be given to creating public reserves of land surrounding urban areas to meet social objectives. In addition, controls of the privatization of land to prevent land speculation should be implemented in accordance with measures employed in places around the world.

9. The existing system of land cadastres, including mapping, registration, titling, and identification, needs to be improved for the transformation to a private land market.

10. The privatization of land does not mean that all land should be immediately and freely alienated to private owners. The program for privatization of land must take into consideration present and future needs for land for government purposes, fairness, and other considerations that reasonably balance public and private interests.

The conference decided that it is advisable to create immediately the Interdepartmental Commission on Reforming Land Legislation and Land Privatization and a Working Group of this Commission to prepare recommendations for a new legislative framework for the allocation, use, and development of land in Ukraine.

The tasks of the Commission and the Working Group are:

1. A review of the existing legislative framework controlling the allocation, use, and development of land in Ukraine.

2. The preparation of proposals for the systematic privatization of land, with particular regard to the following questions:
 - How much and what land is needed for government functions, including roads, government buildings and facilities, historic sites and areas of natural beauty, and so forth? What land should be privatized, and what land should be retained in the public interest? Should land reserves be established?
 - How and at what scale should privatization of land be accomplished? Should it be given to current users for free? Should users be charged for the land based on ability to pay? Should a normative price be established? To what extent should land auctions be introduced to establish market prices? On what timetable should privatization be completed?
 - What mechanisms may be developed to assure that individuals and families without adequate financial resources be protected in a system of land privatization and private land markets?
 - How can land speculation be prevented?
 - How should land cadastres be prepared? Who should control them and at what level of government? What should they include?
 - What institutional arrangements at the national and local levels would best serve

the management and privatization of land resources in Ukraine?

- How should necessary personnel be trained?
- How should the market infrastructure for the privatization of land be organized?
- How should master plans and regulations guiding urban development be improved?

3. The drafting of necessary changes to laws, including the Code on Land, affecting the allocation, use, and development of land in Ukraine.

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State Committee
on Land Resources

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Introduction

Land reform is an integral part - maybe the most important part - of the economic reform taking place in Ukraine during its transition to market relations. Lately great efforts have been made to formulate the legal medium necessary for the realization of land reform and to create an institutional basis for it. The first practical steps taken allow us to assess to what extent the decisions made were correct and acceptable; where we succeeded; and, at the same time, what new land relations problems were created by passing unsuccessful regulations, laws, and standards. I have no doubt that, today, many of those who will make reports, as well as those who will participate in discussion, will touch upon this problem.

At the same time it becomes quite obvious that the decisions passed concerning land relations, as well as the lack of radical decisions to form clear-cut land use rules and a land privatization mechanism, can hinder economic reforms in Ukraine. Here I am going to dwell upon some of the most important issues, in my opinion, but first I am going to give brief survey of the legislative acts passed on land relations.

Legal Medium of Land Relations

Over the last two years the Supreme Rada of Ukraine has passed a great number of decrees directed at solving land privatization problems. These include the legislative acts listed as follows:

- **The Land Code of Ukraine.** This Law is a basic one which determines key notions in land relations; forms of ownership; plenary power in management and transferring land to ownership or use; limitation of land plots for allotment; conditions on which land can be transferred to ownership; conditions and term of lease; possibility of transferring the right of ownership to other owners; conditions for land conveyance; forms and procedures for land payment; ways of solving probable issues; and some other important regulations.

- **On Agricultural (Farm) Economy.** This decree determines government guarantee of preservation of land and other property of owners and the way the land plots can be inherited

- **On Payment For Land.** Today it is one of the basic legislative acts. It determines that land usage in Ukraine is not free of charge. The land owners have to pay land taxes and the lessees, the rent. It also determines the procedure for recovering payments and privileges for some payers.

- **On Town Development.** This law is a basic document for regulating the procedure for using land plots for erection of buildings, working out town development documentation at all stages, and the procedure for exercising architectural and building control to be carried out for all projects, independent of its form of ownership.

- **On Mortgage.** This decree defines the hypothec [mortgage] concept and recognizes the right to mortgage land, buildings, etc.

- **On Land Reform.** This specifies that users of land plots allotted to them before the Land Code was put into force should legalize by March 15, 1994, the right of ownership or the right to use the plot.

- **On the Procedure of Allotting and Conveyance of Land Plots.** This specifies not only the procedure of allotting and conveyance of land plots but also the procedure for citizen applications and consideration of them, as well as working out projects on land organization and payment for the projects.

- **On Privatization of Land Plots.** This decree affirms that, during 1993, the plots of land allotted for subsidiary individual farming, for building of houses, and for construction of summer cottages and garages should be transferred to users' ownership.

This decision must be followed by the creation of suitable systems of credit and finance and ownership registration and the establishment of an institute of property valuation. If this is not done, it will be unrealistic to speak about creation of a housing market.

However, in spite of the great number of adopted laws and legislative acts, it is necessary to assess critically the accumulated experience. The adopted documents on this issue take into account, to a great extent, the world experience and peculiarities of attitude to land, especially in Ukraine. It is possible to say that we have a good theoretical basis for land privatization.

At present we have taken the first step towards the introduction of market relations into land relations regulation. This concerns the introduction of different payment rates for land plots. This step has allowed to arrange in accordance with their places such concepts as profit from the location of the land plot, from utilization of lands with different infrastructure saturation, from the level of public services organization, etc. However, considering this process from the point of view of full-scale land market relations, one should call it levelling. The problem is that acting legislation allows differentiation of tax rates within town borders but does not allow any increase or decrease in them over the level established by legislative acts. Thus, the rate level cannot be lower or higher than three to five times the average rates for a respective group of towns. Hence, one group of towns has equal possibilities to fill up its budget, independent of individual peculiarities, attractiveness, advantages in social and economic development, or level of public services.

From this point of view, privatization of land plots will become the most important step in the development of towns. Creation of a land plot market inside towns will bring about greater differences in the value of land plots and will result in gradual approximation of land

prices to their real consumption price as objects of commercial operations.

Simultaneously, this will result in formation of single all-Ukrainian land market. The price of land inside towns will be influenced by formed conjuncture on the land markets in other settlement-. Besides, some influence will be produced also by the market of agricultural lands which will become sphere of investment of capital. Thus, the real price of land plots will be formed which will take into account the variety of factors that influence upon the consumption quality of a definite plot and not land in general as the sell-and purchase object.

Certainly, this is not a simple and immediate process. World experience shows that land is one of the most attractive objects for capital investment. Many countries face problems with land speculation attempts to monopolize the land market and also with solving legal issues and conflicts. But this should not be the reason for *not* doing anything, for being scared by probable mistakes and problems.

Housing and Land Ownership System

Unfortunately, we are very slow to realize that the fate of housing reform and, to be more accurate, the system of financing housing construction is of exceptional importance for this country. I shall try to explain it.

First, consider ownership and striving for ownership of real estate, such as a privately-

owned house, private apartment in a cooperative house, and others. This is a foundation for economic stability and a motivation for highly effective labor. This impetus should serve as a foundation for the creation of essentially a new credit and finance system that would secure a large housing market.

Second, the housing market will become the foundation of the whole economic system, which is convincingly demonstrated by the experience of some countries, notably the U.S. A good housing market will maintain constant demand for money at a high level and increase its turnover. This index is one of the main indicators of the health of a state's economy.

Development of mortgage credit and the availability of a secondary mortgage market will permit full participation of housing finance. In general the finance market and its role will be exceptionally important.

I think that the government should fully understand that development of the mortgage industry is an inevitable step for revival of the economy as a whole. The house is purchased together with the plot of land. The cost of the land is from 30% to 80% of the total purchase price. Hence, one can see how important it is to establish a rational system of land usage that would secure safety of ownership. This is very important not only for the development of a housing market and housing finance system but also for social, economic and political stability in the State.

Land Usage and Possibilities to Attract Foreign Capital

The program of intense economic reform shows essential advantages of direct foreign investment in comparison with other forms of economic assistance. Foreign investments are sources of (1) venture capital for production of goods and services, (2) new technology "know-how, and (3) organization of advanced marketing and administrative methods. Direct investments secure the most effective integration of a national economy into the world economy because of production, science and technological cooperation.

Now the inflow of foreign capital is very low, despite the passed legislation intended to secure optimal conditions for foreign investors. In 1992 the total volume of Western investments in Ukraine was \$900 million (US). Both the prolonged economic crisis and the existing tempo of foreign capital inflow may result in further production and living standard decreases.

Without foreign investments, it is doubtful that it will be possible to saturate the market with consumer goods and to secure political and social stability in this country. In order to solve this problem it is necessary to perfect legal conditions determined by economic legislation and economic climate favorable for entrepreneurs, by political and economic interest of the government in foreign capital.

Now, however, foreign investors face many difficulties. In particular, they reluctantly

agree to lease buildings, houses, or plots of land, preferring to purchase them in order to avoid the risk that lease conditions might be changed.

The lack of clear-cut land ownership regulations is one of the main barriers to foreign investment in this country. I think that it is not necessary to say what great importance they may have for the development of our towns where there is a need for reconstruction, development of infrastructure, and roads; where there is a great shortage of public-purpose buildings, hotels, and business complexes; where unique architectural monuments are in critical condition; and where the ecologic situation is difficult.

Combination of Public and Private Interests in Land Relations

This is one of the aspects of land relations which has found too little attention in the acting legislation. The adopted decisions in practice have led to incredible, sometimes insuperable, complications, especially in conveyance of land plots from land users and land owners for public needs (highways, engineering communications, public buildings, parks, etc.).

The legislation of Ukraine has established regulations under which it is necessary to have consent of all land users for conveyance of land for public needs. In many towns this resulted in blockage of the most important projects designated to improve vital activity of the towns.

I think it is necessary to have essentially new mechanism of conveyance of lands for public needs that would foresee the unconditional right of town authorities to transfer land. Also it is necessary to create a system of compensation to land users and land owners for caused losses.

One of the most important problems of contemporary territorial development of Ukrainian towns is the necessity to expand into new lands located beyond town borders. The territories of towns, as a rule, border on lands of village or urban village radas, who, within their competence, make decisions to transfer plots of land in their territory to someone's ownership or use. It is quite clear that respective village or urban village radas do not want to lose part of their land in favor of town radas, as this is contrary to their interests.

According to the Land Code of Ukraine, the decision to transfer to town radas new territories (lands) can be made by the regional rada, but this decision can be blocked by the village or urban village rada interested in it. This will not contradict "The Law Of Ukraine on Local Radas of People's Deputies and Local and Regional Self-Government," in which organs of local self-government at the basic level are given the power of competence, which can be changed only by the law or agreement.

The final decision on these problems may be made by the Supreme Rada of Ukraine, but can the Supreme Rada of Ukraine consider each definite case? There are thousands of them. Surely it can not.

Thus, a closed circle forms. The office that can allot land for town development is not interested in doing so. The acting legislation does not solve this problem. Absence of a mechanism of transferring new territories to towns results in a complete blockage of town lands by the land of village or urban village radas.

We consider that a real way to get out of the situation is to create a mechanism based on changing existing legislation. The first - temporary - step may be to give the right to regional radas to decide problems of town territorial development.

Conclusion

In this report we have made an attempt to analyze only some aspects of land reform in Ukraine that are of great importance for the State economy and for the fate of economic reform as a whole. Though the analysis is not exhaustive, it shows that our legislation is imperfect, while the rules of using and especially owning the land are not clear-cut.

The problem of land relations is of great importance for effective development of towns and other populated areas. Cardinal reforms of land policy call forth essentially new approaches to town development and regional planning. Maybe what I have said is not unquestionable, but the main thing in it is that effective reforms in Ukraine are impossible without land privatization, without working out a rational privatization mechanism inherent to the conditions of this country, without full-scale market of land and real estate.

Conveyance of Land in Urban Areas:

Procedure, Methods, Problems

By

**Yuri Piskovsky
Architect**

**Head of Architecture and Urban Development Division
Ministry of Construction and Architecture**

Of all human urges to endeavor the strongest is to construct . . .

August Perret

To construct . . . in what way, for whom, how much and where? It is not sufficient to have an ambition or a need after all; the most important is to have financial means (investments) and land!

Urban land is found within city or township boundaries that include the land allotted for habitation; general and agricultural usage; and other land, occupied by city woods, railways, water, air and pipelines, transportation networks, mining industry, etc.

Boundaries of the population center referred to as a town are determined by drawing the outer boundary of the town or township which would separate this land from other land of the unified State land fund. The boundary of the city or township is drawn on the basis of the master plan of the city or township. At the same time the city boundary is the border of the city as an administrative and territorial unit.

All land within city boundaries is subordinate to the city or township rada of people's deputies. Land parcels for housing, industry, and other types of capital construction are allotted to State enterprises, organizations and entities such as housing cooperatives, and individuals for private housing construction in conformity with the master plan of the city and with the approval of the city executive committee of the rada of people's deputies.

City master plans make up the basis for urban land usage along with detailed design projects for housing development as well as plans for rehabilitating the existing residential areas in city industrial districts, plans for the master plan's industrial units, and projects for industrial zones planning.

Conveyance of land parcels for every type of construction is allotted in strict conformity with zone functioning of the territory as follows: residential areas; social centers (such as administrative, scientific, educational, medical and sports, etc.); parks for public use; industrial areas for construction of industrial enterprises and associated projects; communal and storage areas for locating warehouses; garages, street car, trolley-bus and auto bus stations; outer transport construction sites for transportation vehicles and structures (passenger and cargo stations, ports, river wharves, etc.).

The city's chief architect or the district architect will check not less than once a year the scope of construction in the area according to the allotment of land parcels for construction. They will determine whether or not the homebuilder will retain this land parcel

or whether construction will be effected according to the architectural and planning assignment (APA). As the case may be, the proposal can be suggested to the Executive Committee of city (township) rada of people's deputies either to revoke the previous decision to allot the parcel to this homebuilder or to propose a modified APA.

What is actually the procedure for conveying land parcels for housing, civil, communal, and industrial construction in cities? What should be done; what documents should be prepared; and where should one apply? Our homebuilders are concerned with these and other questions. So there appears a necessity to build!

To live means to construct. Experience is passed from generation to generation. Life is going on. It poses new, ever more complicated and urgent tasks. Before a building or a town comes into being, a social foundation or initial prerequisite of man's construction activity appears. Time and society are the utmost customers. Architecture and civil engineering directly respond to any economic upheavals in the country. A mistake, miscalculation or slowing down means money spent in vain.

The homebuilder has to evaluate all the circumstances and forecast the social effect. He needs financial means besides -- and substantial means at that!

The procedure of land conveyance is described as follows. An application for land parcel conveyance for construction of a project (housing, social, industrial), complex,

expansion, addition or separate buildings and projects irrespective of whether additional land needs to be conveyed, is submitted to the Executive Committee of the rada of people's deputies.

Attached to the application will be brief characteristics of every proposed construction project; preliminary technical and economic indices; an evaluation of the proposed project site plans and dimensions; a written permit from the respective authorizing entity for the construction of this project, specifying means allotted for project construction and design; the proposed planning assignments, confirmed in routine order; and a copy of the master plan for object development specifying the construction priority.

Following the instructions from the city's Executive Committee or township rada of people's deputies, the district architect, on the basis of the master plan and detailed project elaboration, jointly prepares together with other services of the Executive Committee, the proposal to conduct a feasibility study for constructing the project or complex of projects in question.

In case this particular parcel is designed for the development (renovation) of the existing enterprise, a study is authorized to verify the possibility of carrying out the proposed construction within the site boundaries of the same enterprise. A certificate is drawn up regardless of the conclusions of this study. Conditions are tentatively examined for incorporating the proposed project into city engineering and transportation networks as well as

determination of whether requirements of the city supervisory bodies will be met.

With the homebuilder's consent to the project's location, the chief city architect will prepare a draft resolution of the Executive Committee of the city or township rada of people's deputies to authorize the allotment of the land parcel. Attached to the resolution will be a copy of the respective district site plan specifying approximate boundaries of the land parcel.

A decision on conveying the land parcel is adopted after approving the project with respect to the technical conditions and requirements listed in the decision of the city Executive Committee based on a feasibility study and on an architectural and project selection issued by the chief architect of the city (region) authorizing the design. In preparing the decision on the conveyance of the parcel, the homebuilder will submit written plans and drawings of the approved project and a copy of the decision by the entity that approved it.

The Executive Committee's decision will specify the parcel size and major requirements for the builder as to his share of the involvement in the development of engineering equipping, urban development, and landscaping of the territory as well as the demolition of existing housing and compensation to homeowners. For housing construction there should also be specified such data as the number of stories built or added to the premises as indicated in the site plan as well as the total square footage of the building and demographic characteristics of apartments complying with the requirements of the city or district Executive Committee.

On the basis of the decision on a feasibility study for constructing a project or complex, the city chief architect prepares and issues within ten days after filling out all necessary documents an architectural and projecting selection authorizing the plan.

The architectural and projecting appointment along with architectural and urban development requirements will include technical conditions for construction, sanitary and fire protection requirements, and specifications for connecting to the engineering networks, obtained from state supervisory bodies and services in charge of maintaining engineering, communal and other networks required by the city's Executive Committee decision for projects of municipal significance. Necessary coordination for laying underground communications [wiring] and connecting to engineering networks will be specified in drawings.

In order to change the land parcel's dimensions, the homebuilder will submit to the chief architect of the city or district a construction drawing substantiating the proposed change. The city chief architect will submit his decision on this issue to the city Executive Committee. Conveyance of the land parcel is carried out in strict accordance with the decision of the city rada of people's deputies Executive Committee and will be supported by a respective act.

A construction permit, signed by the chief architect of the city, region or district, will be issued to the homebuilder and will consist of the following documents:

- A copy of the builder's application for conveyance of the land parcel
- A copy of project characteristics proposed for construction
- The agreement of the chief architect of the city (region) or the district architect on a land parcel selection
- The decision of the Executive Committee of the district, city, township rada of people's deputies allotting the land parcel
- The architectural and projecting selection for planning
- The decision of the Executive Committee of the respective rada of people's deputies on conducting a feasibility study
- The drawing of the land parcel on a scale of 1:2000 and a copy of the site plan issued for conducting a feasibility study
- A plan of the land parcel with a sketch of the location of projected buildings and other objects connected with the existing situation, temporary fencing, red lines of construction and red marks

- A schematic drawing of projected engineering networks

- The resolution of conveyance of the land parcel

- The decision of the regional Executive Committee of the rada of people's deputies for removing [existing] greenery and plantings

- The resolution accepting the builder's landscaping plan required for preservation.

Construction approval is issued in three copies. One copy is kept in the archives of the city's chief architect or the district architect; the other two copies remain with the homebuilder.

The Executive Committee of the city rada of people's deputies will issue a State resolution on the right to land usage for parcels allotted to the State, cooperatives, public organizations, and construction companies for industrial projects, warehouses and other projects requiring a separate location in cities.

Architectural bodies will perform all jobs connected with selection and conveyance of a land parcel, preparation and issuance of architectural and project plans, construction red

lines, preparation of materials for allotment of the land parcel and designating parcel boundaries. Every land parcel proposed for conveyance will have a separate file in which all land conveyance documents and construction permits, as well as originals of architectural documents, project appointments and permit forms are kept chronologically.

For accounting purposes, the land parcels approved and brought on location are outlined on a temporary operations plane shown on lithographic galleys of the city topographical plan on a scale of 1:2000 or 1:5000.

Land parcels for construction of individual houses are allotted to citizens from the land of the city or township residential area for an unlimited term of usage by the decision of the city or township rada of people's deputies. These parcels are allotted only within the boundaries of residential areas designated by the master plan for individual construction and also for proposed detailed planning projects, housing construction and urban development of individual construction districts, and project proposals for the construction of engineering equipping and development of the above territories following the approval by the Executive Committee of the rada of people's deputies. The parcels are allotted by local civil engineering and architecture authorities based on the Executive Committee's decision of land allotment for individual housing construction.

Citizens who need housing and are willing to construct their own house will apply to the respective Executive Committee asking for a parcel to be allotted for their individual

construction. The application and necessary documents will be registered in a special book. The procedure for receiving the application, registration, accounting, and case reporting to the leaders of the Executive Committee is set up by the Executive Committee of the respective rada. According to the Executive Committee's decision, the city's chief architect or the district architect specifies the parcel on location by fixing its boundaries, determines the house placement on the parcel, and transfers the above to the homebuilder per the act. The act is compiled in three copies, one copy of which is entrusted to the land user, another one is included into materials on parcel alienation which are kept in the office of chief architect of the city or district architect and still another one is sent to the city or township Rada of people's deputies.

The right for citizens to use land is confirmed by a respective entry into the register of the Executive Committee of the city rada of people's deputies. Simultaneously, the city's chief architect or the district architect issues the parcel development plan on a scale of 1:5000, indicating construction red lines, conditions for improvement of the parcel, landscaping, and typical features of the house. In addition the builder will receive the project for fencing the parcel from the side of the street as well as four copies of the parcel development agreement that he signs with the respective Executive Committee. The development plan and housing project will be signed by the city chief architect or district architect on behalf of the office he manages. Development of the parcel can begin only after concluding the parcel development agreement and certifying it in the notary office. Construction jobs can be started only after obtaining permission from architectural authorities.

Commissioning and putting into operation the constructed houses and other structures provided by the project, as well as housing renovation, will be carried out by State commissions appointed by local authorities. The following model of conveyance of a land parcel for construction has been set up:

- An application from the enterprise or citizen organization for any type of construction is submitted to the rada of people's deputies (i.e. Mayor's office, Executive committee)
- The rada assigns the architectural department the preparation of the proposal based on the Master Plan and other projects
- The Chief Architectural Department (CAD) will request a feasibility study (assigns a detailed planning project) and an approval by an urban planning institution
- Assisted by CAD, the customer receives technical specifications from the city's engineering services. Then the project is ordered from the planning institution.
- The location of the project and the project itself are negotiated and approved through the City Development Council.

- The Chief Architectural Department prepares its decision.
- Permission is granted to do the project, convey the land parcel, and detail the conveyed project.
- The conveyance project is coordinated with the landowners.
- The rada (Mayor's office, Executive Committee) approves the conveyance project and specifies the address and size of the parcel.
- The parcel boundaries are brought on location.
- The State issues an act on land ownership (usage).
- The State Architectural and Construction Control Commission gives permission for construction.
- Suitable construction is undertaken.
- The State commission accepts the project.
- Statistical data is transferred into official files.

This system is tough, involving many administrative and business entities. The conveyance process is made still more complicated by the absence of an efficient cadastre model and technical equipping. Privatization of land in various forms will facilitate reorganization of the existing system, with logical and timely decision-making regarding land

conveyance for all kinds of construction as the main form of real estate and social protection.

Property is material space, guaranteeing to the individual his right to live and to continue his heritage as well as his right to a spiritual life. It is imperative to consider the best analogies in the world. People have always been stirred, are still being stirred and will ever be stirred by the issue of to whom such unreplenishable values of Nature -- natural deposits, land, atmosphere, rivers, etc. -- should belong. Within the bounds of national territories this issue should be solved by the citizens of this particular nation.

Any material property acquires social significance exclusively under market conditions and only then, when it assumes a certain consumer value, does it presents itself as a commodity. Non-market national property is always no one's, which leads to the ruination of Nature. If social consciousness will not take the upper hand, no positive outcomes can be forecast. In Nature everything exists and represents itself worthy through a necessity which is in fact a consequence of actions of certain objective laws.

What Land In Towns Should Be Privatized:

Problems and Solutions

By

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Privatization of urban land with its objectives and mechanisms is a complex and comprehensive problem. In this report, the problems are treated basically from the viewpoint of urban development.

Urban land is the major wealth of Ukraine. The land area of 437 towns and 923 townships equals about 1.3 million square kilometers, up to 60% of which is housing. Although urban territory occupies approximately 2% of the land stock of the country, it is inhabited by almost 70% of the population. It is also the location of over 80% of the nation's basic funds and the overwhelming majority of its production, scientific and sociocultural potential. It is common knowledge that the *Law On Payment for Land* has introduced the concept of a standard cost for land that is supposed to be used for economic regulation of land relationships in transferring land into ownership as an inheritance, presenting it as a gift, and in obtaining a bank loan against a land parcel lien. The standard cost of land is established at the value of a one hundredfold ratio of land tax. Based on this, the standard cost of urban land in 1992 constituted roughly 0.6 trillion karbovanets. With an indexation factor of 30, it

equals 17.4 trillion karbovanets, or nearly \$6 billion (US). This figure well exceeds the cost of all basic funds of the national economy and equals about 30% of the value of Ukraine's land stock. Using the existing methods of computing, the specific cost of urban land is almost 15 times higher than in the country; however, this huge national treasure is not utilized effectively. For example, territory of production enterprises exceeds by several times similar enterprises abroad.

In the highly valuable urban areas, there are located 0.5 million garden parcels, occupying 30,000 hectares, which is equal to the total territory of such large a city as Odessa. Every tenth hectare within cities and townships is the land of agricultural entities.

At the same time, the towns of Ukraine are experiencing a sharp deficit of territories for housing and other types of civil construction. In conformity with the Land Code of Ukraine, urban land is subordinate and administered by local organs of government. Yet, till recent times, there has not existed a mechanism of full-scale usage of this land potential for the purpose of increasing local budgets. That is why financing of urban construction was carried out mostly at the expense of limited centralized state capital investments and constituted in 1990 only 302 karbovanets per capita, with the construction cost of one square meter of total living space equalling 535 karbovanets. As a result, degradation of urban land is underway.

Providing the population with housing stock, communal services, and entities catering to everyday needs is considerably lagging behind when compared to both domestic standards

as well as to foreign indices. The situation is even more deteriorated mainly by a sharp decrease in volume of urban construction because of the prevailing financial limitations (from 16.6 minimum square meters of housing in 1988 to 11.4 minimum square meters in 1992). Annual surplus housing provision has dropped from 0.25 square meters per capita in the 1980s to 0.1 square meter per capita in 1991.

It's worthwhile to mention that bringing urban social infrastructure up to the standard level will require (in terms of 1993 prices) more than 80 trillion karbovanets, or over 4 trillion karbovanets per year in order to complete implementation of this program within 20 years. Taking into account the rapid inflation ratio, all calculations are to be done in hard, convertible currency - in US dollars. Based on the official currency exchange ratio set up by the National Bank of Ukraine, the above total expenditures will rise to approximately \$30 billion, or \$1.5 billion per year. Taking into consideration operating expenditures, the figure will rise to over \$2 billion per year. Therefore, factual annual expenditures for the development of urban social infrastructure will have to be increased by 15 to 20 times.

The state, naturally, will not be able to carry this burden. Moreover, the dramatic situation in the economy does not permit including the urban development issue into the list of state priorities. People themselves will be unable to finance mere housing construction, given the present constantly declining level of population's revenues. Thus, while in 1991 the average annual revenue of urban inhabitants was enough to construct about 8 square meters of living space, in 1993 the figure dropped by roughly 5 times.

Administrative methods of urban growth regulation and structural changes in the production basis which prevailed in the recent past have brought no positive results. The biggest portion of population surplus was to be found in the 11 largest cities, whose demographic indices (with the exception of Kiev) are inferior to the average indices throughout Ukraine. In the industrial structure, the leading position still belongs to resource-consuming production, which is production-oriented and is not designed to meet people's demands.

Migration from rural areas has not managed to stop the process of aging in the urban population. At the same time, it has led to deterioration of citizens' social characteristics. Mass privatization of state property (including land) has to prevent further "lumpenization" of the urban population, and will restore motivation stimuli to labor, strengthen social stability and create an owners' class, whose profits will promote the establishment of progressive urban environmental standards in accordance with selective preferences of the citizens.

In view of the above arguments, we would suggest that urban land privatization (along with land taxation) through increasing market space will emerge as an important tool to increase the efficacy of urban land usage, accumulating financial resources, rational urban development, and a means for local government bodies to implement a national policy of urban development. However, regulating the role of land taxation is not as yet high. This is so because it remains part of the cost of the product produced by a state-owned monopolistic enterprise. Therefore, privatization of urban land is objectively becoming the priority in operational and strategic activities of local government bodies. A key role in this privatization

is being played by upgrading legislative and institutional bases, formation of market-land infrastructure, and creation of conditions to encourage the population. The latter is increasingly imperative, since according to sociological investigation, conducted in late 1991, only 36.5% of citizens - or every fourth citizen - were willing to acquire land in the nearest future.

What are existing legislative possibilities for privatizing urban land? In conformity with the Land Code of Ukraine, it is prohibited to privatize land of communal use, belonging to enterprises of state power, communications, defense, environment protection, recreation, historical, and cultural designation and a number of others - in all about 40% of urban territory. Thus, there are no formal prohibitions for privatization of the remaining urban land.

However, in accordance with the law, it is only land parcels adjacent to private houses that can be privatized as well as the land parcels with gardens, country houses and garages on them - in all approximately 0.3 minimum hectares (approximately 23% of urban land). The parcels of the above functional designation will be transferred into private ownership free of charge and only to the citizens of Ukraine: to those who were given such parcels before and to those who have volunteered to obtain such parcels from reserve land stock. Citizens will acquire the right to land ownership also in cases of inheritance, receiving the land as the portion of joint property of the spouses, buy-sell deals, presenting land as a gift, and as an exchange. The following dimensions were set up of land parcels, subject to privatization: up to 0.15 hectare in townships and up to 0.1 hectare in towns for construction and maintenance

of the private house; up to 0.12 hectare for gardening; up to 0.1 hectare for countryside house (dacha) construction; and up to 0.01 hectare for individual garages.

When the right to ownership of these objects is transferred, also transferred will be the right to ownership of the land parcel, provided their target designation is not changed. An owner of the land parcel has legal right to lease it for the term of up to 5 years also without changing its target designation. The term of lease can be prolonged in case the land owner has temporarily lost his or her ability to work, in case of drafting to the military service, studies (up to 5 years), and, in the case of inheriting the land by a minor, till the full age.

The law aims to protect and guarantee the land owners' rights. Thus, for example, it is not allowed through creditors' claims to charge for land parcel belonging to the citizen as his or her right of private ownership with the exception of cases when the land parcel is leased. Withdrawal (buying out) of land from citizens for state or social needs can be effected only through their free will, after the local rada will have allocated an equally appropriate land parcel for housing construction, production and other projects by the enterprises, organizations and entities which are acquiring the above land parcel instead of those which are alienated, with all other losses also compensated. The local Rada has a priority right for buying out at its own expense the land which is privately owned with the owner's consent. Without such consent on the part of the owner, the case is submitted to court. However, a number of provisions of the Land Code are either controversial or have been so written that the efficacy of the law is undermined. The Land Code stipulates the right of the land owner to construct

housing, production, cultural and projects and structures needed daily that are subject to coordination with respective local radas; however, it is obvious from the other Articles of the Law that the owner of the land parcel is eligible to construct only a residence, countryside house or garage. Yet the most important point is that the Land Code has established a 6-year moratorium on selling land since the time of acquiring the right to own it and the process of formalizing this right is delayed.

In December 1992, the Cabinet of Ministers of Ukraine adopted a Decree *On Privatization of Land Parcels*" which, based on the authority granted by the Supreme Rada, has canceled this moratorium. The Decree has obliged municipal and township organs to provide a transfer in 1993 into private ownership of Ukraine's citizens the land parcels which had been allotted to them before. The right of these citizens has also been established to sell the above parcels without changing their target designation. selling at the price fixed by mutual consent of the parties but not lower than the standard cost for land. However, the Supreme Rada in January, 1993 recommended to the Government to exclude from this Decree the right to sell. Therefore [the following actions have occurred]:

- Legislative provisions have been introduced which considerably decrease the scope of urban land liable for privatization (almost 8/10 of urban land practically remains beyond market relationships).
- Even existing privatization possibilities are not fully utilized, while setting up market

relationships is being hampered.

- No additional impetus is created for private domestic and foreign investments into urban development.

- Free transfer into private ownership of land categories stipulated by the law without the right to buy or sell undermines the regulating role of privatization in rational urban development.

Therefore, it appears reasonable that the land parcels being allotted to the citizens for gardening, housing and garage construction within urban areas should be sold to the local radas (including selling out on auction basis), since the towns are quite limited in their territorial resources.

What other urban land is liable for privatization? This is the land of agricultural enterprises, occupying about 10% of urban territories. The Land Code has provisions to transfer this land into collective ownership with the subsequent right for the collective farm member to secede from it, to obtain his land parcel and to sell it. However, this right is practically never realized, since this process is additionally made complicated by the requirements to preliminary transfer the land of agricultural enterprises to the jurisdiction of township or city radas. Another complication was created when these radas were deprived of the right to manage arable soil and multi-year plantations (This right is entrusted to the

Supreme Rada.). The above-mentioned moratorium adds to the obstacles, and last, but not least, the inefficiency of institutional basis.

It is obvious that the Law stipulates a very long procedure of privatization of land parcels belonging to agricultural enterprises, as well as those having individual houses, gardens, countryside houses and garages on them. There are possibilities of limited local government bodies obtaining them through privatization funds, sufficient for urban development in the nearest future. From this point of view, it is reasonable to expand the possibilities of urban land privatization in combination with privatization of state enterprises.

The current legal framework does not make provisions for privatization of land on which projects liable for privatization are located. This legislation is to be corrected. And in this case, it is not only the industrial enterprises, but also trading entities, public food enterprises and those catering everyday needs of the population, etc. and land parcels having state-owned housing on them, which are due to be privatized and sold on auction basis. This land constitutes another 10-15% of urban land. To sum up the proposals, a total 40-45% of urban territory can become private property.

In summary, relevant problems today are as follows:

- Need to modify the current land legislation

- Elaboration of respective sub-law standards and applied techniques

- Implementation of mechanisms to stimulate the activities of newly-formed elements of market infrastructure (such as land banks, investment funds, etc., including, especially at the initial stage, state insurance for commercial risk, granting state guarantees and tax privileges)

- Involving foreign investors

- Establishing juridical responsibility for all administrative bodies for noncompliance with legal standards, including both actions and non-activity, including commitments to make up losses both in the case of unwarranted suspension of rights and in the case of damages inflicted by public bodies in the course of operational activities, etc.

Setting up and regular indexation of land cost and intra-urban differentiation are imperative. Taking advantage of the world's experience, we must consider regularities in land cost formation; inflation ratio; financial means demands for urban development; the forecasted profits of objects of privatization; the necessity to utilize privatization property certificates and housing bonds, which have been introduced in Ukraine as well as public opinion and tendencies in its changes; peculiarities of separate cities' development, which are the result of differences in urban development situations and resources in these cities.

To fulfill these tasks, land titling and cadastre valuation of land parcels should move faster, at the same time improving methodology and technical, personnel and financial bases. In this connection, the role of Master Plans as the principle documents to determine relative value and rational use of urban territories considerably increases. With legal and economic limitations for territorial expansion of the cities and with a deficiency of territorial resources, the land factor is becoming the most decisive one for forecasting the scope and profile of urban development. (Note: Alienation of new land in favor of the city is dependent on the land owner's consent. With regard to valuable agricultural land, it is dependent on the Supreme Rada, while compensation expenses per every hectare in square kilometers an amount equal to the construction cost - 152,500 square meters of living space.)

The Master Plan is supposed to be the basis for implementing the policy of urban land usage and paths for its realization. In particular it establishes the scope of urban development, the priorities and conditions of land parcel privatization, determination of urban differences in [land] parcels cost, and reasonable measures designed to target regulation by the local Rada of urban development and the process of privatization, especially to designate the land that has to be bought from the landowners to solve municipal problems. This brings about radical improvement in the orientation and contents of the Master Plan.

Private Property Interests and Private Land Markets

By

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Executive Summary

This paper describes the main features of the Anglo-American system of private property rights. The Anglo-American system does not have a concept of "absolute" ownership. Instead each owner has a "bundle of rights": rights to occupy the land; to use the land in certain ways; to exclude other persons from the land; and rights to alienate (transfer). New bundles of rights can easily be assembled whenever there is a major industrial, commercial and residential project so that it will be possible to satisfy the objectives and interests of all of the parties, public and private.

The paper then lists the legal categories that are used for various "sticks" in the bundle of rights. It specifically discusses the concept of leaseholds, which have many advantages, but which can also cause many problems, such as: need for a highly skilled staff; corruption; special legislation so that leases can be used as security for loans; disinvestment by lessees at the end of the lease; inflation; and unattractiveness to large investors; however, Hong Kong has had considerable success in creating a dynamic economy while retaining state land ownership. The sale of leases has been an important revenue source to build new urban infrastructure. Shanghai and the Special Economic Zones in the People's Republic of China

are clearly attempting to imitate Hong Kong, and thus to maintain the principle that land is publically owned, but limited use of land can be given, as necessary, to stimulate commercial and industrial growth.

"Development rights," are a special form of private property rights that have become extremely important in the past twenty years. The transfer of development rights gives great flexibility to land transactions and is proving to be very useful to public agencies which wish to deal with the potential value of land without disturbing the existing users. The French experiment of selling the right to more intense development was ultimately rejected as a national policy, but is still widely used by the suburbs of Paris.

The question of speculation in land is also discussed. Speculation is characteristic of private market economies, especially in periods of rapid economic growth, and when there no alternative forms of investment, such as stocks and bonds. The international experience has been that it is very difficult to control speculation in land through regulation or taxation. The only true control is provide an abundant supply of land with good public services (infrastructure), and attractive alternative forms of investment.

The paper concludes that real estate transactions in modern capitalist economies are based on complex transfers of property rights between private persons and between public agencies and private persons. A large "toolbox" of property rights is essential to facilitate all major projects. The economic development of certain countries in Latin America, Africa and

Asia has been impeded by a lack of flexible and secure private property rights in their legal systems.

1. The Nature of Land Rights

There are two main statutory systems of land tenure used by market economies: (1) Land tenure as defined by the Anglo-American system, also called the "common law,, tradition, and (2) land tenure as defined by "civil law" that is derived from the Napoleonic Code. In this paper I will discuss land tenure as it is defined in the first, although this is not to say that the Anglo-American system is superior.

One of the most important elements of the Anglo-American system is that it does not give absolute ownership to anyone. As defined by Farvacque and McAuslan (1992) the most important characteristic of the common law system is that it permits multiple rights to the land.

Different people can have or own different sets or bundles of rights in the land, which may last for different periods of time or may be so arranged that they only come into being in the future and may cover different aspects of the total corpus of rights to land --the right to use and manage it; the right to the fruits; the right to dispose of it. In common law systems, people do not own land; they own estates or bundles of rights in the land.,, [page 37]

In other words, no one has complete and absolute ownership. Instead, everyone has a bundle of "sticks" or rights. These bundles are called "estates in land." Ownership is not of the land but of the bundle of rights.

The advantage of this approach is its enormous flexibility. Since the bundle of rights is infinitely divisible, it is possible to invent new combinations of rights to cover any arrangement that is necessary for parties, public or private, to carry out any economic or social purpose. This can be very important, since most major commercial and industrial projects in modern economies involve several public bodies and several private investors, all of whom will be exchanging property rights with each other to carry out the project.

In the Anglo-American system, all property rights are limited by the concept which is (awkwardly) called "the police power." This consists of the right of the government to take away certain sticks of the bundle (usually the rights to certain uses of the land) without compensation, when justified by a public or social purpose. Any system of private property rights should contain a legal principle that covers this subject. Since virtually all constitutions require payment when property is taken for a public purpose, a concept of the "police power," which permits certain types of rights to be taken without paying compensation is quite important. If it did not exist, all changes in land policy by the government would involve the payment of compensation, which would be operationally almost impossible in societies in which the regulation (and deregulation) of land uses must be constantly evolving to meet the needs of changing technology and **environmental** protection. For this reason Anglo-American doctrine in this field is quite complex, as is discussed in the paper by Jerold Kayden at this conference.

II. Types of Property

Fee simple, or Freehold is used to describe **maximum** number of rights that can be owned. The owner of a fee simple has four categories of rights: (1) the right to fully occupy and to possess the land and all of the structures upon it, (2) the right to exclude all others, (3) the right to use the land and structures in any way that he or she wishes, and (4) the right to alienate, that is, to sell or transfer all or part of these rights to any other person, group of persons or government agency. These four rights are limited only by the overall regulatory system of the state. A life estate describes full rights of ownership, but limited to the lifetime(s) of the person(s) owning the life estate. A leasehold may give full or partial rights to possess and use the property, but for a limited time. Leases have been written for as little as one day and as long as 999 years. (See discussion of advantages and disadvantages in the next section of this paper.)

It is also possible to have classes of ownership which will exist only in the future, which are called future interests. The most common future interest is called a remainder interest: it occurs after the death of a person who has a life estate. It is also possible to have what is called a fee simple determinable which is an estate that will end if the owner of the bundle of rights does something that his grantor prohibited. For example, a municipality gives a piece of land to a private person for the purpose of providing automobile parking to the public. If that person ceases to use it for providing parking to the public, all rights will revert back to the original owner (the municipality).

Ownership can also be divided between those who manage the use of the land, and those who have rights to the profits from the use. These are often called trusts, but the whole concept of the corporation, an essential institution of market economies, is based on property in which ownership rights are held by one group of people (the shareholders) and management rights by another group (the management).

Many forms of concurrent ownership are also possible. In a tenancy in common many persons can have rights in a single, undivided parcel of land. Joint tenancies are similar, but when one joint tenant dies, his or her rights immediately pass to the surviving tenants. This is often used by married couples so that the surviving spouse has **immediate** title to the family dwelling unit when the other spouse dies.

There is also a useful category of rights known as easements, which is a grant of an interest in land that entitles a person to use land possessed by another. An affirmative easement is a "stick" that permits a person to make some sort of use of the land of another person; for example, the right of a person to cross another's land in order to go to his own land. Negative easements prevent a neighbor from blocking light, air, etc., and have recently become important to protect scenic views and assure that sunlight will fall on solar heaters. Public bodies can hold scenic and ecological easements from adjacent private owners to protect the character of especially beautiful or ecologically sensitive areas.

Covenants are promises made by one landowner to another that he or she will or will

not do something on the land. For example, companies that create large housing developments ("subdivisions") often insert elaborate covenants about the type of architecture and landscape materials, etc. that individual owners may use. It is believed that the buyers of individual plots will pay a higher price when the architecture, landscaping, etc. of the development is controlled by covenants. Similar covenants are equally important in establishing industrial estates for offer to investors or offices set in parks which are attractive for investment.

III. The Advantages and Disadvantages of Leaseholds

There are many advantages to all land being held by the State and only leased to private parties for specific amounts of time. It appears to have worked exceptionally well in Hong Kong and the Netherlands but less well in Sweden. Private leases are the basis for much of the urban land in London; however, leaseholds have certain disadvantages:

1. They must be administered by a well-trained and incorruptible agency. Because each piece of land is unique, it is difficult for bureaucracies to know the characteristics and value of each piece of land, especially when leases are given at the provincial or national level.
2. Special legislation is required to permit leases to be used as collateral ("security") for loans. The possibility of using land for collateral is essential to the functioning of modern property system. (See further discussion in the paper by Samuel Sherer at this conference.)

3. Lessees tend to "disinvest" (remove capital) from buildings toward the end of leases.
4. It can be difficult to keep the rents received from leases in line with inflation. This is as much a political problem as a technical one. When many people are lessees of the State, they form a voting block to prevent rents from being raised. (Sweden is an example.)
5. If leases are not carefully written, lessees may claim that they are not subject to "the police power." This has become a problem in Hong Kong.
6. If a nation is competing to attract investors, it will be at a competitive disadvantage if other countries offer investors freehold land. On the other hand, leases have been quite successful on Hong Kong island and Kowloon. There all land belongs to the State (the British "Crown"). Land is not sold but leased - usually for 75 years. The lease specifies the exact use and building size to be permitted. If the use is changed to a more intensive use or the building is enlarged, a new lease must be purchased from the Hong Kong government. Therefore, as Hong Kong's economy has prospered, the government has had continuing income from its leases, generally used to improve the infrastructure (roads, gas lines, electricity, water, etc.). As the infrastructure is improved, more industry and commerce becomes possible, and new leases (to enlarge activities) are requested, which in turn yield money for better infrastructure. In this way a beneficial upward cycle of development can be established. As mentioned in Professor David Dowall's paper, the People's Republic of China is moving in the direction of the Hong Kong system, The Constitution of 1982,

Article 10, Clause 4, stated:

"No organization or individual may appropriate, buy, sell, or lease land, or unlawfully transfer it in other ways."

In 1988 this clause was amended to remove the words "or lease," and to add the words "the right of land use can be transferred in accordance with law." In the Pudong New Development Area in Shanghai, land-use rights are sold by public bidding or negotiation. Maximum terms are: 40 years for commercial, tourist, or recreational purposes; 50 years for industrial purposes; 50 years for education, scientific research, culture, public health or sports; 70 years for housing; and 50 years for other purposes. Similar leases are used in the three Special Economic Zones (Shenzhen, Xiamen, and Shantou), except that tourism uses are limited to only 20 years. Leasing has also been used in Amsterdam since 1896, for three reasons: (1) [to increase] revenue to the city, (2) [to] assure careful control, especially of noxious industrial uses, and (3) to make it easier for small enterprises by reducing the amount of "start-up" capital needed (since capital for land purchase is not needed).

IV. The Concept of Development Rights

One extremely useful way of looking at property rights is to divide them as follows:

Market Value = Existing Use Value + Development Value.

Market value is defined as the price that would be paid by "the market" - for example, at an

auction. *Existing use value* is the capitalization of the stream of income from the property in its current use. *Capitalization* is the conversion of a stream of income into a single sum. It can be calculated by the following formula:

$$\text{Capital value} = \text{Annual income divided by the prevailing rate of interest}$$

For example, if a rented dwelling unit produced \$1,000 in net income in a year, and the interest rate were 10%, the capitalized use value of the farm or dwelling unit would be \$10,000 ($1,000/0.10$).

Development value is the capitalized stream of the potential new, additional, or future uses of the property. For example, if a buyer of the single dwelling unit believed that two more dwelling units could be added to the same site, he or she would calculate the future income that these additional units would pay and then capitalize it. The amount which he or she would bid at an auction would be the sum of capitalized value of the present use, and the capitalized value of the potential future uses that the buyer thought could be added in the future. People will bid different prices at an auction, because each buyer might see different potential future uses for a particular piece of land. Buyers who have lively imaginations about the future will bid more because they foresee many development possibilities. However, the future is always uncertain, any they could lose money if they paid for development values which could not, in fact, be realized in the future.

Development values may also be referred to as development rights. Sometimes owners prefer the use that they are now making of their land, and never want to develop it to more intensive uses. For example, an historic building that is "downtown" in a commercial part of the city where land prices are high because of the demand for commercial or office space may have a high development value because of its location. If the law of the municipality permits, the owners of the historic building could sell their development rights to other owners nearby, permitting them to build larger and more profitable buildings. The historic building would then have money that could be invested, and the income from the investment could be used to repair and maintain it. This process is called the transfer of development rights.

Once it is understood, the transfer of development rights can have a very broad range of applications. For example, if a city wishes to create a Greenbelt, owners in the Greenbelt will lose much of the value of their land; specifically, they will lose all of their rights to develop their land, that is, their development rights (as discussed above). However, if the law provides that persons who wished to build in the city (inside the Greenbelt) needed to buy development rights in order to obtain a permit to build, the persons in the Greenbelt might be permitted to sell their development rights. In this way land owners in the Greenbelt area would receive some compensation for the rights that they can no longer exercise. There have been successful (although small) experiments with this type of transfer of development rights in the United States. Seoul and 13 other cities in Korea are now actively considering the system to preserve their Greenbelts. In San Paulo, Brazil, special development rights are given as a form of subsidy to landowners who provide proper housing for poor families that

have squatted on their land.

However, by far the most common use of transfer of development rights has been the transfer of rights that occurs among public bodies and private parties in major commercial and industrial projects. Unfortunately, most countries have not yet enacted legislation that defines development rights and the methods of their transfer. **While such legislation has some technical complexities, there are major advantages having development rights available in the legal system as a form of property interest.**

One interesting variation is to consider that property interests exist in horizontal "strata." The famous international planning consultant, Constantine Doxiades, proposed that there should be no "landowners" but only "space owners." Private ownership would extend only 10 meters upward and 6 meters downward. Space above 10 meters would be owned by various levels of government. For example the "second" 10 meters would be owned by the district, the third by the municipality, the fourth by the province, the fifth by the nation. As persons wished to build tall buildings, the right to do so must be purchased from the relevant public bodies, depending on the size of the building. The Law of December 31, 1975 in France enacted a very similar system. It stated, in effect, that private owners have the right to build as many square meters of structure as the square meters of land that they owned. (1.5 times in Paris.) If an owner wished to build a larger structure, the right to build must be purchased from the municipality. For example, if an additional 1,000 square meters of structure were desired, the owner must pay a fee equal to the price of 1,000 square meters of

land in the district where the construction would take place. (For information on how such a fee would be calculated, please refer to the paper by Joseph Eckert at this conference.) In 1982, municipalities of over 50,000 people were permitted to raise the owner's rights to two times the amount of land owned. (three times in the case of Paris). In 1986, municipalities were permitted to discontinue the system entirely. By February 1, 1991, 2,241 of the 36,765 municipalities in France still had the system (6%). However, the system covers a population of 14.7 million people, and is used in most of the municipalities surrounding Paris, which have the greatest pressures for growth. Sales of development rights amounted to about \$159 million (US) in 1990. (Reference: Granell, Jean-Jacque, *L'Experience Francais du Plafond Legal de Densite*, Monograph of ADEF, Paris, April 1992.)

Indirectly, the "sale" of development rights occurs in most big American cities , where large buildings are often permitted only when the developer "pays a price" to the municipality, not usually in money, but in the donation of infrastructure that the municipality needs. However, the experience in both France and the United States shows that the sale of development rights works only when there is a strong market demand for development.

V. Controlling Speculation in Land

One of the most difficult problems with all systems of private land ownership is the control of land speculation. Land speculation may be defined as situation where persons buy land not for the purpose of using it, but only for the purpose of holding it for sale at a later

time for a higher price. The so-called Neo-Classical economists argue that such activities are economically useful, because they will permit land to be released into the market at the time when the price is judged by their owners to be highest. The reason that the price will be high is that someone is able to put the land to a very valuable use.

However, in spite of this theoretical argument, land prices have often become very high when countries with free market economies have enjoyed rapid economic development. In fact the economically most successful countries in recent years, Japan and Korea, have the highest urban land values in the world. Land speculation is most intense when a country does not have other alternative investment possibilities (such as a stock and bond market). In such a case, people will invest excess capital into land. As more and more people invest in land, the price goes up, encouraging more investment, since the price is perceived to be always rising. Eventually prices will stop rising, and there may be a sharp decline in prices, as recently happened in Japan, and may be happening now in Korea. However, this may occur only after many persons have become very rich from this process. Land speculation is particularly difficult to control when the national currency is weak, but the economic future of the country in the long run is promising.

An important aspect of speculation is that much of the value of urban land is created by installation of infrastructure: land with a road in front of it has much greater value than one that do not. Ideally, therefore, the costs of building infrastructure should be transferred to those whose values are increased. In practice, however, it has been difficult to find

institutions that can do this. Betterment taxation attempts to tax such gains in value after the infrastructure has been installed. Development impact fees attempt to predict all of the infrastructure that will be needed, and charge them to the developer before permission to develop is given. Joint private/public projects solve the problem by a negotiation between the developer and the public bodies as to who will provide the various services and how they will be paid for. Almost all large projects in the United States and many other free-market economies are now done in this way. (Refer to the paper by Professor Charles Haar.)

Leaseholds have been used to attempt to control speculation, as in Hong Kong, already described. However, there can also be speculation in "key money, " that is to the right to obtain a lease. One of the purposes of the French system of selling development rights has to control speculation, but its success is hard to evaluate from other variables in the real estate market.

Land ownership can be held by the state, and building by private persons, as was done in the former Yugoslavia and other socialist countries. However, the experience appears to be that this only shifts speculative values to the purchase and sale of buildings, and does not solve the problem.

In summary, no country appears to have found a perfect solution. It is very difficult to have rapid economic growth in a economy without land being "valorized," that is, the best urban locations increasing in value more rapidly than general inflation. In the long run the

only way to limit land speculation is (1) to provide many other forms of investment opportunities, and (2) to keep the supply of well-serviced land larger than the demand for such land. where these conditions exist, as in most countries in Western Europe and the United States, land speculation is not attractive, except in special situations.

Conclusion

A lack of a sufficient set of categories of property interests has been a serious problem to economic development in many countries. Incomplete and unclear legislation about land rights is deferred investment on the one hand, and on the other, has prevented public bodies from being able to control the proper development of land. The economic progress of certain countries in Latin America, Africa and Asia has been impeded by a lack of an adequate framework of legislation concerning property rights. The objectives of a system of property rights might be listed follows:

1. Greatest possible flexibility.
2. Clarity and security of rights.
3. Resistance to bribery and corruption.
4. Possibility of the separation of "use rights" and "development rights".

5. Possibility of mixed public/private interests in industrial, commercial, and institutional projects.

6. A concept of "police power," that is, the right of the State to take away certain property rights without compensation, but only within limits.

This paper has attempted to outline a few of possibilities that may be useful in developing a future system of property interests that are both clear and flexible enough to carry out whatever national policy may be chosen.

The Role and Function of Urban Land Markets in Market Economies

by

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What Urban Land Markets Do

Markets provide for the exchange of goods and services between buyers and sellers. In market economies there are a multitude of markets: markets of food, labor, capital and land. In some instances markets are highly organized and buyers and sellers go to specific places to execute transactions. A good example is the New York Stock Exchange. However, in most cases, markets are less structured and buyers and sellers contact each other through advertising, auctions or brokers.

All market transactions have three dimensions: a product, a quantity, and a price. Buyers and sellers enter markets to attempt to sell or buy goods and services. A buyer's process to effect a market transaction begins with a search for the good or service he or she is interested in buying. Once sellers have been found, the buyer then proceeds to determine the asking prices of the various sellers. If the buyer is economically rational, he will always attempt to purchase the good or service at the lowest possible price. However, he may end up rejecting all sales offers if he deems that the asking prices are too high.

A seller's process to effect a market transaction begins with a search for buyers. Once a group of buyers has been found, the seller will attempt to sell the good or service at the highest possible price. In the end he may reject all offers from buyers if they are too low, retaining the good or service. An important feature of all markets is their voluntary nature; neither buyers nor sellers are forced to sell or buy. Each decides whether to buy or sell based on the actual price they would pay or receive. Land markets follow these general patterns as well.

Land markets perform four important functions: 1) they bring buyers and sellers together to facilitate transactions; 2) they set prices for land; 3) land markets allocate land by setting prices so that the land market "clears" -- that is, the quantity of land offered for sale equals the quantity of land demanded; and 4) land prices play an important role in ensuring that land is efficiently used. If a buyer has to pay a high price for a land parcel because there are few such parcels for sale, he will use the land intensively, perhaps building a multi-story building. This pattern will be described below in greater detail.

Requirements for Efficient Land Markets

If urban land markets are competitive they will operate efficiently. There are six important conditions necessary for competitive land market operation: well defined property rights; voluntary participation; many buyers and sellers; free entry and exit; perfect information and similarity of product. Markets need well-defined property rights, so that sellers and buyers can clearly determine what they can and cannot do with land and property. These

rights need to be unambiguous and easy to transfer from sellers to buyers.

Buyers and sellers must not be forced into market transactions; all market activities should be voluntary. This is especially important for land and housing markets. Households shopping for housing should have the option of refusing to accept an offer if it does not meet their requirements and budget. If such conditions prevail, consumer sovereignty will develop, forcing land and housing developers to be more responsive to consumers. Only under very limited conditions should people be forced to sell their property. These conditions usually exist in cases of bankruptcy and when the government needs land for public projects.

Markets work best when there is competition, and this requires that there are many buyers and sellers. If markets are comprised of a multitude of buyers and sellers, no one seller or buyer will be able to control or influence market prices. The seller will quickly determine the current market price and set his accordingly. Under competitive market conditions, individual buyers and sellers are price takers, not price setters.

Actual market prices are determined by the combined activities of all individual buyers and sellers. Each seller will determine how many units of land he wants to sell at each specific price. The aggregation of these individual decisions determines the market supply of land. Each buyer determines how many units of land he wants to buy at each specific price. The aggregation of these individual decisions determines the market demand for land. In the marketplace, these supply and demand schedules determine the market price, where the quantity

demand equals the quantity supplied. If a sufficient number of sellers decide to limit the amount of land they are willing to sell, prices will start to rise. On the other hand, if buyers leave the market, the market price of land will decrease. The dynamics of the marketplace yield more efficient outcomes if there are many buyers and sellers, so that no individual buyer or seller can control the market.

Markets should be open, so that buyers and sellers can freely enter and exit. If market prices rise, new sellers and suppliers should be able to enter the market and offer land for sale. If entry is restricted, existing sellers may be able to earn excess profits and buyers will pay more than necessary. Free entry and exit will produce market outcomes which allocate resources at their lowest possible cost. Markets are information intensive, and buyers and sellers must be fully informed in order to make rational decisions. This means that information should be easy to get. At a minimum, buyers and sellers need information about prices, costs, products, and buyer and seller preferences. Finally, products traded within a market should be relatively similar. If there is product similarity, then buyers and sellers will focus more on costs and prices than on product characteristics.

If all of these conditions are in place, land markets will operate efficiently, allocating land to users at prices reflecting the marginal cost of production. Buyers will pay the lowest possible prices for land. The next section considers factors which affect the demand for and supply of land.

Demand and Supply Factors

What shapes the demand for and supply of land? The demand for land is derived from various activities using land: housing, factories, retail shops, farms, government facilities, etc. Under conditions of derived demand, the demand for land will be determined by the demand for these activities. The availability of credit to finance land will enhance demand, shortages will dampen demand.

On the other hand, some buyers purchase land not for developing it but to use it as a "place" to store assets and protect them from inflation. In high inflation environments, the demand for land as a hedge against inflation is substantial. Since these buyers do not develop their land, idling of land becomes widespread in high inflation situations.

The supply of land available for urban development is determined by topography, distribution of infrastructure, master plan and zoning policies, and the willingness of land owners to sell parcels. Steep slopes, wetlands, and hazardous areas limit the supply of land for urban development. Infrastructure networks also largely determine the supply of developable land as well. Government policies limit land supply as well especially if land development policies are restrictive.

Changes in these demand and supply factors bring about shifts in demand and supply schedules. For example, if a city alters its land development policy and creates a greenbelt

around the city, the supply of land available for development will shrink. If a city is suddenly confronted with a flood of immigrants needing housing, the demand schedule for land will shift, and more land will be demanded at various prices.

Land Prices and Land Bids

In the land market, buyers typically bid for sites offered for sale on the market. The process is competitive, with many buyers bidding for the same site. The bidder making the highest bid "wins" and purchases the site. The competition insures that bidders will make the highest possible bid. The actual amount that a land developer will bid for a site depends on the following factors:

- 1) What he can build on the site
- 2) How much the site and building can be sold for after development
- 3) The cost of developing the site and building
- 4) How much profit the developer needs to make to compensate him for his time and effort

This method of bid determination is called the land residual method. The bid is

determined by identifying what can be built on the site, calculating how much the development could be sold for, estimating the total cost of constructing the project, and determining what level of profit is required in order to take on the risk of development. Subtracting cost and profit from sales revenue yields a residual value which sets the upper limit that the developer will be willing to pay for the site. If he were to bid a higher price for the site than the residual, his profit would decline. If he bids less, he stands to increase his profit.

In the land market, land developers (and those wanting land for their own projects) search for and compete for sites. This bidding process insures that land is used efficiently, and is developed to its highest and best use. If a developer makes a bid for a site which is based on a low-intensity development plan that generates limited revenues, he stands the chance of losing out to other bidders proposing more intensive uses. The land market encourages developers to develop sites to their highest economic potential, picking that use and building at that density which will yield the highest residual land value.

In cities where land utilization is governed by competitive bidding for land, urban land is used efficiently. It is rare to find vacant or grossly underutilized parcels of land in the center of large cities in market economies. Developers and land owners seek to maximize their profits by developing land at its highest possible use, limited by land use and planning regulations. If the demand for developed property increases (the number of households requiring housing or economic activity expand) property prices and rents will increase. In such cases, land developers will increase their bids for land since they will be able to sell or rent complete

projects at higher rates. If developers bid higher prices for land, more parcels will be offered for sale on the market, and gradually the land market will expand to a new level of output meeting the increased demand for housing, commercial or industrial space. The next section considers specific factors which influence land price bids.

Factors Affecting Land Price Bids

A variety of factors affect the level of land price bids. The most important ones include type of development, density of development, location of plot, cost of construction, cost of infrastructure, cost of financing, taxes, demand or development, supply of land, and level of competition.

Uses which generate the highest net revenues per buildable square meter yield the greatest residual land value. For example assume a 2,000 square meter site can be developed with 10,000 square meters of either residential or office space. If office space sells for \$4,000 per square meter, costs \$2,800 per square meter to build, and the developer requires a profit of \$400 per square meter (10% of sale price), the developer will be able to bid \$8 million for the site $[(\$4,000 - \$2,800 - \$400) \times 10,000 \text{ square meters}]$ or \$4,000 per square meter. On the other hand, if the developer develops a residential project on the same site, his bid will change. If residential space sells for \$3,200 per square meter, costs \$2,500 per square meter and the developer requires a profit of \$320 (again 10% of sales revenue), the developer will be able to bid \$3.8 million for the site $[(\$3,200 - \$2,500 - \$320) \times 10,000 \text{ square meters}]$ or \$1,900 per

square meter.

Bids will increase if the density of development increases. If the office development density is raised from an FAR of 1:5 to an FAR of 1:6, the developer will be able to build 12,000 square meters of office space and therefore bid more for the site--\$9,600,000 or \$4,800 per square meter.

Location greatly affects land prices. For example, since retailers will pay more for a building if it is on a busy shopping street than if it is on a less active street (because they expect to achieve higher sales rates per square meter), developers will be able to bid more for the site.

If a project costs more to construct, the potential land rent will be less. This is because the developer will have less net revenues to allocate to profit and land. If the cost of office construction increases from \$2,800 to \$3,000 per square meter, the maximum bid will decline to \$6 million (\$3,000 per square meter). Increased costs for infrastructure, project financing and income taxes will have similar impacts on land values.

If the demand for a site's potential use increases, the sales price or rental income derived from the project will increase. This means that the developer will have a larger residual to allocate to his profit and land bid. If the supply of land available for development is limited, demand pressures of sites will drive up sale prices and rent.

All of these factors are constantly at work in markets and they continuously affect land prices. Maintaining smooth and efficient land market operation requires eliminating barriers to entry, promoting competition, and avoiding unnecessary regulations which constrain the market. The next section considers what roles government should play in facilitating urban land market operation.

The Role of Government in Land Markets

There are three generally accepted justifications for government interventions into urban land markets:

- 1) Eliminate market imperfections and failures to increase operating efficiencies
- 2) Remove externalities so that the social costs of land market outcomes correspond more closely to private costs
- 3) Redistribute society's scarce resources so that disadvantaged groups can share in society's output

These principles apply to urban land policy in a number of ways. The first two seek to increase the allocative efficiency of land market outcomes. The third objective seeks to improve the equity of land market outcomes by targeting land resources to low and moderate income

groups.

Efficiency enhancing government interventions include increasing the level and transparency of information about land markets, and removing market imperfections, failures and externalities. A common governmental action to increase the clarity of the land market is to provide better titling and registration, and more comprehensive land information systems. For example, in cases where there is a poorly functioning land registration system, buyers of land are often not sure if they are actually buying from the "real" owner. The lack of clear proof of ownership imposes substantial costs on the land market. Potential buyers must conduct extensive research on property ownership before deciding to enter into the transaction. Owners of untitled property are unable to use the land as collateral for obtaining loans from financial institutions and must either forgo credit or pursue more expensive channels of borrowing. In some cases land disputes are so widespread that they effectively "shut down" land markets.

Another argument for government intervention into the land supply system is the frequent failure of private developers to provide essential services, because they cannot profitably produce and sell them. Examples of such goods include parks and open space, roads and sidewalks, and community facilities such as drainage and water systems. Goods that are not provided by the private sector are frequently referred to as "public goods" and many governments have taken a variety of initiatives to fill this gap. In many countries parastatal organizations such as land development authorities have been created to provide low-cost land developments and housing. In other cases, governments have adopted regulations compelling the

private sector to provide necessary public goods when they build projects.

Governments routinely adopt a variety of planning controls, building standards and land development laws that attempt to eliminate external costs associated with land development. Development controls limit building heights and bulk in order to ensure that surrounding properties are not adversely affected by new development. Zoning and planning regulations seek to restrict the types of activities permitted on land, so that noisy and dusty factories do not adversely affect residential neighborhoods. Such laws are also used to control development intensity so that existing infrastructure is not over burdened.

The third urban land policy objective seeks to improve economic equity by allocating resources to low-income groups. In the absence of government intervention in urban land markets, low-income households may have difficulty obtaining access to land for housing . It is quite common for government to allocate land directly for housing to these low-income groups.

A city's or a nation's urban land policy normally calls for a variety of specific laws, regulations and actions. Quite often the central government decides to take the lead to solve land management problems, in spite of the fact that most land policy issues are of local concern. Frequently, government intervention is misdirected. There is too much regulation and not enough facilitating and enabling action to support private land development. In the rush to "patch externalities," governments implement a "blizzard" of regulations which smother formal private sector initiatives and over-constrain urban land markets. At the same time, government

routinely fails to create land titling, registration and information systems which are so critical for efficient land market operation. They also neglect infrastructure needs and programs to modernize and redevelop old urban areas. Care should be taken to seek a proper balance between government and private sector responsibilities for land market operations.

Conclusion

This paper has outlined the basic analytical and theoretical structure of land market operation. It has explained the purpose of markets, described how they work and analyzed how developers decide how much to pay for land. It has also explained what factors affect land price bids and provided a justification for government intervention into urban land markets.

The Role of Government in Private Land Markets

By

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I. Executive Summary

Government plays a crucial role in making private land markets possible and effective. First, it enables land markets to function by establishing and enforcing the right of private property through enactment of laws and implementing institutions. Second, it regulates land development in order to protect and advance the interests of society. Third, it taxes land and land uses to support government activities and provide needed capital infrastructure and services. Fourth, it provides needed public infrastructure, facilities, and services to allow meaningful land development to occur. Fifth, it subsidizes certain types of land development to promote social interests such as job creation and housing for poor families. Sixth, it owns some land, holding it from the private land market or making it available in order to meet social interests. Seventh, it judges conflicts between individuals, and between individual and the state, involving land and its use.

This paper addresses these seven fundamental roles of government.

II. What Is Government?

Before exploring government's role in private land markets, it is necessary to define what this paper means by the word "government." This paper uses the word government to refer to the tripartite division of authority traditionally found in Western free market economies among the legislative, executive, and judicial branches. These three independent branches together constitute the governing institutions of a nation, and each is equally essential to the operation of fully functioning private land markets. The legislative branch, which exists at the national and local level, adopts the basic laws that enable and regulate land markets. The executive branch, also at the national and local level, may adopt implementing regulations and also administers the laws adopted by the legislative branch. The judicial branch hears disputes between individuals and disputes between individuals and the state, interprets and applies the law, and renders a final decision. Thus, the judicial branch may invalidate an action of the legislative and executive branches as being in violation of the laws of the nation. As used in this paper, the word "laws" refers not only to laws adopted by parliaments, but also to decrees, decisions, by-laws, regulations, and other governmental actions having legal effect and adopted by ministries and other levels of government.

III. Government As Enabler of Private Land Markets

At the outset, effective private land markets depend on three bedrock features that are usually ensured by government enactment and administration of laws:

- First - clear, unequivocal, and binding definitions describing the content of what individuals and legal entities have when they enjoy the right to private property in land;
- Second - complete and accessible identifying records of who has what private property right in geographically specific parcels of land; and
- Third - speedy, fair, and predictable mechanisms to resolve disputes among parties over rights to private property.

A. Private Property Definitions

In most Western free market economies, governments enact laws setting forth the definitions of private property interests. At the top of the list is constitutional law, the supreme law of a nation. If a country has a formal written constitution (Great Britain is one of the few that does not), it will usually contain a clause stating that individuals enjoy a basic right to private property. Many constitutions frame this right in the context of a limitation placed on government's ability to interfere with this right. Although the exact wording varies, governments generally are prevented from arbitrarily seizing or taking private property from individuals, unless for a public purpose and accompanied by payment of compensation to the owner. This principle assures individuals that the right to private property inheres in them, not in the whim and caprice of government. No matter how noble and majestic the public purpose,

government's power to seize land (the power of eminent domain or expropriation, see paper by Michael Kitay) is thus subsidiary to the individual's right to private property. At the same time, as described later in this paper, the balance between the rights of individual owners and the needs of society has not always been easy to define when government regulates rather than physically seizes property from the owner.

The other key set of laws, known generally as real property laws as enacted by the legislative branches at the national and regional levels, defines the range of private property interests that individuals may have (see papers by William Doebele and Samuel Sherer). At their broadest, these laws effectively divide the world of land into two categories of ownership - private and public -- dependent only upon the identity of owner (proprietor). Thus, individuals and private legal entities have private land, while government has public land. These laws may further classify types of property, from full ownership rights to lesser estates to leasehold rights to easements.

A third group of laws covers other areas of property interests requiring additional and specific elaboration. For example, laws about ownership of land by foreigners may place additional restrictions on such rights, although it should be noted that most Western free market economies allow foreigners to own, use, and sell land.

B. Complete and Accessible Identifying Records

Governments also enact laws and establish offices for identifying and registering private property interests in land. Known as land titling and registration or cadastral laws and offices (for example, Torrens system, grantor-grantee index, etc.), this systematic approach allows for the registering of all initial ownership interests in land, and the subsequent recording of all transfers of property, whether through sale, devise, or other means, as well as the reflection of all security interests (liens, mortgages) and limited interests (easements, covenants).

C. Speedy, Fair, and Predictable Mechanisms for Resolving Disputes Over Property Interests

An essential institution for land markets is a fully functioning judicial system. This is discussed later in this paper in the section entitled "Government as Judge of Conflicts."

IV. Government As Regulator of Private Land Markets

Left alone, private land markets do not always advance the interests of society. Economists use the term "externalities" to describe some of the negative effects caused by one land user upon his or her neighbors (see paper by David Dowall). For example, a factory located in the middle of residential neighborhood may produce unpleasant odors and noise that disturbs the neighbors, even though such behavior in an industrial neighborhood might be

perfectly acceptable. While private land markets in theory might be able to sort out such conflicts without the intervention a supervening force, the empirical reality in Western private market economies is that government plays that role as regulator of private land markets.

Land use and environmental laws enacted and administered at all levels of government constitute the crucial regulatory instruments for government in addressing inadequacies in private land markets that cause damage to the public health and safety or that otherwise impede the furtherance of the public welfare. Such laws are enacted to advance a broad range of public objectives, from preventing air, water, and land pollution to promoting a well-planned, even beautiful, work and living physical environment. Each country has its own specific way of describing the governmental purpose behind interference in the workings of the market. In the United States, for example, the incantation accompanying laws regulating the use of land intones that government is protecting the "health, safety, morals, and general welfare" of society. Other country's laws refer to socioeconomic entitlements of its citizens.

It is essential to understand that, pursuant to these laws, government may restrict the owner's private property right to use his or her land without payment of any compensation. Only when such restrictions are so onerous as to deprive an owner of all use of land does the issue of compensation arise. After all, if government had to compensate owners every time a regulation impinged on property rights, then the financial cost to government would be prohibitive. The underlying principle is that although land use and environmental controls frequently reduce the value of property, by, for example, limiting the amount of development

permitted, the owner receives reciprocal benefits from restrictions on neighbors.

In Western private market economies, land use and environmental regulation imposes substantial costs on the private sector, thereby increasing prices to the consumer for land and activities that use land. Although this is perfectly reasonable, it is also important to recognize that land markets savor simplicity, stability, and predictability in government regulation. Duplicative regulatory processes, standardless administrative discretion, and unrealistically demanding laws can cause greater harm than good. In designing a regulatory regime for land use and the environment, then, the debate in private market economies is over how to strike the proper balance between allowing the private market to supply land for housing, commerce, and industry at competitive prices while guaranteeing that other social interests are protected or advanced.

A. Land Use and Building Control

All Western private land markets are subject to laws and agencies controlling the use of land by private owners. At the national or state levels, governments have enacted laws authorizing or requiring the preparation of land use plans and regulations by local governments designed to promote better working and living environments. Although the laws generally devolve responsibility to local governments, they sometimes assign to the national government authority to address land use problems that have impacts beyond the borders of any one city or town.

Land use and building control laws authorize or require local governments to do land use planning. They also authorize local government to adopt land use regulatory systems such as zoning or planning permission that restrict an owner's absolute use of land. These laws regulate the use of land (to residential, commercial, industrial, agricultural, etc.), the density of development (a maximum of 10 units per hectare, etc.), and the shape of the development (more than 15 metres in height, set back 10 metres from the street, etc.). Such land use regulations are usually adopted in the same way other local laws are adopted, by majority vote of the local council. Their adoption usually requires public hearings and public participation, not solely as an exercise in democracy for its own sake, but to consider public viewpoints and educate the public about how such laws affect their property rights.

B. Environment

Western private market countries all possess a national government ministry to protect the public's health and safety and the natural environment of land, water, and air. These ministries have the authority to set standards governing the behavior of land users for air and water pollution, landfills, and other environmental concerns. Two methods are widely used to govern polluting activities. Under the traditional command-and-control approach, governments mandate that each polluter achieve a certain level of pollution control, and, in some instances, install specific pollution control technologies. More recently, market-based strategies no longer specify to polluters how they should achieve the required pollution reduction. Instead, the law

announces the standard and lets the polluters determine how best to achieve this standard. In this way, if the polluter devises a less expensive cost-effective method for achieving the same standard, then it is allowed to use that method. Environmental ministries are also responsible for monitoring levels of pollution and enforcing the standards.

C. Historic Preservation and Monument Protection

Governments in western private markets frequently have special laws and departments to protect historically, culturally, or architecturally significant buildings, neighborhoods, and monuments from demolition.

D. Building Codes

Governments announce minimum technical, engineering, fire, and other standards for the construction of buildings on land. Government inspectors visit buildings during construction to assure that all work is being completed in accordance with the relevant code standards. Alternatively, licensed private inspectors certify that the construction meets applicable requirements.

E. Exactions and Planning Gain

Local governments follow laws that require owners wishing to develop their land to

provide or pay a fee for the provision of marginal adequate public infrastructure, including roads, water and sewer pipes, and so forth, needed by their development. These so-called exactions are a requirement for receiving permission to develop property and are in addition to any local taxes assessed on land.

V. Government As Taxer of Private Land

As one of the most substantial, visible, and stationary sources of wealth in a country, land has traditionally provided a significant stream of tax revenue to governments in western private market economies. Land is usually one of the largest sources of wealth in the country. Unlike annual income, it is more difficult to disguise and, unlike money or other objects, cannot be easily moved from one place to another. In short, it is a favorite target for the tax collector.

The most common tax on land (known as the property tax or land tax) is sometimes also assessed on buildings. In most Western private market countries, it is an ad valorem tax, meaning that it is levied on the market value of real property. Government assessors appraise land for its market value, and then government collects a percentage of that value annually. In many countries, the property tax is the primary source of the revenue dedicated to the financing of local government services. In the United States, for example, it pays for 20-40 percent of many local government budgets and may reflect an annual charge to owners of one percent of the market value of their land and building. In Great Britain, it is also a major generator of

revenue for local authorities.

VI. Government As Provider of Public Infrastructure

Without provision of the public infrastructure and facilities, such as roads, water and sewer pipes and treatment, gas and electric lines, mass transportation, airports, train stations, government buildings, community centers, schools, parks, libraries, museums, and so forth, private land markets literally could not function. Without provision of the public services of police and fire protection, street cleaning, garbage collection, and so forth, private land markets would also suffer grave consequences. National or local governments, special purpose public agencies, and the private sector increasingly divide the responsibility constructing and maintaining this infrastructure. Governments in western private markets are hearing the siren call of privatization, and are evaluating infrastructure and service provision to determine what may be provided by the private sector. Many arguments can be made as to who is best able to provide public services. Electric, gas, telephone, and now water are increasingly privatized. Roadways and facilities continue to be publicly provided.

Local governments and private owners of land dance a minuet around who should provide the marginal public infrastructure and facilities specifically needed by new development. Local governments want to make sure that private development "pays its way," that is, that development pays for any burdens it additionally imposes on public infrastructure and facilities. Although developers may argue that they have already paid for such

infrastructure and facilities through general taxes and should not be assessed any additional amount, laws have increasingly granted to local governments the authority to impose additional charges, known as exactions and planning gain (see earlier discussion).

To determine how much developers should pay, governments calculate what a square metre of development for different categories of uses (office, residential, industrial) would require in terms of additional public infrastructure and facilities. Developers must then either provide that infrastructure or pay into an infrastructure fund. For example, a private development of 50 single-family homes will result in increased traffic, greater use of parks, and additional demand on water and sewer capacity. As part of the land use approval process, government may require the private developer to provide roads, parkland, and water and sewer pipes generated by the development.

VII. Government As Subsidizer of Land Development

Left unregulated, land markets do not always act in the public interest. Even with the application of appropriate regulations, certain public objectives will remain unaccomplished. For example, land markets do not normally provide housing of sufficient quantity and quality for poor families, or jobs that match up with the skills of the workforce. Thus governments in private market economies frequently grant subsidies for low-income housing and other activities that the land market itself cannot or does not furnish. In a real sense, government is engaging in a joint venture with the private sector, a "public-private partnership," to do together what the

private market cannot do alone (see paper by Charles Haar).

Government subsidy programs for land markets take many forms. They may authorize a specific ministry to offer grants and loans (frequently at lower interest rates) directly to the supplier of a certain desired land use. Alternatively, government may provide subsidies directly to the demander (consumer) of the activity requiring subsidy. Government may also provide tax benefits to encourage the activity, or other forms of subsidy. Finally, government may sell, lease, or give land it owns to the private sector at below-market prices in order to encourage certain types of land development. The United States program of "urban renewal" in the 1950s and 1960s operated on this principle.

VIII. Government As Owner Of Land

The existence of private land markets does not eliminate the necessity for some public ownership of land. Indeed, because the private market does not meet all needs of society, government may choose to address some of those needs through land ownership. The reasons for government ownership of land in private market economies may be divided into two categories. First, government may own land to make possible the performance of its basic mission of providing public infrastructure and services, including roads, public buildings, schools, parks, and so forth. These are infrastructure and services that the private sector on its own does not normally provide. When government does not own land needed for such purposes, then it may exercise its power of eminent domain or expropriation (see paper by

Michael Kitay) to take such land from private property owner upon payment of compensation. Second, government may own land as a "player" in the private land market, subject to its rules and incentives like private land owners. Some governments maintain a "land bank" (see, for example, the Swedish experience) whose portfolio is enlarged or reduced depending on the condition of the land market. If land prices are too high, then government may release land into the marketplace to ease the pressure. Governments also use land sales or leasing to raise revenue for government activities. These sorts of interventions into the private land market are not always successful, and raise troubling conflicts between government's role as regulator of land and owner of land. If government owns land and wants to sell it, for example, then government finds it in its interest to allow maximum development of the land.

IX. Government As Judge of Conflicts

Disputes naturally and frequently arise in land markets between individuals, and between individuals and government, over who owns the land, what activities on the land are allowable, whether governmental actions affecting the land are legitimate, and so forth. While institutions within the executive branch of government sometimes play a role in resolving disputes, most Western private land markets leave it to judges to make the final decisions. Sometimes, there are specialized land courts that only hear cases involving land issues. Other times, land disputes are treated no differently than other kinds of commercial or civil disputes.

In all cases, judges must interpret the applicable constitutional parliamentary or

congressional legislation, administrative regulations, other civil law, their own written opinions, the words of a private legal document, or other relevant materials, to render decisions in specific cases. These decisions are final and binding on all parties, including the executive and legislative branches of government. Once a court declares an action of the legislature unconstitutional, then the only recourse is to seek a change in the constitution itself.

The Right To Land Ownership and Land Privatization in Ukraine

By

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The concept of the right to private ownership of land was formally introduced in Ukraine on January 30, 1992 when the Law on various types of land ownership was adopted. The Law consists of two Articles. The first one reads "to introduce in Ukraine collective and private forms of land ownership, which will exist along with state ownership." The second Article reads "Land ownership in Ukraine can be of the following forms: state, collective and private. All forms of ownership are equal."

However, March 13, 1992 should be considered the actual date of legalization of private ownership in this country. This is when the Supreme Soviet of Ukraine adopted a new edition of the Land Code - the fundamental law of Ukraine on land usage and protection.

Following the adoption of the new edition of the Land Code of Ukraine, the state ownership for land loses its dominant significance. The state preserves its exclusive ownership to only that land which bears special social and economic or ecological significance. This is the land of communal usage in population centers and land parcels allotted for buildings of state

administrative power; land occupied by mining industry enterprises; those of the unified energy and space systems; entities of transportation, communication, and defense; land having environmental protective, recreational, historic and cultural significance; land of forest and water reserves (with insignificant exception); as well as some other categories of land having agricultural designation (as for example, land belonging to agricultural, scientific, and research institutions and agricultural schools and their experimental plots, etc.) All other types of land in Ukraine can be transferred to collective or private ownership.

It's worth mentioning that privatization of land stock does not mean that the state fully eliminates itself from usage, regulation and protection of land, including that transferred into collective and private ownership. In accordance with the Land Code, the state will still fulfill a number of functions dealing with regulation of land relationships aimed at defending public interests in the sphere of land resources regulation and protection.

First, the state defines land stock division into separate categories of land and thus designates the character of land usage. In conformity with the current legislation the land stock of Ukraine is subdivided into seven categories:

1. Agricultural land
2. Population centers

3. Industrial, transportation, communication, defense and other designated land
4. Environmentally protected, recreational, historical and cultural land
5. Forest stock
6. Water stock
7. Reserved land

Land referred to one or another category will be used strictly for its target function, formulated in land legislative acts. Neither land owners nor land users are allowed to change the target function of land. Such a change is within the exclusive authority of the state government bodies.

Second, the state carries out monitoring of all land, i.e. keeps observance of the land stock condition aiming at timely discovery of any changes, their evaluation, prevention and liquidation of the consequences of negative processes.

Third, a state land cadastre is conducted in Ukraine, which makes provisions for rational usage and protection of land, regulation of land relationships, land development, and substantiation of the rate of payments for land. The cadastre contains the scope of necessary

information and documents relating to the legal status of land, its distribution among land owners and land users depending on the land categories as well as qualitative characteristics and the public and economic value of land. All the land owners and land users are supposed to provide the state organs dealing with land cadastre with all the necessary data.

Fourth, the state has taken it upon itself to carry out land development of all categories of land. However, the elaboration of land reclamation projects, connected with land protection against mud flows, slides, minor flooding and land salting can be conducted either following the initiative of land owners and at their expense, or by the state or any other land development entities.

Fifth, the state transfers the land belonging to it into collective or private ownership and purchases the land privately or collectively owned; in a number of cases which are stipulated by the legal framework, it will deprive the owners of their right of ownership to the land parcel.

Sixth, the state maintains control of land usage and protection, aimed at safeguarding the observation of the requirements of land legislation by all state and public organs as well as by enterprises, entities and individual citizens. State control over the usage and protection of land is effected by the Councils of People's Deputies, the State Committee on Land Resources, the Ministry of Environmental Protection of Ukraine, and other state bodies specially appointed for that. In all other cases legislation contains no provisions for the state organs to interfere with the entrepreneurial activities of the land owners.

The institution of the right to private ownership of land, in conformity with the legislation of Ukraine, envisages the transfer of land parcels into the private ownership of the citizens. Citizens have the right to receive land into private ownership for all the purposes stipulated by the Land Code, i.e., for farming, for construction and maintenance of houses and farm buildings, for gardening, and for summer house and garage construction.

The institution of the right to collective ownership of land which, in the civilized world, is referred to as a variety of private ownership, is to a certain extent analogous to the institution of the right to common collective ownership. Introduction of this institution is conditioned by an ambition of the legislators to provide the workers of non-state agricultural entities the status of the owners of the land, which is used by these entities (such land makes up the major part of land of agricultural designation in Ukraine) on the one hand, and on the other hand, to preserve the advantages of large-scale agricultural production. The concept of the right to collective ownership allows all existing large-scale agricultural cooperatives, gardening partnerships, and agricultural auction entities to privatize agricultural land belonging to them with the exception of the land which remains in the exclusive ownership of the state. Simultaneously, starting from the moment of privatization, every member of the above agricultural structures becomes the owner of the respective land property and acquires the right, should he decide to quit the above structure, to receive his share of land in natural form (on location) and thus to fully privatize it.

It's worth mentioning that putting the new edition of the Land Code of Ukraine into effect does not result in the automatic privatization of land. The latter will be carried out as a

component of general privatization of state property on the basis of special legislation.

In conformity with the Land Code, citizens of Ukraine have the right to take land parcels into private ownership for farming, construction and residing in one's own house and household structures, gardening, or for summer house and garage construction. The Land Code of Ukraine has designated the largest possible dimensions of land parcels which are allotted as citizens' property. Thus, a parcel allotted for a farmer's household may not exceed 50 square kilometers of agricultural land and 100 square kilometers of other land. An individual household may not exceed more than 0.6 square kilometers, while for gardening, not more than 0.12 square kilometers. For construction and maintenance of the house and household structures there may be allotted in rural population centers not more than 0.25 square kilometers, while in townships, not more than 0.15 square kilometers (for members of collective agricultural farms and state farms not more than 0.25 square kilometers and, in towns, not more than 0.1 square kilometer).

The Land Code does not have provisions for the citizens to obtain the right to land parcels which are basically designed for manufacturing and commercial needs, etc. For such needs the land is allotted only for leasing.

The right to use land parcels provides the enterprises, entities, organizations and citizens a scope of rights to land which allows them to own and use the land parcel. However, the land user has no right to manage the land parcel, which constitutes the principal difference between

the right to land ownership and the right to use it.

The land usage can be permanent or temporary. According to legislation, permanent land usage is without a predetermined term of time. Temporary land usage can be short-term - up to three years - and long term - from 3 to 25 years. Yet, in the case of production necessity these terms can be prolonged for a period which does not exceed one term of respectively short- or long-term temporary usage.

One aspect of the right to land usage is leasing. For temporary usage, leasing privileges are allotted to the citizens of Ukraine; enterprises, entities and organizations; public bodies and religious organizations; joint ventures; international enterprises and organizations with Ukrainian, foreign, juridical subjects and citizens participation; entities fully belonging to foreign investors as well as to foreign states; international organizations; foreign juridical persons and physical persons without citizenship.

Land can be allotted for short-term leasing up to 3 years (for cattle pasture, hay growing, vegetable growing, or state and public needs) and for long-term leasing up to 50 years. Leasing terms, as well as other conditions including the price for land lease, are negotiated and fixed in the lease agreement. Along with this, in a number of cases the law has limitations regarding the term of the land lease. Thus, agricultural land, which is used temporarily and is collectively owned by collective agricultural enterprises, agricultural cooperatives and agricultural auction partnerships, can be allotted for leasing for agricultural

usage for a period not exceeding 5 years. While citizens, having land parcels as their property, have the right to allot them for leasing without changing their target designation for a period of up to 3 years, while in the case of temporary disability, or conscription to serve in Military Forces of Ukraine, or enrollment in the academic institution - for a period of up to 5 years. And it is only in the case when the land parcel is inherited by a minor is it allowed to allot the parcel for leasing for a longer period - until the heir reaches full age.

Apart from the rights provided to the land lessees by the lease agreement, the Land Code has two more important provisions. First, the lessee has the priority right to renew the land lease agreement when its time expires. Second, lessees of land parcels of agricultural designation have priority rights for obtaining ownership of the leased land parcels with the exception of cases when the land parcels are owned by joint ventures, international partnerships and organizations including Ukrainian or foreign juridical and physical persons, enterprises which are full property of foreign investors as well as foreign states, international organizations, foreign juridical persons and physical persons without citizenship.

Therefore entrepreneurial activities in an agricultural and industrial complex can be based on various forms of land ownership: state, collective, private. Simultaneously agricultural producers, in contrast with manufacturing, transportation and other nonagricultural enterprises, have the right to choose the form of land ownership.

All the agricultural producers, irrespective of the form of land ownership, are required

to observe the rules of using the land of agricultural designation. Collective agricultural farms occupy the predominant position in the agricultural industry of Ukraine. Collective agricultural entities which are being set up in Ukraine in the place of former collective farms are prone to be the assignees to the right of using the collective farms land. That is why the major part of the agricultural land stock of Ukraine has been referred to collective agricultural entities, which, following the decision of the joint meeting of their members, have the right to privatize it.

In the case when land is privatized by the collective agricultural entity and thus becomes the collective property of its members, the total land mass is divided into the land of common non-agricultural usage (intrafarm roads, field protecting forested tracts and other soil protecting plantation, hydraulic technical installations, etc.) on the one hand, and the land of agricultural designation on the other. Such division is important in case the collective agricultural entity goes bankrupt or is to be liquidated. In such cases, land of agricultural designation can become the property of agricultural enterprise members while land of common non-agricultural usage will be managed by the respective local Councils of People's Deputies.

Every member of an agricultural entity, upon leaving the entity, will have the right to receive his share of land, the size of which will be determined by the rural, township or municipal Council of People's Deputies. When estimating the average land share only agricultural land (including arable land) which is used by the enterprises, entities, organizations and citizens within the bounds of this particular Council, with the exception of land which is not liable for privatization, is taken into account. The total size of thus estimated land is divided by

the number of people working in the respective farm, retired people, living in the same rural area as well as people who are engaged in the social sphere of the village. Included in the number of people working in agricultural production belonging are all the workers of the collective agricultural enterprises, auxiliary agricultural structures, peasants' farms and other agricultural entities, enterprises and organizations. Included in the people engaged in the social sphere belonging are workers in public education, medical service, cultural establishments, service of daily needs, communication, commerce, public feeding service, law enforcement organs, Councils of People's Deputies and their executive committees as well as retired people of all the above categories.

It is remarkable that when the size of the average land share will be estimated, the quality of agricultural land will be also considered which will be based on the data of state land cadastre. The size of the average land share can also be reconsidered depending on demographic conditions and new concrete circumstances by the same Councils of People's Deputies which previously had defined the same size.

Simultaneously every member of collective agricultural enterprise being the owner of this enterprise land, has every right to manage his own share even without marking it out on location. In particular, one can transfer his share of land as an inheritance within the legal framework and conditions stipulated by civil legislation regarding property inheritance and the statutes of the respective collective enterprise, or sell it.

Similar rights are possessed by members of other groups with the right to collective land ownership such as agricultural cooperatives, gardening partnerships, agricultural auction associations, including the ones which have been established within the framework of state farms and other agricultural entities.

Collective agricultural entities, agricultural cooperatives, agricultural auction partnerships and other agricultural enterprises, entities, and organizations which have united to set up agricultural and industrial amalgamations such as associations, combined entities, agricultural partnerships and other agricultural structures, will preserve their right to land. However, in the case that independent agricultural cooperatives are established within the bounds of agricultural enterprises (with the exception of experimental farms), these cooperatives will succeed the right to the land which previously has been possessed and titled by them, following the decision of the rural, township or municipal Soviets. The plot of land transferred to these cooperatives will be estimated depending on the average land share, calculated in the aforementioned way.

One prospective direction of the development of entrepreneurial activities in Ukrainian agriculture will be individual peasant farming. This is a new direction in agricultural development in this country. Unfortunately, by the time individual peasant farming was legalized, all the land appropriate for agricultural production had been basically allotted to collective and state farms. That is why, in conformity with the Land Code, rural and township Councils of People's Deputies are eligible to create a reserve land stock of up to 15% of all

agricultural land including land within the bounds of the respective population centers. The reserve stock of land is state-owned and is designed for further redistribution and usage as per target designation, primarily for setting up peasants' farms.

According to the Land Code, land parcels can be transferred to the private ownership of those citizens of Ukraine who are willing to have a peasant farm of their own either as their property or for usage including leasing. Simultaneously, land parcels are allotted into private ownership or permanent usage basically from the land reserve or from land which was taken away from land users. As far as temporary usage is concerned, land is allotted both from reserve land and from forest or water stocks.

The Law has detailed limitations regarding the procedure of obtaining land for running peasant farms. Citizens willing to participate in such activities (including those who are moving from other localities) submit an application, signed by the head of the peasant farm, to the rural, township, municipal or district (depending on the location of the parcel) Council of People's Deputies. The application is supplemented by the size of the parcels to be acquired, the number of peasant farm members, and data relating to skills and special qualifications. Other methods of receiving land parcels are also possible.

The application is to be considered by the respective Council of People's Deputies within one month and, if it causes no objections, a project of alienation is to be done by the state land development organization. Such a project is correlated with the land owners or land users, as

well as with district or city land development, land protection and architecture organs.

A decision to transfer the land to individual ownership for running the peasant farm or to refuse the transfer will be adopted at the nearest forthcoming session of the respective Council of People's Deputies. In the case of refusal, the issue of allotting land for the peasant farm will be decided by the Council of People's Deputies of a higher level, while in the case of refusal by this Council, the issue will be decided in court. In such a case, the court decision on complying with the suit is the basis for land parcel alienation, for issuing the document certifying the right of ownership to land.

The Land Code of Ukraine provides limitations on the size of the land parcels for peasant farms. For these purposes, land parcels not exceeding 50 square kilometers of agricultural land and 100 square kilometers of general usage land can be transferred to private ownership or given for lease. Concrete sizes of such parcels are determined by the respective Councils of People's Deputies differently depending on the regional peculiarities, specialization and possibilities for titling the allotted land preferably by the members of peasant farms, members of collective agricultural enterprises and cultural cooperatives. The workers at agricultural enterprises willing to run peasant farms will receive parcels for this purpose, not from the reserve land, but from the land of such enterprises, their sizes defined on the level of average land share of the member of a collective agricultural enterprise or agricultural cooperative. Cadastre value of the alienated parcel will be, as a rule, on the level of an average one in the framework of the respective farm.

The size of the average land share has a substantial significance for determining the conditions for obtaining land parcels by citizens for running peasants' farms anyway. The point is that the citizens are eligible to receive for free a parcel only of the average land share; land above this quota will be paid for.

In conformity with the Land Code of Ukraine, land owners are entitled to the following:

1. To run the parcel independently
2. To own the agricultural produced he produced or profits due after its realization
3. To use widespread mineral deposits, peat, forest and water resources, as well as to use other usable properties of land
4. To construct dwellings, production, cultural and daily needs and other constructions and installations previously approved by rural, township and municipal Councils of People's Deputies
5. To own the agricultural land forest plantations in his particular parcel
6. To receive compensation from a new land owner or land user or from the local Council of People's Deputies for an improvement of land fertility in case the land parcel is sold

or voluntarily alienated

Besides the subjects having the right to collective or private land ownership are eligible to go into a lease agreement with an entity which makes a loan and also to lease the land. Citizen-owners of land parcels have the right to make such deals managing them as a purchase-sale, gift, exchange of land parcels, or inheritance of a parcel. Along with this, the Land Code of Ukraine has imposed a 6-year moratorium on any deals by land owners involving land alienation. The owners of land parcels transferred into private ownership by Councils of People's Deputies have no right to sell or otherwise alienate the land parcel belonging to them for 6 years after obtaining the right to private ownership, with the exception of cases when land is transferred as an inheritance or returned to the Council of People's Deputies as per the same conditions on which it was originally obtained. However a court decision can satisfy the owner's suit and shorten the above term given valid reasons.

Unfortunately, in spite of the legalization of the right to land, private and collective ownership land privatization was not begun in Ukraine in 1992. Among other reasons that resulted in slowing down the privatization campaign, we would like to single out two: imperfect land legislation and a reluctance on the part of the State and the Councils of People's Deputies to carry out the transfer of land into citizen ownership. Bearing in mind provisions for putting legislation on land privatization into effect, the Cabinet of Ministers of Ukraine approved a decree on privatization of land parcels by citizens. According to the decree, the Councils of People's Deputies are charged with the responsibility to carry out transfer land parcels into the

private ownership of citizens during 1993. This decree does not concern only the land allotted to citizens for running their peasants' farms. Besides, the above decree suspended the action of Article 17, part 2 of the Land Code which imposed the 6-year moratorium on land parcel alienation by subjects of private and collective land ownership.

The Supreme Soviet of Ukraine, having missed the 10-day term during which the decree by Cabinet of Ministers could have been canceled, on January 27, 1993, adopted the regulation which recommends amendments to the decree on privatization of land parcels to the Cabinet of Ministers, having ruled out the right to sell the land.

We feel successful privatization of land stock is possible if the following conditions are met. First, it is necessary to work out a scientifically grounded concept of the right to land ownership with not only provisions for widening the scope laws regarding a market economy, but also the possibility to consider and implement comprehensive national interests in land usage and protection. The basis for this concept is to be a political and juridical acknowledgement of the land (including already privatized land) as all-national property.

Second, elaboration of the land privatization mechanism remains as relevant a problem as before. Unfortunately, there is a discrepancy between the positions of the lawmaking and executive powers in Ukraine. Thus, the Supreme Soviet of Ukraine has adopted the concept of privatization of state property, housing stock, and land stock as well as the Law on privatization papers which envisage the inclusion of land stock in the state property eligible for privatization.

Land privatization will be carried out according to the general rules existing for privatization of such property. However, the Cabinet of Ministers of Ukraine, by its Decree on land parcel privatization dated December 26, 1992, stipulates the transfer of all the land parcels owned by individual citizens to their ownership, irrespective of privatization of state property. This discrepancy in the approaches to land privatization creates legal obstacles on the path of successful privatization, and most likely is prone to be removed. It is also not excluded that, in this connection, there appears a necessity to adopt a new legislative act regarding the issues of land stock privatization.

Third, one of the main conditions for carrying out land privatization is, in our opinion, the establishment of a respectable market infrastructure which will make provisions for including the land in civil circulation. Here we mean creating, upon a complete cadastre of land (since at present such a cadastre covers only the land of agricultural designation), a Land Bank of Ukraine and its subsidiaries in all regional centers of Ukraine, and the transfer of all land disputes from the jurisdiction of administrative organs to the jurisdiction of judges who specialize in such disputes.

Fourth, the transfer of land from the exclusive ownership of the state to ownership of juridical and physical persons should be done gradually, according to a program, publicly and with due respect to the requirements of social justice. Bearing this in mind, state programs on land privatization should be drawn up to consider the interests of the state as a whole, those of separate regions and industries as well as interests of juridical and physical persons. Preventing

corruption among officials dealing with land privatization should be given special attention.

Legal Conditions of Urban Lands in Ukraine

A Short Analytical Survey of the Legislation

By

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Since August 24, 1991, Ukraine, as an independent sovereign state has embarked on the realization of the land reform aimed at denationalizing a part of lands, i.e., reducing state ownership of land and carrying out land privatization.

Legally, the privatization process in the sphere of land relations is based on land laws. The whole scope of standard acts on regulation of land use in Ukraine can be structurally divided into three groups:

- Laws
- Bylaws
- Acts issued by local bodies and authorities

The laws and bylaws are legally binding in the whole territory of Ukraine. The acts of the third group are imperative for a definite area depending on the body that adopted this or

another act (region, district, town, village). The acts of local bodies and authorities shouldn't be contradictory to the laws and by-laws.

Among the standard acts in Ukraine which are aimed at legal provision of land relations, a distinction needs to be drawn between the fundamental acts that regulate directly the land relations and secondary acts containing, as a rule, blanket norms, i.e., referring to the special laws. For example, Article 42 of the Law *On Foreign Investments* points out that acquiring proprietary rights in land by foreign investors is regulated by the Land Code of Ukraine. This survey will be restricted mainly to the analysis of special standard acts.

A certain legal basis for regulating land relations, including relations of urban land ownership, has been recently created in Ukraine. It includes:

- The Law of Ukraine *On Forms of Land Ownership* of March 30, 1992
- The Decree of the Supreme Rada of Ukraine of March 13, 1992, *On Speeding Up Land Reform and Land Privatization*
- The new working of the Land Code of Ukraine of March 13, 1992
- The law of Ukraine *On Payment for Land* of July 3, 1992

- The Act of the Cabinet of Ministers of Ukraine of September 16, 1992, *On the Procedure of Land Tax Rate Determination*

Other laws and bylaws that regulate in one way or another land relations, including, among others, these Laws of Ukraine:

- *On Property* of February 7, 1991 (in the wording of July 7, 1992)
- *On Fundamentals of Urban Planning* of November 17, 1992
- *On Foreign Investments* of March 13, 1992
- *On Local Radas of People's Deputies, Local and Regional Self-Government* of April 24, 1992
- *On Local State Administration Regulations* approved by the Decree of the President of Ukraine of July 24, 1992

The list of standard acts specified above is not exhaustive because there are also legal acts on regulation of land relations in the agricultural sector of economy. These are specifically the Laws of Ukraine:

- *On Peasant Farms* of December 20, 1991

- *On Collective Agricultural Enterprise* of February 14, 1992

The use of urban lands is legally provided also by norms of ecological, financial, administrative, and criminal legislation of Ukraine.

In its content, the present land legislation differs greatly from the land laws adopted in 1990. It is more progressive and can serve as a basis for the future formation of a land market through the privatization of land. One of the most important prerequisites for this, in my view, is the recognition on the state level and the legislative securing of diverse forms of land ownership. While the Land Code of the Ukrainian S.S.R. of 1990 reconstructs in a disguised form the principle of the state's exclusive right of land ownership, the Law of Ukraine "On Forms of Land Ownership" of March 30, 1990 establishes that there are three forms of land ownership in Ukraine: state, collective, and private. All forms of ownership are equal. Article 3 of the Land Code of Ukraine also represents this regulation.

Besides the regulations on the right of land ownership, the land laws of Ukraine contain a considerable amount of regulations on the permanent or temporary (including leasing) use of land plots.

The subjective rights to own and use the land plots cannot be realized without having proper legal guarantees that these rights would be protected. Therefore, the Land Code of

Ukraine contains regulations on the compensation for damages to the land owners and land users on the control over the land use, on the state land cadastre and the system of land use, and on the procedure of settling land disputes. It also stipulates the responsibility for an infringement of land laws.

Another important prerequisite for land market formation is the privatization of land plots. To this end, the land laws of Ukraine have regulations aimed at provision of land distribution into the private or collective ownership of citizens and juridical persons. It is envisaged, among other things, that not all categories of lands in Ukraine are to be privatized or relieved of state ownership, but only lands of agricultural application and urban lands (of cities, towns, villages). As regards lands used for industrial, traffic, defense, protection of nature, health improvement, and recreational and cultural application, as well as the lands of forest and water stocks, these lands, according to Article 4 of the Land Code, are, with some exceptions, subject to the exclusive right of state ownership and cannot be privatized, i.e., transformed into the private or collective ownership.

Among the lands of Ukraine, the most relatively significant are urban lands which are inhabited by more than 52 million people. Therefore, the problems of privatizing these lands, of creating conditions to include urban land plots in the civil law, i.e., formation of the land market, acquire particular topicality.

The Ukrainian laws classify the lands of cities, towns, and rural settlements as urban

lands. Included in the lands of cities are all lands within the city limits, that is the outer boundary of city lands which separates them from lands of other application and is defined by the city local plan or technical and economic grounds for city development (Article 63 of the Land Code of Ukraine). The procedure of establishing and altering the city boundary is defined by the Supreme Rada of Ukraine. Included in the lands of towns are all lands within the town limits. The boundaries of towns are established and changed by a regional Rada of People's Deputies or on its assignment by a corresponding district or town (if it has a district in its administrative subordination) rada of people's deputies (Article 65 of the Land Code of Ukraine).

The lands of these settlements are under the authority of the corresponding radas of people's deputies (city, town, village). It means that these radas of people's deputies have the right to manage these lands and control their use.

While analyzing regulations of the Land Code of Ukraine on legal conditions of urban lands as listed above, one cannot but notice their general, descriptive character. Their content doesn't make it possible to determine the composition of urban lands, to establish the legal conditions of their use. Not mentioned are, for example, lands of urban development, agricultural lands within the town limits, lands under forests within towns, and lands of industrial, traffic, communications, TV, radio, defense, and other special application within the limits of a town. Meanwhile, the regulation of these issues in legal acts is an important precondition for the future privatization of plots that would be the first and essential step towards

creation of the land market in Ukrainian towns.

At present, according to the land laws and other standard acts in force in Ukrainian towns, only those land plots can be privatized that were or will be given to citizens for individual housing, garage and dacha (cottage and a garden plot) construction within the specified limits. That is, the size of plots for construction and maintenance of a house, household buildings and structures (a personal plot) should not exceed 0.1 hectares in cities, 0.15 hectares in towns, or 0.25 hectares in rural settlements. The size of plots for individual dacha construction should not exceed 0.1 hectare, and, for individual garage construction, no more than 0.01 hectare.

The plots purchased by citizens for these purposes through the conclusion of civil transactions or on other grounds stipulated by the law in force are also to be privatized. By this is meant the houses and other structures disposed on plots by right of succession, and the part of land in the common property of a married couple, etc. Based on a resolution of local radas of people's deputies, the plots for personal subsidiary housekeeping not exceeding 0.6 hectare can be given to citizens.

As for other lands forming part of urban lands, according to the laws in force they are under the authority of local radas of people's deputies as an exclusive state property and could be given only for use. This means that the reduction of state ownership of urban lands and their privatization intended in Ukraine is limited and doesn't embrace all aspects. Thus, the plots

within the limits of cities, towns and rural settlements can be given for permanent use only to housing, housing construction and dacha cooperatives. The same procedure is used for rendering plots to privatized residential houses (condominiums) and to juridical persons.

While in agricultural lands the use of areas based on the right of collective ownership is allowed, in urban lands the use of plots based on this form of ownership is envisaged only for collective gardening. In this case, the size of plots that are given to citizens' cooperatives should not exceed 0.12 hectare per member of the cooperative.

It can be assumed from the above analysis of land laws and regulations that in the towns and settlements of Ukraine only the individual plots of citizens and, as an exception, of collective gardeners' cooperatives are to be privatized. The other subjects of market relations can have plots based only on the right of use. Naturally, such an approach to the privatization of land is inappropriate for creating the conditions for a full-fledged land market in Ukraine.

Moreover, the acting laws on land in Ukraine contain regulations that are hindering the formation of market relations in the sphere of urban lands use. Among the main problems that restrain the comprehensive land privatization are:

- Free distribution of the existing land plots to physical and some juridical persons
- Legislative adoption of the principle of stipulated use of rendered plots

- Juridical prohibition of the civil law transactions on privatized plots
- Legislative adoption of the priority of state land ownership
- Impossibility of using certificates for the privatization of plots
- Lack of a market mechanism of payment for land
- Imperfection of the organizational legal mechanism intended to protect the right of landownership and related property rights of owners in the process of market relations formation.

The above list of obstacles is not exhaustive. However, it would suffice to conclude that the privatization of urban land plots is limited and doesn't provide for the creation of land markets, i.e., it is no more than privatization for the sake of privatization. In support of this conjecture, let's analyze in brief the essence of some restrictions on the privatization of land plots.

The principle of free distribution of plots to the citizens that is fixed in land legislation may be regarded as positive only with respect to the plots that are already in use by citizens. As to the distribution of new land plots, it results in making artificial obstacles on the part of the

land owners -- the corresponding local Radas of People's Deputies. The Radas decide independently whether a citizen will be given a plot for one or another purpose or he will be refused. Lacking material motives for transferring plots to citizens, the local Radas of People's Deputies, especially those of small towns and villages, often reject applications of individual citizens for rendering them a plot. It is widely practiced now that local Radas of People's Deputies conclude agreements on joint activities with companies of a different kind. These agreements usually envisage rendering plots for individual housing construction in exchange for financing the construction of social, cultural and other amenities for town. Some agreements envisage different activities to be performed for this town.

Actually, this amounts to nothing but rendering plots for payment. An individual citizen cannot compete with companies in such cases and therefore can't receive for free or purchase a plot of land. Thus, having granted citizens the right to a plot for free, the state establishes legal restrictions for rendering plots and making different sorts of transactions on them. The only motive for this is to prevent people from getting rich through the land resale, not to admit the so-called speculation in land plots. Such regulations are contained in the present Land Code of Ukraine.

First of all, the articles of this law should be named that secure the principle of stipulated use of land plots: Articles Nos. 2, 6, 30, 40, 56, 57, 66, 67, etc. This principle implies that a plot may be rendered into ownership only for the purposes stipulated by the law. Thus, for example, Article 6 of the Land Code envisages that the citizens of Ukraine have the right to

plots for:

- Running a peasant farm
- Running a personal subsidiary farm
- Construction and maintenance of a house and household structures (personal plot)
- Gardening
- Dacha and garage construction

A citizen cannot get or purchase a plot for other purposes. Such a plot may be rendered only for use. The strict stipulated use of a plot determined by the law restricts the land owner rights. Thus, for instance, if the ownership of a house and associated structures is transferred, it will apply also to the ownership of a corresponding plot without changing its stipulated use. If the owner of some real estate (houses, buildings, structures) expresses a wish to use the purchased plot for another purpose, he is to apply to a local Rada of People's Deputies to give him this plot in an order of allotment. Such a demand stipulated by the law cannot be considered as logical and consistent while in some cases it is nothing but absurd.

Another major, if not the main, obstacle for carrying out full privatization and land market formation is presented by the legislative prohibition of civil law transactions on plots. On the one hand, the Land Code of Ukraine recognizes contracts of purchase, gift, or exchange as one of the reasons for the right of private land ownership to emerge (Article 6). On the other hand, it plainly prohibits or, to be more precise, imposes a moratorium on the alienation of plots during a definite period.

So, according to Article 17, part 2 of the Land Code, the owners of plots allotted to them by a Rada of People's Deputies don't have the right to sell or alienate the plot in another way for 6 years after they acquire the title to it. The exception to this rule is provided by the case when a plot is handed down by right of succession or alienated by a local Rada of People's Deputies on the same conditions as it was given, i.e., free. The transactions on plots concluded as specified above are declared null and void. Such provisions in the law make the citizens' subjective right of land ownership practically unrealizable and present an obstacle for the land market development.

Other restrictions on the right of land ownership by citizens and juridical persons are derived from those discussed above. Therefore, there is no need to analyze them in this paper.

Based on this analytical survey of the laws in force which determine the legal conditions of urban lands, one can make a general conclusion that the intended land privatization programme in Ukraine is limited and one-sided and needs additional steps to be made on the legal securing of the plots actually used by citizens.

Having analyzed a few regulations of Ukrainian modern legislation on land relations in the context of the land reform in Ukraine, one can conclude that the legal provision of reducing state ownership of land and land privatization is imperfect and needs to be changed. To this end, it is proposed to:

- Elaborate the concept of land ownership in Ukraine under the conditions of market relations being formed and developed;
- Elaborate the organizational legal mechanism of reducing state ownership of land and land privatization with the aim of land market formation;
- Adopt the Law on Land Privatization;
- Adopt a new Land Code of Ukraine and the appropriate package of bylaws.

**Problems of Normative Guarantee of
Land Privatization in Town-Building**

By

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Professor**

In the development and implementation of social-economic relations and their structures, normative systems, through legal documents, became more and more important with their function to regulate and harmonize all the forms of productive and social activity, observance of the qualitative norms of life, effective use of multipurpose resources for the sake of the country's prosperity, and coordination and security of personal and societal interests.

Among other normative systems a special place is taken by city planning norms, which regulate a wide range of requirements, conditions and results of activity, production and social structures within the confines of territories of various scale and functions. Along with norms that standardize the quality of life in terms of comfort and security, an important place is occupied by the norms which guarantee efficient levels of resource consumption in towns and by determination of the system of legal relations in this area. The latter is bound to ensure maximal economic effect for the state, the town and an individual.

One of the most important aspects of legal relations is the creation and implementation of principles to carry out land and real estate privatization and ownership in towns. These are

expected to ensure state and municipal economic effects, social justice, security, correlation of personal and social interests, introduction of individual responsibility for the state of material infrastructure and the use of territories in towns. Solving this problem is vitally important both for privatization itself and for the successful realization of town-building programs. At the same time it is necessary to ensure prevention of social conflicts which are bound to happen through clashes of the personal interests of different groups of the population and municipal authorities concerning territories and real estate projects being privatized by the state. Such a normative system is especially important in a transitional period of change in forms of property and land and real estate ownership in towns.

The peculiarity of the transitional period consists of the absence of legal guidelines, organizational experience and corresponding executive bodies. These can be formed by adapting and using the home and foreign experience, though both practical and theoretical difficulties here are inevitable. They ought to be discussed specifically.

In our view, the most complicated problems are concerned with inertia and the resistance of social environment, a philistine mentality, and leaders with interests of separate social, political and economic structures, for whom absence of individual land ownership is a source of personal power and wealth.

From the point of view of methodology, a number of concepts ought to be defined with regards to our conditions. While in the developed countries they may be referred to axiomatic

concepts as they exist historically and for every individual are kind of posterior, under our conditions they appear to be a priori, introduced from the outside, and require very thorough consideration and substantiation.

Unfortunately, the tendency for hasty transfer of a priori categories to posterior ones is bound to cause not only methodological confusion, but also confusion in social cognition, which is very dangerous as it may result in confrontations and conflicts. Too well we know from history, that change of paradigms in social practice, as a condition of progress, is necessary, but it is not bloodless. The striking illustration of this is the persecution of the [early] Christians, the Inquisition and Bolshevism. But admitting this fact does not necessarily imply such [will occur], taking into account our grievous experience of the revolution.

If one admits that there exists a certain vector of consecutive order of transition from one state to another, neither extremely radical nor too careful, it is necessary to thoroughly calculate trajectory, rate and means of movement from absolute state land ownership to private ownership (it is obvious, that no such situation as total private land ownership is possible even for an extreme radical privatizer). Caution in the process of land privatization is more necessary, since absolute state land ownership, being economically ineffective, still creates a definite and rather considerable psychological comfort for the overwhelming majority of land renters, specifically the absence of responsibility for the results of land exploitation as a natural resource or a means of existence.

Taking into account the established tendencies of the territory under consideration, a very debatable question may arise: what might be preferred by the inhabitant of this land -- non-ownership and irresponsibility or private land ownership entailing a burden of responsibility for the present and the future? The global effect of this or that choice of an individual is not taken into consideration, at least in this country.

In the final analysis we should admit that land, as a value not created by human beings, cannot belong to anybody personally (this has been the principle of communal land ownership in post-reform Russia). But there exist several kinds of rent which will be discussed further. They correct statements about land "not created by human beings," unable to be possessed by anybody, correct them on the grounds that some forms of rent are actually the result of human activity.

We can classify three types of rent (or rent payment), according to three types of space qualities; the account of which is a prerogative of town-building:

- Rent 1: Peculiarities of economic and town-building development of the region where the settlement is located
- Rent 2: Heterogeneity of town area and town planning structure
- Rent 3: Local conditions of engineering development peculiar to every site, making up

for the ousted functions, preparation of the territory, etc.

Rent 1 is formed by the development of regional productive infrastructure, administrative scientific-technical and social-cultural potential of the municipal system, and also owing to difference in communal costs of main funds and labor resources reproduction in different regional conditions. Rent 2 is established for each town specifically on the basis of the analysis of its planning structure. The economic essence of Rent 2 consists in the fact, that heterogeneity of town plan entails difference in the conditions of production and people's activity, more favorable for the center of town, well communicated with populated areas, working areas, service centers, popular rest places, and less favorable for periphery. Rent 3 is connected with the development of local territory and depends on the degree of this process and complexity of engineering-technical work, pulling-down of the existing funds, etc. Specifically, these types of rent ensure the possibility of standardization in the sphere of town land privatization from the point of view of initial costing.

The other aspect of this problem is determining possibilities and communal expediency of town land privatization regarding their differences in the value system outside the economy. Thus division of town territory into zones can be carried out from the viewpoint of:

- The state, as safeguard of historical-cultural wealth comprised by the town and guarantee of national security (state property);

- Municipal authorities, as guarantee of assurance of social and technological qualities of town environment, not subjected to privatization as these qualities are realized only as entity and only on the town level. Among these is first of all communal town engineering-technical and social infrastructure indispensable for town functioning as a social-technical body and ensuring social balance, technical conditions and life security in town (municipal property).

- Definite regional population groups and ethnic and religious communities, which require for their functioning non-appropriated land reserve (communal property) or mentally do not admit the principle of land ownership.

- Individuals who have no possibility to purchase land but who (1) have the first right to own it by the labor put in it earlier, and (2) are unable to respond to the land and real estate market situation (problem of homelessness). Rate setting is especially needed here as a social guarantee.

From all [the points] discussed above arises a concrete and by no means academic task, comprising several points which will require normative decisions.

A. Objective bounds of privatization (what territories can or cannot be privatized) from the point of view of their functional role; also mentality and social preparedness of the community for privatization. From the functional-planning viewpoint, the most complicated question is rate

setting of the town territories reserve expenditure for the future town development. Under private land ownership, non-use of land over a long period of time is unprofitable for the municipality; on the other hand, drastic reduction of the reserves in selling off land will complicate the town development problems because of natural land price rises in the course of time (effect of negative discount). There must probably exist a certain reservation norm correlated with the town development rate and the degree of intensity of town area development and budget requirements. This norm will naturally be a rough guide, though even if largely increased, it will play an important role in municipal town-building and budget policy. Besides it will likely need to introduce differentiation of reserved territories by their place within the town plan (inner town reserve, town-adjoining territories etc.) and by their perspective use! Special rate setting will be required for industrial properties as the reserve of development of working places, of employment assurance, as revenue source from taxes on land, production funds and activity.

In any case the question of freezing and mobilizing territory reserves will rest on a general idea about territory resources expenditure for various functional needs and principles of price formation and taxation in the process of land and real estate privatization.

B. Privatization norm correlated with the notion of land parcelization as the factor of assurance of the social right of everybody to land ownership and as a means of struggle against town land resources speculation (notions of land minimums and maximums).

- C. Privatization norm as a dynamic category, altering in time.
- D. Costnorm (ransom) of land plot and instrument of redeeming or transfer without compensation
- E. Privatization procedure as an element of realization of town-building policy, having its own normative constituent aimed at limiting or stimulating privatization process in accordance with the conception of town territory-planning development and its functional division into zones, to ensure stability of town function.
- F. Instrument of normative balancing interests of privatization subject with regards to size of land plot; their position, their fictional use, ways and means of their reconstruction. Among other factors a very important role is played here by ecological factors and normatives.
- G. And finally, land property taxation combined with the necessity of all possible encouragement of effective land use in towns. We can probably speak here about progressive taxation norm, beginning from the concept of minimal parcel. Methodologically we should differentiate here between the rent payment system being introduced now for municipal or town land property, and taxation of private land property.
- H. The questions of taxation norms for land ownership are directly connected with real estate taxation norms. Appropriate correlation between these tax rates is very important for

adequate town space development, funds use and town building structure. This will, first of all, require differentiating normatives classifying land into zones and regions, as well as real estate projects, including municipal and engineering systems and construction in advance of their position in the town plan, with the possibility of their affecting the town building development and transformation of the ecological situation, social conditions, architectural-artistic qualities of townbuilding, etc. This list is not exhaustive, of course, and remains open.

In the meantime the following essential item is worth consideration. The starting point for all the attempts to set up norms in these various positions is the recognition of principal qualitative difference between settlement lands and lands of rural use. If the latter are productive forces, means of production, the former ones are predominantly an area of social relations, a space for organization and realization of man's activity and organic functions. This principal difference predetermines differences in approaches to land privatization. In one case the criterion of productive-economic effectiveness of the use of land resource directly reproducing material wealth is predominant; in the other it is the criterion ensuring conditions necessary for social and cultural reproduction of man and society. In other words, rural space reproduces biomass, town space-socium and sociodynamics. While in the first case the privatization norm is ultimately determined by the financial, material possibility of the person (physical or juridical), in the second case come limitations connected with communal use of the most part of the town territory by its inhabitants, without which a settlement cannot exist as such, as a definite social-economic phenomenon.

The study of foreign experience, particularly in the USA, in developing legal assurance and realizing principles of private land and real estate ownership in towns, with consideration of the complex factors that guarantee interests of state and municipal bodies and the population, including a just taxation system, is extremely important, but requires very thorough consideration and adaption to specific and wide-ranging historic, social-psychological, political and economic conditions in Ukraine.

The Legal Framework of Private Land Markets

By

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I. Executive Summary

The efficient and equitable functioning of private land markets requires a proper legal framework containing the following key elements:

1. Equal status to private property (as compared to state property and cooperative property)
2. Security of land title (through recording of land rights)
3. Simplicity and efficiency of transfer of private land rights, subject only to urban planning and other social welfare concerns of the State
4. Ability to use land as a financing mechanism (as security-hypothèque/ mortgage, construction loans)
5. Reasonable precise limitations on the right of the State to extinguish or restrict private

land rights

6. A system of land taxation that helps to regulate the land market by encouraging efficient and equitable use of land, as well as serving as a main source of revenue

Of these six elements, the first has already been accomplished by Article 2 of the Ukraine Law on Property, 1991. The fifth element regarding limitation on private land rights by the State is covered by companion papers by J. Kayden "The Role of Government in Private Land Markets," , and M. Kitay, The Role of Public Land Acquisition in Private Land Markets." In addition, types of land rights, development rights and the question of land speculation are covered in W. Doebele, " Types of Private Interests in Private Land Markets."

II. Security Definiteness of Land Title

Security of land title is required for an effective and efficient private land market. It provides the basis for a housing mortgage finance system or agricultural credit system.. It is also necessary for a comprehensive real property tax, the most common element of local government finance system throughout the world. Definitive information on land titles can provide the data on land markets required for effective urban planning and land use management and for efficient compulsory land acquisition/expropriation. Security of title has also been demonstrated to be an important factor in encouraging improvements to land and buildings.

An effective legal cadastre is the method for providing the necessary security of title. Such a cadastre is a systematic survey of all land parcels with regular maintenance of records. There are four basic minimal conditions for the establishment of such a system of land registration:

1. The unit of land registration must be a proprietary land parcel, unambiguously defined (preferably on a map).
2. On initial compilation, all registrable rights and interests in each parcel are recorded on the land registered (by the land adjudication process).
3. Thereafter, the register is kept up to date and indicates the current position regarding rights and interests at any times.
4. Title depends upon the act of registration, not upon documentary instruments or judicial orders.

Many modern cadastres are also developed to serve additional functions for property tax purposes (fiscal cadastre) and as a Land Information System (LIS) for urban planning and land management. Thus a fifth condition is added:

5. The land parcel must be identified by a unique identifier.

However, even in Western Europe and the states of the United States, most existing land recording systems do not meet all of these conditions. The Torrens registration of title system as developed originally in Australia is perhaps the most advanced but is not usually systematic and does not give legal status to a map. In addition, tax arrears are not usually recorded. The registration by deeds system (using a grantor-grantee index) still used in most states of the United States also does not establish the unit of registration as the land parcel. Yet with the advancement of computers and the interest in land information systems there is movement toward the type of legal cadastre discussed above. Most land registration systems could be converted into such a system if the following elements are added, as required:

- a. Giving legal status to the cadastral map;
- b. Requiring that a unique identifier be attached to each parcel;
- c. Permitting photogrammetric, computer and other advanced techniques of mapping to replace surveying and mapping on the ground (where feasible);
- d. Streamlined adjudication process by official or non-official authorities, and by permitting provisional title (as under the British title registration system);
- e. A public land register (but with specific rules to protect privacy and for access to information);

- f. Guarantee of title/title insurance during period of conversion to the new system;
- g. Permit all relevant documents to be placed in one register and require liaison between the legal cadastre and other parts of a multi-purpose cadastre;
- h. Require maintenance of the system and systematic updating of information at least every ten years;
- i. Encourage initial updating of system by making it free or cheap to register and by not tying registration to collection of back property taxes.

In addition, compulsory registration has been found to be necessary for such a system. However, the proper penalty for non-compliance has been difficult to determine. Most such laws provide only for the legal voiding of any transfer of land rights not so registered, but this only undermines the definiteness of the system if there are many such transfers. On the other hand, the extreme of forfeiting the land to the State seems too harsh. Systematic registration, area by area, after the parcels have been defined is preferable but has been carried out successfully only in such colonies as Kenya, with the system falling apart after independence.

As mentioned above in (f), title insurance can play a major role in providing security of title in a land registration system that does not meet all of the requirements set out previously or as an interim step. In the United States, most states have specialized title insurance companies

which provide such a guarantee and often keep more detailed land records than those of the appropriate public agencies.

III. Reasonable Free Transfer of Private Land Rights

A second necessary prerequisite for an efficient and effective private land market is the reasonably free transfer of private land rights in order to permit the effective commercialization of land. Generally under a private land market, a party may transfer his rights in a plot of land subject to restrictions established by land use controls and specific principles of "general welfare", including potential nuisance of the planned use to neighbors. For sale-purchase, the transfer is usually accomplished by the signing of a legal contract between the parties and the transfer of the deed concerned, including warranties as to the soundness of title and as to the quality of what is transferred. The transfer is registered in the legal cadastre. Under the ideal situation described in the previous section of this paper, registration of the transfer in the legal cadastre would be determinative in and of itself, without a deed or other piece of paper as evidence of the transaction being required.

The level of government responsible for this limited land rights transfer approval with regard to land use controls and nuisance controls varies based upon the type of government concerned. In the federal system of the United States most such controls are set by local regulations based upon state authorizing legislation. However, many environmental controls are now set nationally, based upon national legislation. The United Kingdom with its centralized

system sets such land use controls on a uniform national basis.

IV. Land As a Financing Mechanism

A third important element for an effective and efficient private land market is a system for the use of land rights as security interests for financing purposes. Financing of real property acquisition and development is a central part of land and building markets. Thus a strong private banking system and strong other financial institutions that lend capital are required for the creation and maintenance of a healthy real estate market. Thus there must be strong general laws pertaining to banks, insurance companies and other major lenders of capital to this market. Further, general securities laws are necessary to regulate the operation of organizations that provide equity capital to real estate markets as one of their activities.

More directly concerning private land transactions, security of title is necessary as a basis for such a system, as was mentioned above. Land as security is important both for:

1. Long term loans (generally up to 30 years) for purchase of land and buildings by means of mortgage/hypothèque; and
2. Short term loans (generally for three years) for construction, loans for actual house building, and other loans for the purposes of land development.

In many countries, there are specialized lenders that operate in only one of the above two markets. In the United Kingdom building societies provide most mortgages and are restricted from most other lending activities. There was a similar history for savings and loan associations in the United States until the 1980s and the loosening of such restrictions has led to major losses for many such institutions as the expense of the American taxpayer. Construction loans have been made in most countries by general banking institutions.

Short-term construction loans will be discussed in the companion paper by P. Abeles, "Buying, Selling, Financing and Developing Land in Free Market Economies." This paper will concern itself only with what is required for an effective hypothec/mortgage. For long term housing loans for purchase, there are two basic systems- the Civil Code hypothec and the Anglo-American common law mortgage. The major difference between the two forms is that title to the property remains with the lender under a hypothec until the final payment is made, while under a mortgage title passes to the borrower immediately with the lender retaining the right to foreclose on the property for non-payment of loan amounts due. In either case, an effective security interest requires:

1. Strong procedures for foreclosure in case of default
2. A uniform instrument which may later be collateralized

A. Foreclosure (including more general bankruptcy provisions)

A major requirement for a successful system of mortgages/hypothèques is the ability of the lender to take over the property concerned upon default in payment by the borrower or foreclosure. More generally, there is also the need for a proper system of bankruptcy to deal with the assets of failed enterprises or individuals.

For foreclosure, legal provisions are required that establish a fair balance between the rights of borrowers and those of lenders. Borrowers should be able to have a reasonable stated time period to make good on their default in payments. However, lenders must have the ability to collect on the debt or, in the alternative, take over the property concerned and sell it to get back what is owed to them. In particular, lenders must be able to exercise the following:

1. Remove the defaulting borrower from possession of the real property concerned (after following a set procedure)
2. Retain the collateral land (at least for a short period) on default by the borrower, prior to resale
3. Avoid possible elimination of the security interest at a public sale by a Government official

Besides the foreclosure provisions, there needs to be a more general mechanism to liquidate a no longer viable enterprise and repay the claims of creditors according to pre-established rules of priority or, if parts of the enterprise remain viable, to establish a legal framework through which creditors and debtors can negotiate binding agreements to undertake reorganization. Such bankruptcy provisions are applicable to state-owned enterprises as well as to private sector enterprises and individuals. However, for the private sector a bankruptcy law should be seen as part of a wider set of legal rules, including the above-mentioned definition of security interests and methods of foreclosure, which increase the potential economy, including in the land and buildings market.

B. Uniform Security Interest/Secondary Mortgage Market

Besides the above provisions regarding foreclosure and bankruptcy, an effective mortgage system also needs a model security interest which is uniform in character and thus may be collateralized and sold to a party other than the lending institution which originated it. In the United States there is an active secondary mortgage market which permits lenders to sell their mortgages and thus not tie up their resources for the period of the mortgage. Thus they can use the money concerned almost immediately to give out more mortgages. A public-private organization buys loans from the primary lender, packages them together and uses them as collateral or the issuance of securities in general financial markets. The organization may issue bonds that are tax-exempt to the borrower-holder so that the organization can offer a lower interest rate to borrowers than that otherwise offered in the market. The Government provided

initial capitalization for the public-private organization, but the organization is designed as a for-profit entity and has indeed been very profitable. In Europe, the system relies more upon mortgage bonds.

V. Land Taxation

A fourth important element for an effective private land market is a system of real property taxation that helps to regulate that market by encouraging efficient and equitable use of land, as well as serving to provide large Government revenues from a source that cannot move its location.

Two categories of taxes of real property are important for the establishment of such a private land market:

1. Taxes assessed on an annual (periodic) basis, primarily the property tax but also including such taxes as the special assessment district tax and the commercial occupancy tax.
2. Taxes assessed at the time of the occurrence of a specific event, such as the transfer of rights in real property. Such taxes include also mortgage/hypothèque recording taxes and betterment taxes. In addition, more general taxes on real estate transactions such as a capital gains tax, could be put into this category.

A. Real Property Tax

The real property tax, levied annually on the value of that property, is the primary source of tax revenues dedicated to the financing of local government services in most countries. In the United States, it generally pays for 20-40% of local Government budgets. In addition, with regard to the efficiency and effectiveness of a private land market, the fiscal cadastre of taxpayers established for property tax purposes sets the assessed value annually or its market value (which then would be on public record). Generally mass appraisal techniques are used and the property tax law itself provides that all property must be individually appraised at least once every five years. An appeals procedure is established by which unhappy taxpayers may have review by the government and then by a court of the assessment.

Such a law further sets the classification of property into several different classes, with different tax rates applied to each class (for example, residential, commercial). However, all properties within the same class would be taxed at a uniform rate. A further critical point is that the tax would constitute a lien on the property. Often this lien is superior to all other security interests in the property. If an owner fails to pay the tax, then the Government concerned would be able to commence in rem proceedings in the courts to foreclose the property. After the Government foreclosed on the property, it would subsequently auction it to the highest bidder who would first be required to pay the property tax bill. This would not only keep up the level of local government revenue but also permit the property to be used effectively as part of the commercial/private land market.

B. Taxes Assessed At The Occurrence Of An Event

Taxes that are assessed at the occurrence of an event, such as a real estate transfer, are not generally considered to be important sources of revenue but rather as a means for the Government to achieve some benefit from increases in property value which often have occurred because of Government actions such as investment in public infrastructure, as well as to encourage efficient use of land. The taxes themselves also provide evidence of the event that has occurred.

The most important such "event" taxes are:

- 1. Real estate transfer tax or recordation tax**, which is levied as a percentage of the price at the time of sale of the real property. A typical such tax is 2% of the price, with 1% each paid by the buyer and the seller. However, a problem often arises that the reported price for tax purposes is substantially below the actual negotiated price of the parties.
- 2. Hypotheque/mortgage recording tax** (often 1% of the amount of the hypotheque/mortgage);
- 3. Betterment tax** (valorization or development tax)- a tax on increases in property value resulting from Government actions. These taxes have been employed with some success in the United Kingdom, Israel, and Colombia but are hard to administer and to coordinate with

the property tax;

4. **Capital gains tax**, traditionally levied on owners of capital assets, including real property, at the time of the sale of that asset. The amount of tax is a percentage charge on the difference between the value of the asset at the time of sale and its value at original acquisition plus the value of any improvements made to the property reduced by any "accumulated depreciation" (thus a calculation of expected deterioration but only to the building not to the land). This later figure is known as the "basis". Thus a capital gains tax helps set market values that later may be used for property tax assessment purposes.

C. **Summary and Conclusions**

The establishment of a proper legal framework for the efficient and effective functioning of private land markets requires security of land title, simplicity and efficiency of transfer of land rights, use of land as a financing mechanism and a system of land taxation that helps to regulate the land market by encouraging efficient and equitable use of land (as well as being a main source of revenue). This paper has described some of the problems and possible solutions in each area if an efficient and effective private land market is to become a reality.

Principal Land Market Features and the Development Process in the United States

By

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Introduction

This paper will set out some of the principal features of the land market and development process in the United States. More specifically, the paper will focus on three aspects: land and development costs; the time and risk involved in the development process; and financing for acquisition and development of land. The paper's major theme will be the way in which more extensive government regulation invariably influences all three aspects of the process, leading to higher costs, longer delays, and more restrictive financing in the face of greater risk.

The original version of this paper was prepared prior to visiting Ukraine. This version has been revised to reflect two impressions concerning the future of development in Ukraine. First, the development of land outside the central city will be critical in meeting national housing objectives. Second, for the near term it is the government - and not the emerging private sector - that will play the major role in determining how land is used. Regarding the first impression, if the housing history of the West is any indication, much of Ukraine's new housing will be built at far lower densities than in the past. In the United States, almost two-

thirds of all land development is for low density housing. This type of housing ranges from 20 to 200 square meters of land per unit. Because Ukraine faces a very large demand for new housing, construction of enough low density housing to satisfy the demand will require a large supply of vacant land available for development. This land is available only in rural areas. Rural land, and particularly farms, will be converted into subdivisions of single-family homes.

Regarding the second impression, that government will play the major role in land development, it will take a number of years for the private sector to mature to the point of taking the lead in the development process. Today, only the government has the means to deal with the problems that will follow the expansion of existing cities into the surrounding countryside. The government's role will be especially important at the outside edges of the major Ukrainian cities, where demand for housing will conflict with established rural land uses. As this paper suggests, the role of government in ensuring an adequate supply of land will have a major impact on future housing production.

This is in marked contrast to the current situation in the United States. Although local governments in the United States play a major regulatory role in development, market decisions are made by the private sector. Nevertheless, the United States has had experience relevant to the current situation in Ukraine. The end of World War II marked the end of a decade and a half of highly restricted housing production. From the mid 1940s to the late 1950s, the United States underwent a period of massive building to overcome past housing shortages. Most of the new housing was built in the countryside outside of the established cities. This suburbanization

was facilitated by pro-development decisions made at every level of government. If facilitated by local government, this same solution may be employed by Ukraine in meeting its housing needs.

Land and Development Costs

Two financial tables, identified as Case 1 and Case 2, have been prepared to illustrate how the price of land is determined in the development process. Although the numbers have been simplified, they represent current prices and values in the northeastern United States.¹ The tables are explained below, and a more detailed line-by-line explanation is appended to this paper.

The essential difference between Case 1 and Case 2 involves the way in which government allocates land for development. In Case 1 the supply of land available for housing equals or exceeds the local demand for new housing. It is assumed that this is a rural area in which the government does not restrict the conversion of farms into residential subdivisions. The government has adopted only minimal land use regulations and does not seek to determine how much land may be used for various purposes (e.g., agriculture or housing). The government requires only that public streets be built in any subdivision to provide access to the

¹ Most of the numbers and prices reflect conditions in the state of New Jersey. This state is used because it has had a period of relatively unrestricted development followed by a very restrictive development policy. It is also a suburban state that changed from an almost rural state to the most densely populated in the nation in less than fifty years.

houses and that there is safe water and sewer disposal for each house.

Case 2 describes the same rural area, but under a government policy that restricts the supply of developable land. The government, not the marketplace, determines which farms may be converted into housing. As a result, the available land is not adequate to support the local demand, and developers must compete with one another for the available parcels.

These two cases have both been experienced around American center cities. Just after World War II, local and state governments placed very few restrictions on the conversion of agricultural land to suburban uses. As much agricultural land as was needed was converted to residential and related uses. This period was one of the most active periods of housing production in American history. This expansion period was followed by increased local and state government restrictions on the amount of land available for development. What happened is Case 2. Government became the major factor in determining the supply side of the land equation.²

Although the numbers differ to reflect differences in the availability of land, the two tables follow the same format. Both present three scenarios, involving the development of a given property for housing intended to serve the lower-income family, the middle-income family, or the upper-income family market. The income ranges of the three groups have been

² Even today, there is no shortage of land in absolute terms. However, as a result of planning, both locally and on a statewide basis, large amounts of underutilized land cannot be developed for housing.

simplified to appear as three bands of identical width, but the ranges reflect at least roughly the actual income levels in the New Jersey housing market. The median New York area family earns about \$40,000 a year.

The first eight lines in either table convert family income into the amount of housing a family can afford. Affordability is determined by two factors: the amount of savings that a family can pay as a downpayment on the house (generally about 20% of the price of the home) and the amount of annual earnings that a family can devote to housing costs on an ongoing basis after moving into their new home. In the United States, a family is expected to spend about 30% of its income on housing. Part of those housing dollars will go to operate the home, but most will go to paying off the mortgage loan that the family assumed in order to purchase the house. Assuming that a bank has lent an amount equal to 80% of the cost of the house, and that this amount and interest at the prevailing rate will be repaid in equal monthly installments over a 30 year period, the annual debt service that a family can afford translates into a maximum loan and, adding the downpayment, into a maximum housing price. Line 8 represents the maximum amount of housing that a family, at a certain income level, can afford.

The next section of the table, lines 9 through 13, take a typical size farm and convert the total area into a number of lots. Depending upon the buying power of the family, the market will provide smaller or larger lots. The sizes used in the tables are typical of the lots that each class of American family would normally buy.

Lines 14 to 16 calculate the cost of the land needed for each house. The price of land reflects two factors. The first is the use to which the land will be put. When agricultural land is used for residential development, its price would be somewhat higher than the farmer would have to pay for equally good farmland at another location.³ The second factor is the relative supply or scarcity of land that is available for that purpose. The scarcer a commodity is, the more valuable and expensive it becomes. In the areas where new development is restricted by government, land can cost \$200,000 or more per hectare. On the other hand, in areas where ample land is available, the price of land is close to its agricultural value.

A farm in New Jersey is typically about 80 hectares in size. A combination of crops on such a farm can produce a net profit of \$50,000 per year. Assuming a capitalization rate of 10 percent, this land has a value of \$6,250 per hectare for farming.⁴ At the very least, assuming a plentiful supply of developable parcels, the price of the land for housing might be double its value as a farm, or about \$12,500 per hectare. That is the value of land used in Case 1. If the price were much more than its agricultural value, then more farmland would come on the market, driving the price down.

³ This assumes a continuing increase in farm efficiency and a decreasing need for such land. This is actually what has happened in the United States since the middle of the last century. It is what made development in New Jersey possible.

⁴ The capitalization rate is the way of determining the value of a commodity if the annual rate of return is known and there is a figure for the cost of money. If the long term cost of money is 5% for inflation and 5% for the value of money, for a total of 10%, then farmland which makes \$50,000 per year, at 10% is worth \$500,000 for 80 hectars or \$6,250/S.H.

This would not be the case if government regulations artificially reduced the supply of developable parcels. Although the overall supply of agricultural or vacant land would remain the same as in Case 1, that does not determine land prices. The supply of land that may be developed for housing determines that. If the government regulates how land may be used, and if it allocates less land for housing than the housing market would otherwise dictate, a shortage occurs. This has two obvious consequences. First, the owners of developable parcels can and will demand more money for the land, and those who can afford to pay will essentially bid against each other for the available property. The experience in New Jersey suggests as much as a twentyfold increase, from \$12,500 per hectare in Case 1 to \$200,000 or even \$250,000 per hectare in Case 2. Second, not enough housing can be built.

The impact on the distribution of housing is predictable. The greatest profit for a developer is in building housing for the wealthiest group of homebuyers, but the number of high-income families is relatively small. In Case 1, because the supply of developable land exceeds the amount required by the upper income group, developers will seek to satisfy various market niches, as long as the income group can afford enough to generate a reasonable profit. The market process will soon bring the housing industry to the largest market, the families earning \$30,000 to \$50,000 per year. Where the quantity of land is not limited, most land will be used in meeting the housing needs of the mass market. In Case 2, however, the amount of land is not sufficient to satisfy the entire market. Because of the economic power of the upper income group, where land is limited it will go to the higher income families. The limited number of wealthy families will be able to consume most of the limited supply of land.

Developers will pay more for land than would be possible for housing that anyone but the wealthy could afford. This use of the land can bring both the highest value to the seller and the highest profit to the buyer (builder). Only after the demand of the upper income group is satisfied will the price of land fall to the next level (\$200,000 rather than \$250,000 per hectare). Sometimes that does not happen, and the result is an exclusion of many homebuyers from a particular market.

The remainder of the two tables shows how the price of land affects total development costs. Lines 17 through 23 illustrate what it costs to build a typical house in New Jersey. Construction costs are relatively standard; the only differences are in the size of the home, the size of the lot, and the quality of the finishes and amenities, all of which vary according to what the consumer can afford. Line 24, the cost of land, is the major difference between Case 1 and Case 2.

Case 1 shows that where a large supply of developable land exists, the price of land is not significant in the total cost of housing (line 31). The size of the lot and the size of the house play a greater role in determining the cost of the housing than does the cost of the land.

Aside from the cost of land, land improvements, and house size, the developer has little control over the other housing costs. Building materials and labor cost almost the same, on a square meter basis, for both a large and small house. The price for which the developer can sell the house is limited by what a prospective purchaser can afford to pay, as was explained earlier.

No matter how much it costs to develop a home, a developer cannot sell it for more than the purchaser can afford.

In Case 1, where there is minimal regulation of the land supply, the cost of the initial land transaction is just under 15% of the total cost of the new house. In Case 2, where land is more heavily regulated, the cost of improved land is about 28% of the cost of housing. Note that it is the same size piece of land; only the regulations that affect its supply are different. Today, in New Jersey, especially in those localities in which land is highly restricted, land costs usually represent 25% to 35% of the cost of the house.

The only other factor over which the builder has control is the amount of profit that he or she is willing to accept. As the profit, as a percentage of the developers total investment (or amount at risk), declines, the less incentive there is to develop housing for a particular income group. If the profit is much below 20% of the sales price, there is no incentive for the developer to undertake the project.

With an unrestricted land market, most of the housing is built for families earning about \$40,000 per year who could afford to buy a house costing \$130,000.⁵ In Case 2, even if the amount of land exceeds that needed for the uppermost income group, developers are less likely to build for any other market.

⁵ \$9,500 per year will pay off \$110,000 in debt over 30 years. The \$20,000 savings is used as a downpayment for a total housing cost of \$130,000.

In Case 2 the more restrictive regulations do benefit some people. For the owner of a developable farm, the regulations raise the value of the land from \$1 million to \$20 million. For other landowners, however, the regulations decrease the value of a similarly sized farm from \$1 million to its cost as agricultural land. By decreasing the amount of development, the regulations improve the quality of life for those who obtain housing. Larger lots, more privacy, fewer people, and less traffic are all benefits of lower density development. The consequence, however - the most important consequence in terms of housing policy - is that restrictive land policy results in excluding a large part of the population from new housing.

Time and Risk

There are two very separate phases of land development: preparation of the land for construction and the actual construction itself. The first phase involves obtaining approval to build and installing the infrastructure (roads, sewers, water lines, etc.). Regarding infrastructure and construction, if the engineering is done correctly, the amount of risk in this process is small. Yet, in what should be a very technical process, local land regulations play an important economic role.

The element in the development process over which the developer has the least control is getting the government approvals for construction. Because of the regulatory process, the land cannot be used until every approval has been obtained. Because of the complexity and risk in this process, builders demand higher profit. The greater the complexity, delay, and risk become, as

a result of more cumbersome regulations, the higher is the profit that the developer requires to undertake the project.

The following is a very incomplete list of the types of actions and approvals that might be needed in the process of converting a farm to housing:

- Change in the use of the land
- Change in the intensity of use of the land
- Preliminary plan for division of the land
- Final plan for division of the land
- Registration plan for the divided land
- Permit for access to government roads
- Permission to connect to existing sewer system
- Approval for soil protection and erosion plan
- Determination of environmentally sensitive areas
- Permit to discharge storm water

In New Jersey, these approvals require action by six different government agencies. Each of these agencies may be controlled by a different level of government with no direct coordination between them.

Even where the land is approved for the use demanded by the market, the developer must still get each and every approval before any building can occur. One mistake in a plan or one change in the regulations can either delay or prevent a development. Since the approval process can take years, new regulations and changes can occur even during the process of development. The approval process is a period of high risk.

It can take 2 or 3 years from the start of planning and approvals to reach the last needed government signature. The major role of the developer is to accept the risks in getting the necessary approvals and holding the land during that entire process. A large part of the developers job is made necessary because of government needs to regulate land.

Aside from the dollars spent on the preparation of applications and plans, the developer is at risk for the cost of the land and his time. While land use changes are sought and approvals obtained, the developer must control the land. He must either buy the land outright or buy the right to buy it after it is made ready for building. Since there are few developers who have \$20 million to invest in a farm, most land is bought by a contract for future sale. The developer will arrange a contract for the land that reflects both its present permitted use and the fact that it

will be held off the market for a long period of time while a change of use is sought. The developers dollars paid for land outright or for the contract to buy in the future are totally at risk. If the land use regulations or the market change, the developer may be left with a \$20 million farm. If the developer buys a contract for the land and if the approvals are not obtained, the payments for that contract are lost.

A major reason why the developer needs to achieve a high rate of profit is because he is taking all the risks for getting from finding land to using it. Until he obtains the last approval, the developer has only vacant land. He must pay for all the approvals before a house is sold. Finally, he must assume the risk that he has the right housing product at the right time for the right market. The higher the risks in this difficult process, the higher the risk and the higher the payment for such risk. These costs will be added to the cost of housing.

Financing Land Development

In the private sector development process, financing for land and its approval is an essential part of the production process. Few builders have the resources to undertake development without the use of financing. Without financing private development would not be possible. Government plays a very important role in determining if money, and how much, will be available for development.

A land loan is based on the future value of the land when ready for housing. If all the

approvals had been obtained and the builder was ready to build, the loan would be close to the value of the land for building. If the governmental approval process has not been completed, banks will be very reluctant to provide any financing. Without financing for both acquiring an interest in land and its approval, the amount of development is reduced. The less development, the higher the prices for new housing.

Banks have come to the conclusion that the risks of land development are too difficult to evaluate properly. Today, banks will lend some of the money to purchase land only after the developer has his approvals and is ready to start construction. This pattern of lending recognizes the fact that land only has its full value when the government approval process is completed. In Case 1, where the land sells for \$1 million, a bank might be willing to lend half of that amount after the approvals have been obtained. Note that this is the value of the land as a farm and, therefore, provides the bank with reasonable collateral.

Because of the uncertainty with the development process, land for residential development is usually bought under a contract for future payment when the land is ready for building. This form of contracting for land eliminates the necessity of having bank financing available at the start of the development process. The developer's funds for the contract to purchase land is usually a small percentage of the final price. The only capital the developer risks is the money used to secure the contract. It is this contract form of financing that is widely used today.

The terms of the typical land contract call for paying the seller on a regular basis, for giving the developer the right to buy the land in the future. The value of the contract for the seller is his cost of holding his land off the market. The developer will base his price on the amount of risk that is involved. The seller is taking some of the risks by, in a sense, providing interim financing of the land, and the seller is rewarded for taking the risk by getting some of the higher value created by the development process.

The first phase of the land contract ends after all the approvals have been obtained and the land is ready for building. When this happens it is as much determined by government as by the developer. Banks, once the risk of land approvals has been eliminated, are willing to lend against the value of the land.

Conclusions

Ukraine is fortunate to be able to use the experience of the West in developing its own ways of making land available for development. This paper has addressed two important lessons. First, the relative scarcity or availability of land is a major factor in determining how the land is used. Second, government plays a key role in every step of the development process, and can influence the availability of land. This paper has stressed the role of government.

First, the way in which government allocates land can determine who benefits from

development. Any scarcity can dramatically increase the cost of land, and that cost is passed on to both builder and homebuyer. If government ensures that there is an ample supply of land, the American experience suggests that the private sector will attempt to build housing for anyone who can afford the basic product.

Second, government determines the time and risk of the approval process. While the effects of this are not as dramatic as those related to the supply of land, the cost of that process ultimately is reflected in housing prices.

Third, without financing, private sector development is not possible. Lenders to the development industry understand the risk that is imposed by government in the development process. The cost of that risk is reflected in housing prices.

The United States has experienced major housing crises similar to that affecting Ukraine today. One of the most severe housing shortages, just after World War II, was overcome with the widespread use of agricultural areas with minimum government intervention. The results of that experience may be applicable to present day Ukraine as it begins to overcome its pent-up demand for more and better housing.

Case 1

Production and Sales Cost of Housing for Three Income Groups

Under Conditions of an UNLIMITED Supply Of Land

	Type of Family by Income	Lower Income \$30,000 to \$50,000	Middle Income \$50,000 to \$70,000	Upper Income \$70,000 to \$90,000
Note				
1	Family Income, Average	\$40,000	\$60,000	\$80,000
2	Percent for Housing	30%	30%	30%
3	Total Housing Budget	\$12,000	\$18,000	\$24,000
4	Operating Cost of Housing	\$2,500	\$3,000	\$3,500
5	Available for Debt Service	\$9,500	\$15,000	\$20,500
6	Maximum Loan	\$107,955	\$170,455	\$232,955
7	Assumed Down Payment	20%	20%	20%
8	Max. House Price	\$130,000	\$205,000	\$280,000
9	Total Land Area, Hectares	80	80	80
10	Streets, Parks etc, in %	20%	20%	20%
11	Meters Available for Lots	640,000	640,000	640,000
12	Average Size Lot	600	1,200	1,600
13	Total Lots or Housing Units	1,067	533	400
14	Price of Land / Hectare	\$12,500	\$12,500	\$12,500
15	Total Land Costs	\$1,000,000	\$1,000,000	\$1,000,000
16	Land Costs Per House	\$938	\$1,875	\$2,500
17	Size of House, In Meters	160	220	260
18	Cost to Construct/Meter	\$400	\$460	\$480
19	House Cost	\$64,000	\$101,200	\$124,800
20	Development Cost / Meter	\$10	\$10	\$10
21	Lot Development Cost	\$6,000	\$12,000	\$16,000
22	General Site Cost	\$12,000	\$12,000	\$12,000
23	Soft Cost @20%	\$16,402	\$25,042	\$30,562
24	Cost of Land	\$938	\$1,875	\$2,500
25	Total Product Cost	\$99,350	\$152,127	\$185,872
26	Production Cost / Meter	\$621	\$691	\$715
27	Market Sales Price	\$130,000	\$205,000	\$280,000
28	Sales Price / Meter	\$813	\$932	\$1,077
29	Builder's Profit	\$30,651	\$52,873	\$94,128
30	Builder's Profit in Percent	24%	26%	34%
31	Land as % of House Price	0.7%	0.9%	0.9%

Production and Sales Cost of Housing for Three Income Groups

Under Conditions of a HIGHLY REGULATED Supply Of Land

Type of Family by Income	Lower Income \$30,000 to \$50,000/ Yr.	Middle Income \$50,000 to \$70,000/ Yr.	Upper Income \$70,000 to \$90,000/ Yr.	
Note				
1	Family Income	\$40,000	\$60,000	\$80,000
2	Percent for Housing	30%	30%	30%
3	Total Housing Budget	\$12,000	\$18,000	\$24,000
4	Operating Cost of Housing	\$2,500	\$3,000	\$3,500
5	Available for Debt Service	\$9,500	\$15,000	\$20,500
6	Maximum Loan	\$107,955	\$170,455	\$232,955
7	Assumed Down Payment	20%	20%	20%
8	Maximum Price of House	\$130,000	\$205,000	\$280,000
9	Total Land Area, Hectares	80	80	80
10	Streets, Parks etc, in %	20%	20%	20%
11	Meters Available for Lots	640,000	640,000	640,000
12	Average Size Lot	600	1,200	1,600
13	Total Lots or Housing Units	1,067	533	400
14	Price of Land/ Hectare	\$200,000	\$200,000	\$250,000
15	Total Land Costs	\$16,000,000	\$16,000,000	\$20,000,000
16	Land Costs per House	\$15,000	\$30,000	\$50,000
17	Size of House, In Meters	160	220	240
18	Cost to Construct/Meter	\$400	\$460	\$480
19	House Cost	\$64,000	\$101,200	\$115,200
20	Development Cost / Meter	\$10	\$10	\$10
21	Lot Development Cost	\$6,000	\$12,000	\$16,000
22	General Site Cost per Unit	\$7,500	\$11,250	\$12,500
23	Soft Cost @20%	\$15,502	\$24,892	\$28,742
24	Cost of Land	\$15,000	\$30,000	\$50,000
25	Total Product Cost	\$108,012	\$179,352	\$222,452
26	Production Cost/Meter	\$675	\$815	\$927
27	Market Sales Price	\$130,000	\$205,000	\$280,000
28	Sales Price / Meter	\$813	\$932	\$1,167
29	Builder's Profit	\$21,988	\$25,648	\$57,548
30	Builder's Profit in Percent	17%	13%	21%
31	Land as % of House Price	11.5%	14.6%	17.9%
	Site work Per Acre	40000	30000	25000
	Total Acres	200	200	200
	Total Site Work	8000000	6000000	5000000
	Total DU	1066.666667	533.3333333	400
	Site work Per Unit	7500	11250	12500
		2.5	2.5	2.5
		100000	75000	62500

Appendix - Explanation of Case 1 and Case 2

- Note 1. The median family income for New Jersey is about \$40,000 per year. There may be half as many families with \$60,000 per year and again half as many with \$80,000 per year.
- Note 2. Typically a family will use 30% of its income for all housing costs. A bank will accept 30% of income as the amount a family has available for all housing costs.
- Note 3. 30% of total family income
- Note 4. Included in housing costs are taxes for the property, fuel, insurance and repairs. If the house is larger and more expensive, all of these operating costs will increase.
- Note 5. The amount available annually to pay for the housing loan.
- Note 6. The maximum loan that can be paid off in 30 years at the present lending rate of 8%. This amount will vary as interest rates go up and down.
- Note 7. Depending upon bank policy, the type of loan and other conditions, 20% of the purchase price must be equity, the remaining 80% is the loan described in Note 6 above. Equity can be as low as 5% and as high as 30%.
- Note 8. The combination of equity (note 7) and loan (note 6).
- Note 9. Typical large family farm for grain crops and dairy products.

- Note 10. Land needed for public improvements and not available for housing lots.
- Note 11. 80 hectares minus 20%
- Note 12. Lots vary according to regulation and the market. The larger and better house is usually on a larger lot.
- Note 13. Division of lot size into 64 available hectares.
- Note 14. A function of the market in an unrestricted economy.
- Note 15. Total size of property times price per hectare.
- Note 16. What the land owner gets regardless of the final price.
- Note 17. Typical size of low density housing. It is one of the few things that the builder can vary to meet market conditions and other costs, such as land.
- Note 18. The total production cost, including fixtures, from outside wall to 1.5 meters away from outside wall. As the size of the unit increases, the cost of some parts of the unit will decrease.
- Note 19. Cost per square meter times the number of meters.
- Note 20. The cost of turning raw land into a lot ready for building. Includes grading, pipes, and landscaping.
- Note 21. Size of the lot times the cost per square meter.

- Note 22. The cost of roads, sidewalks, water, sewer, storm drainage, clearing the land, etc. Typically the costs for land will vary from \$100,000 per hectare for intensive development (600 sq. meter lots) to \$62,500 per hectare for the least intensive development (1,600 sq. meter lots).
- Note 23. The cost of design, sales, organization, banking fees, permits, and other non-construction costs.
- Note 24. See note 16 above.
- Note 25. Total of all costs in making the house, excluding the developer's profit.
- Note 26. The same as note 25 but on a square meter basis.
- Note 27. For each income group, the maximum price the family can afford to pay for the house.
- Note 28. The same as note 27 but on a square meter basis.
- Note 29. The difference in dollars between what it costs to produce the housing including land and what it sells for in the market.
- Note 30. The same as note 29 but as a percent of the total selling price of the house.
- Note 31. Percent of the total cost, or sales cost, that the land cost represents.

**Urban Development Documentation
Its Upgrading Following Privatization of Land**

By

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When urban development is viewed as a single unified system, three major types of documents will be used as follows:

- Documents which determine national policy in urban development (laws, edicts, decrees, regulations, etc.);
- Documents which establish the procedure and rules to implement national policy in urban development (state and regional standards and rules);
- Documents which implement urban development policy, adapting it to the requirements and conditions of specific regions and population centers (urban development documentation proper).

Structure of Documents in the Sphere of Urban Development

Policy outlying documents (Laws, Decrees, Edicts, Regulations and sublaw acts)	Scientific backing Scientific concepts, research works
Procedure and rules for implementing the state policy (state and regional standards and rules)	Methodology and research works
Implementation of Urban development policy (regional and urban development projects)	Pre-project study, forecast, conceptions or regions and towns

Besides there also exists a parallel structure of scientific documentation which performs a dual function. On the one hand, it singles out the problems facing urban development as a whole, scrutinizes them and works out requirements for projects documentation. On the other hand, scientists analyze the experience acquired in carrying out the projects as well as the accomplishments and the mistakes. The analysis results are then returned to the upper level of decision-making in the form of scientific proposals and forecasts.

The necessity to separate the scientific block of problems is well substantiated, since, according to the Law on the Fundamentals of Urban Development (Article 17), scientific elaboration of problems is not referred to in urban development documentation. At the same time one can find such a vague definition as "other materials" in this Law. Urban development documentation, which is actually an instrument for carrying out state policy, turns out to be for urban development consumers a complete, independent and self-sufficient sphere of activity. Such a perception appears to be erroneous and

should be tolerated only to a certain extent. It is groundless to expect that a rank and file citizen would possess knowledge and understanding of the complexity of legislative intricacies, standards and rules of designing, i.e. in the field of human endeavor which is not the sphere of his specific professional activity. It should suffice that he just observes those rules and requirements which regulate his relationships with local organs of self-government as regards construction and maintenance of urban development objects. At the same time, the closer the subject comes to the peak of the pyramid which formulates urban development policy, the more he should realize the relationships and interdependence of all structural elements of this pyramid and be aware of the major flows of information inside the pyramid. Thus we come to the realization that urban development is perceived from a variety of viewpoints and therefore cannot be viewed upon as a homogeneous concept. As a matter of fact this is a complex combination of different requirements, viewpoints and approaches to implementing state urban development policy. We cannot tolerate the existence of urban documentation separately for state officials, municipalities, and designers on the one hand and for lay-citizens having their own specific understanding and competence on the other.

Today we should point to a great deal of ambiguity with regard to "urban development documentation," not in the semantic aspect but primarily from the viewpoint of its contents. Only on the threshold of the privatization process did professional urban developers begin to speculate seriously over the problem of legislative backing for urban development activity and the population's perception of the expedience for regulating the relationships coming into being in the process of construction of any type conducted in population centers. Primarily, this is bitter dissatisfaction with the existing level of project solutions and the quality of project documentation. We are now in the situation when local organs of government are unable to solve their own problems on the basis of project documentation. Designers, in their turn, cannot suggest radical ways for solving the problems of population centers

using the current legal framework and standards basis.

Urban development documentation has not yet become a solid foundation which would allow the use of territorial resources and would serve as a convincing argument in solving controversial issues. In the first place this refers to the sphere of land relationships. A priority given to an agricultural type of land usage has resulted in a distortion of the system of land usage. Most strikingly this is the case with the bigger cities. The procedure of preparing and approving decisions on land usage in population centers has strengthened the standing of land developers to the detriment of architectural bodies. Land developers, not being professional urban developers, cannot by virtue of their inadequate authority, make an optimal decision. At the same time in a number of cities they are entrusted with the full authority to prepare decisions on the alienation of land parcels. The role of architectural bodies and urban development documents is merely subordinate. Considering that in the local Radas there are practically no professional urban developers, the decisions taken cannot be critically analyzed and in the majority of cases are automatically approved.

As a result, urban development documentation in practical life is either distorted or simply ignored. Although the Land Code, the "Law on fundamentals of urban development," the "Law on organs of local self-government" and a number of other legislative acts contain a provision which necessitates the usage of urban development documentation for solving the issues of urban development and for emphasizing the responsibility of local self-government organs to follow this provision strictly. However the laws are regularly violated.

The paradox of the situation is accentuated by local organs of self-government themselves when they now and then violate General Plans, claiming the inadequacy of the latter ones. At the same time

they appeal to court organs when project documentation is violated by individuals, enterprises and other subjects of construction. But courts should not enjoy a franchise right. There should be law which is equal for all.

And now we are approaching another major problem with most of the adopted laws. There should be an immediate punishment for any law offense. So far a system of legal relationships and organs of control which would observe implementation of legislative acts and induce their observance has not been set up. Penalty sanctions should be imposed not only on executive structures or concrete builders (individuals, companies or state corporations) but also on designers of project documentation given its execution is connected with violations of the Laws, state or regional standards and rules.

The third major problem is the absence of unified requirements for urban development documentation. In the majority of cases when they speak about upgrading projects, the suggested requirements are mostly descriptive and are slightly formalized. Such proposals cannot be implemented in concrete standards and rules. Not only organs responsible for elaboration of national policy, but primarily local organs of self-government, as the main consumers of urban development documentation, cannot clearly formulate what they really expect from it-- what issues and how elaborately they should be reflected in the projects subject to the approval. We would suggest dividing these issues into two groups:

- those which should be elaborated in the projects for making a competent decision to go through expertise checking;

- those which will be discussed by the Local Rada before being approved.

Today all such issues are united in a homogenous conglomeration. Both professionals and laypersons will get for their scrutiny one and the same document. It is essential to fix legally the split of functions of urban development documents and to determine the requirements for every one of them.

These general requirements will apply in full to the problems of privatization of land parcels. When they speak about privatization in general, this is only a concept. An attempt to carry out privatization without sufficient backing and argumentative estimations will result in speculation, corruption, abuses and ultimately will discredit the idea itself. It is impossible to implement land privatization in a city on whose General Plan the industrial and communal areas are shown as one zone and are painted one and the same color. The same applies to habitation zone, greenery plantations, transportation and other functional zones of the city. The problems could be tackled on the spot in every particular case, but in this country up to 60% of General Plans have been worked out by GIPROGRAD Designing Institute of Kiev. It's hardly reasonable to apply to Kiev with regard to every land parcel to be alienated. And there will be thousands of issues of this kind when the actual privatization campaign comes underway.

Changing conditions in the development of this society necessitate changes in urban development documentation. This documentation should be, on the one hand, executed more accurately and professionally, and on the other, more accessible to comprehension by a wider circle of non-professionals.

The preceding period of urban development in Ukraine was characterized by complex- and

hierarchy-type of project elaboration. This approach has quite a few advantages and as a matter of principle this system could be preserved in the future given social and economic conditions don't change so dramatically. At present it is simply impossible to elaborate the projects of the same scope, within the same time terms and in the same details.

We could start from the upper hierarchy level of district planning. The combined scheme of the district will provide an answer to the number one question of exactly which land within Ukraine will be undoubtedly referred to state property and by no means be liable to privatization, no matter who possesses the right to manage that land. The schemes of district planning within regions is the main document on whose basis regional organs of self-government will make decisions as to feasibility, dimensions and priority in implementing land privatization. Such an analysis is imperative on the regional level. No single market, including the land market, cannot be surveyed independently. To all appearances, the most stable form of land market at the beginning will be the city market. However, it is on the level of one city, especially a town, that it will be easily possible for monopolistic structures to set up and manipulate land prices. Coordinated efforts of organs of local self-government on the regional level to establish and function a plurality of interconnected markets will assist in destroying the above monopolistic structures.

Goals of General Plans in this regard are so complex that this could have become the subject for a special report. However, we would like to emphasize that the General Plan should and can be the main urban development document which regulates the process of land privatization within the bounds of population centers, being also the project for district planning beyond their bounds. These documents will be worked out on the basis of approved land cadastre.

Elaboration of projects for detailed planning in separate city districts is connected with a serious problem. The role of such project tasks remains absolutely unclear under conditions of land privatization. It is also unclear whether such projecting is necessary at all.

During the first period of land market establishment and functioning, the importance of urban development documentation sharply increases, thus making the job of designers more complicated. For all that, it is only professional designers who will be able to provide consistency in implementing the adopted decisions at all stages of project designing.

Under dynamically changing social and economic conditions in the sphere of upgrading urban development documentation it is most reasonable to have more than just one goal so that a priority of one goal or another could be changed depending on the current situation. It is also important to keep good command of the process of urban development planning, to avoid an uncontrollable course of events. The most appropriate goals seem to be as follow:

- 1 . Changing the directions of urban development documentation for solving land and economic problems using practical accomplishments in economic evaluation of land in population centers;
2. Working out a model of urban development documentation of a new generation and preparing standards and methodology basis;
3. Conducting training and advanced training of urban development personnel using resources of national and local budgets;

4. Elaborating planning documentation of the new generation involving the elements of urban development cadastre of population centers.

Such a sequence is meaningful. At present we still have a current standards and methodology basis which could be used by project designers. Along with this however, there are acute difficulties in solving land and economic problems. They should be tackled only with the General Plan as the foundation. Cities will not be able to survive unless we shall have worked out the necessary scope of standards, rules, instructions, etc. The process of privatization should be sped up, not slowed down. Therefore, being conscious of inefficiency of existing principles for elaborating the projects, we should proceed by providing continuous elaboration of urban development documentation.

Simultaneously, scientific and methodology efforts are also due to upgrade the project production. Bearing this in mind it is essential to formulate more clearly the goals of each level of project and planning documentation (national, regional, local), and to build up theoretical models and by practically using them to try various approaches; it is expedient to determine the status which all types of pre-project, project and program jobs will have; to specify for which cases and for which organs, organizations, juridical and physical persons they will be useful, as well as when they will be recommendations or obligations; to work out requirements for step-by-step, sequential or compulsory execution of urban development documentation; to prepare temporary standards; to carry out experimental projects and to analyze the obtained results.

The issues of status of various jobs requires a bit more of attention. It has not as yet become an alarming one for urban developers and local administrators at large. But it's going to be the most painstaking issue in the nearest future. The first problem appeared when the approval of a combined

scheme of district planning of Ukraine stood out. An understanding was quickly reached that such documents should not be approved. What should be done with the regional programs? And what kind of job is this: project or pre-project scientific job?

The concept of urban development is a component of the General Plan. What is the status of this kind of work in the hierarchy of urban development documentation? Could it be related to urban documentation at all if it is not compulsory but those who elaborate it and approve it? All these questions are not just rhetorical questions; they are to be solved in the nearest future. Dependent on their solution are the authorities of solutions, the possibility to claim one point or another, to prove anything to those in power. We are in the transition period to what is termed a law-abiding state in which the decisions will not be made according to the telephone call from a big shot, but on the basis of laws and standards. And to implement this, one should know what can serve as an argument in a law dispute and to what extent.

Before these basic problems are solved at least in general, it is not reasonable to train the personnel, because this program will not result in anything constructive in terms of curriculum? At the same time we cannot abstain from solving the problem. Taking into account the complexity of the problem of building up material basis and preparation of teaching personnel the solution of these problems should have been started even yesterday.

The problem of control over the quality of urban development documentation is of paramount importance. First of all it is necessary to work out the criteria for confirming the professional validity of the experts for urban development design (certificates, licensing, etc.). Just now we have a number of low quality jobs which pseudo-businessmen try to present as valid, while presenting themselves as

professionals. Local organs of self-government, for various reasons, allot the fulfillment of orders to local "their own" firms and cooperatives.

There should be a reliable mechanism of objective evaluation of the quality of the process of preparing the contender for obtaining the order. The second important component of the process is the setting up and supporting of a reliable system of control manufacturing and implementing urban development documentation proper.

In the transition period of land privatization, the significance of quality project production can hardly be overestimated. In the first place because incorrect solutions or deliberate distortion of project documents will result in great irrational extra expenditures of the municipal budget. Secondly, it will cause an unjustified and amoral enrichment of dealers associated with urban development and will discredit the shop of urban development in the eyes of the public. Thirdly, if land parcel speculators get hold of the market of urban development project jobs (which is theoretically quite possible given the existing Law on urban development fundamentals), their monopolistic control in this sphere can bring about incalculable losses for the majority of honest tax payers. Not only urban development documentation proper requires changes, but the system of elaboration of urban development policy, its scientific, standard and methodology support as well as the technique of elaboration and implementation.

Conclusions

Urban development documentation does not exist separately as a sort of high skill activity. It is mainly designed to provide a coordination of individual interest of separate land owners with public

requirements for harmonious development of all regions and population centers. The only criterion for evaluating the results achieved in all stages of elaboration and for carrying out urban development policy is the practical implementation. There can be the only answer-- whether or not we were successful in really improving people's lives.

One of the most complicated moments in evaluating the correctness of decisions taken is a considerable span of time between decision-making and the time when this decision can be verified. Responsibility for decision-making is great because urban development is one of the most fund consuming activities of human endeavor. The price of the mistake is so high.

1 . The system of urban development documents includes documents as follow:

- documents which determine national policy in the sphere of urban development;
- documents which set up the routine and rules for implementation of national policy;
- documents which regulate urban development proper.

Each of these three levels consists of theoretical (scientific) and practical parts. These components make up one whole and cannot be treated separately without regard to interconnections and interdependence.

2. The basic goals, tasks and directions of regulating materials of every type of urban development

documentation will comply with the existing national and regional standards and rules. They may not change depending on the viewpoints and perceptions of the customer. Changes are allowed only in specifying target goals, contents and composition of illustrative and graphical materials submitted for approval.

3. In the process of land privatization an acute necessity arose to change the principles of relationships between the urban development process and management of urban development due to more dynamic and diversified conditions of urban medium formation. Methodology of decision-making both in the sphere of national policy and in the sphere of scientific supplementation of urban development upgrading is well-known and does not require any serious changes. Considerable changes are due in the composition and contents of urban development documentation, in the clear definition of the role and duties which one or another document is designed to perform, and in responsibility for any infringement.

4. Land privatization will urge a sharp increase in the soundness and substantiality of decisions in urban development, a more balanced attitude towards such concepts as form of ownership and limitations of ownership. In the nearest future the authors of urban development project may find themselves co-respondents in the courts along with the organs of self-government. Unfortunately, project designers not only in terms of their legal education but also from the psychological point of view are not prepared to such a turn in the course of events. At the initial stage this will have a negative impact.

5. The system of State architectural and civil-engineering control which is in the process of formulation now merely serves as a unified body with organs of architecture at all levels of elaboration and implementation of urban development documentation. It should be aimed in the first place at prevention of infringements rather than at punishment for such infringements.

6. Existing accomplishments in the sphere of economic evaluation of land and development of urban development cadastre should serve as the foundation for working out new approaches to drawing up urban development documentation. For all that it is not permissible that this documentation would transform into mere utilitarian type of project designing serving only immediate requirements. Urban development documentation should preserve for the future its basic aim of determining the perspectives of regional and population center development, irrespective of the current general political situation.

Market Monitoring and Valuation in Economies

With Scarce Sales Data:

The Case of Poland and Russia

By

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Abstract

The ability to monitor market development and to develop estimates of relative land values are of critical importance to economics in transition from Soviet type systems to market-based systems. In the absence of price signals, land allocations were not made based on the land's *highest and best use*.

Perverse patterns of development resulted that may inhibit the smooth transition to a market-based economy. Land privatization is an important step that can be instrumental in causing existing inefficiently utilized land to be recycled to more efficient uses. The ability to monitor relative land prices and extrapolate sparsely price trends can accelerate the recycling process. This paper describes the effort to monitor trends in emerging land and real estate markets in Poland and Russia using technology currently used in the West to implement value based property tax systems. The technology is capable of measuring and monitoring land value

trends even when Land is not yet sold.

Introduction

Some of the most important changes in the United States in assessment administration in the last decade are the result of improvements in information storage, manipulation and analysis due to improvements in computer and software technology. In the United States these new information technologies have made it possible to judge more accurately the highest and best use of property, create and maintain an advanced property database and mapping system, provide for statistical quality control, improve public access to real estate information, and develop mass valuation systems for use in property tax administration.

These same technologies can help establish property markets in developing economies and for the privatization process in Eastern Europe. They can also be the basis of an automated and efficient property tax system. This paper will summarize the technical advances that have been made in the automation of assessment and land record systems over the past several years and then show how these new technologies can be used in countries emerging from socialism, using data from Krakow, Poland, and Moscow, Russia as examples.

Elements of Changing Technology (Table A)

Hardware such as powerful mini- and micro-computers and specialized work stations,

linkable horizontally by network technology and vertically to larger computers by emulation technologies, have revolutionized the way computers can be used. No longer does computer access have to be controlled by a central computer facility.

Computer technology has had a dramatic history of rapid innovation. Developments can be roughly divided into four phases, or generations:

1. Computers were introduced for commercial use in the early 1950s. First-generation machines were characterized by vacuum tubes and were very large. Large air conditioners were needed to dissipate the enormous amounts of heat they generated. By modern standards, first-generation computers were very slow, with the time to perform arithmetic operations measured in milliseconds (thousandths of a second). Moreover, they failed frequently, typically 'going down' after only two hours of use. By today's standards they were also expensive. Several thousand of these machines were produced.
2. The second generation, in the early 1960s, used transistor technology. Transistors were much smaller, produced less heat and were more reliable than vacuum tubes. Processing speed was measured in microseconds (millionths of a second), meaning that these machines were a thousand times faster than first-generation computers. Cost/performance ratios also improved.
3. The third generation, beginning in the mid-1960s, used solid-state integrated circuits. This new technology again dramatically improved storage capacity, processing speed, and

reliability. Processing speeds were measured in nanoseconds (billionths of a second).

Multiprocessing, which allows several programs to operate simultaneously, was introduced.

Unlike their predecessors, third-generation computers enjoyed an abundance of software and support services.

4. The fourth generation emerged in the mid-1970s and is characterized by very large-scale integrated circuits and yet another quantum leap in operating speeds and cost/performance ratio. The speed of modern mainframe computers is measured in picoseconds (trillionths of a second). Minicomputers were introduced in the mid-1970s and microcomputers in the early 1980s, accompanied by a new generation of low-cost, high-performance software.

The software developed for general database management, statistics and modeling, high resolution graphics, computer-assisted drafting, spreadsheets, word processing and planning, and fourth generation applications development has made it possible for appraisers and planners to use the enhanced computer power to the fullest.

General-purpose software has been programmed to accommodate a wide variety of users. This is accomplished by isolating the various program functions and giving users the means to customize without modifying the program itself. Only basic system and data management functions are hard-coded; application-specific processes are left to be defined by the user and stored in tables or files where they can be modified as needed. In essence, general-purpose software is a program, usually compiled, that lets a user write the application code that will be

interpreted each time the program is run.

General-purpose software can be either horizontal or vertical. Horizontal is written for a general function such as word processing, data management, spreadsheets, and statistics. Vertical is written for a particular industry, business, or application, such as accounting, hospital management, or assessment administration.

Excellent general-purpose software is available for all types of hardware and at low cost for microcomputers.

Application of Hardware and Software Advances in Appraisal (Tables B and C)

In the last few years powerful new applications have resulted from combining the enhanced computer power with some or all of the emerging software options. Combining database, statistical, modeling, word processing, planning and drafting software with mini- or micro computer technology has produced computer-assisted mass appraisal (CAMA) and automated mapping (AM).

Modern CAMA systems typically provide for several broad functions: data management, sales analysis, valuation (Table C).

In a related development in land use planning (see Table D), combining mini- or micro-

and work station computer technology with database, computer-assisted drafting, modeling, and graphic software has produced an application called geographic information systems (GIS). These systems were originally developed for spatial analysis needs such as natural resource and land record planning. GIS systems can completely integrate spatial data and attribute data among different layers. The GIS approach is ideal for multipurpose users.

In a GIS, database data are combined in a variety of ways and presented visually. Each layer in the GIS is like a single map overlay. The geodetic survey control is usually the first layer, and a grid reference system such as the state plane coordinate system is usually the second. Additional base map information, such as the transportation network and other planimetric features, could be next. Other layers might be sewers zoning, utilities, land use, soil types, topography, property lines, geologic structure, political boundaries, communication networks, streams and bodies of water, and so on. Attribute information for each of these layers is also stored and available for manipulation and analysis (see figure 1).

Different layers can be compared. Additional layers and related new data can be generated. For example, the assessment office could create a new map layer by combining the property line, political boundary, and zoning layers. Then the system could select all parcels between one and five acres zoned single-family residential that are in a certain school district but outside the city limits. Accessing the attribute data files could further refine this by requesting, for example, those non-vacant parcels meeting the above criteria in which the houses are less than twenty years old, more than 2,000 square feet, and assessed at less than \$100,000.

An output map could be printed or plotted with the selected parcels shown by color code or symbols. Specific information on each parcel could also be printed out.

The integration of CAMA and GIS (Table E) has improved the mass appraisal process considerably. Neighborhoods can be defined and neighborhood analysis conducted.

Sophisticated spatial research can be used in sales studies. By using information from other databases (such as zoning soils, flood plains, airport "nuisance" zones, school districts, political jurisdictions, and other physical, social, governmental, and economic divisions) with a GIS, it is possible to develop sophisticated CAMA models. It is also possible to add distance analysis to the models by including such variables as distance to work, schools, shopping, churches, recreation, and other attractive or unattractive features. These models can then be used to produce estimates of value for a wide variety of property types over a large geographic area.

CAMA/GIS Applications in Transition Economies

The management of a real estate data base within a CAMA/GIS environment provides a powerful tool to aid the development of national real property markets. For real property markets to develop, major market participants need to get information about economic trends and actual transaction prices as soon as they occur. The ability of GIS systems to create customized maps that depict changing economic trends in population and incomes, and track property sales, can help potential developers determine the highest and best use of land. The ability of CAMA technology to use limited sales data to create valuation models that can be

used to provide suggested prices for unsold parcels of land, whether vacant or improved, can be useful to municipal officials responsible for privatizing municipal land properties or property tax officials interested in creating a value-based property tax system. In addition to specific valuation estimates, rent and sale price gradients for various uses of property can be easily created and displayed on a map. This information can be made available to broken developers and the general public on a regular basis.

Information of this type can be exceptionally helpful in establishing rational markets that reflect well-known economic principles based on special location theory. For example, a rent gradient for storefronts that varies depending on distance from the commercial areas of the city can help shop owners know what rents to pay and landlords what to charge.

As more data on actual transactions are added to the database, then, valuation models can quickly be updated. The reliability of the rent and sale price gradients gradually becomes better and more encompassing. CAMA/GIS technologies can therefore speed up the process of creating rational land markets better than informal methods of communication about the operation of markets. In the United States the multiple listing services that provide transaction data to brokers have acted to stabilize and rationalize real estate markets for years.

Application of CAMA/GIS Technologies to Krakow, Poland, Real Estate Data

The author and two colleagues visited Poland in October of 1991 for a study as part

of two USAID grants. The first visit was to develop an method that could be used to determine the highest and best use of properties that municipalities had inherited from the State. Both missions concentrated their activities in Krakow, the former capital of Poland. Krakow has a population of 750,000.

The first mission concentrated its efforts on investigating the infrastructure that would to be in place in order to make any kind of appraisal work possible. The mission investigated the records of the land planning system and found that the maps, planning document and ownership records were in reasonably good shape. The mapping system and the legal documents were modeled on the German/Austrian model; and, as a consequence, parcel information and title information was tied together by a common identification number. In addition, the Department of Geodesy and Land Management of the Voivodship had created the software to implement a GIS system and had automated the maps and legal and fiscal cadastral information in about 20 percent of Krakow by the time of our visit. (See Maps 1, 2, and 3 as examples.)

Given the infrastructure we found in place, the mission was able to collect market information on a range of property types on the initial visits. Data were collected on about seventy properties. We were able to get sales information on residential homes, single apartments, vacant land, small factories, retail stores, and apartment houses, as well as rental information for retail stores, offices and apartments. In addition, both distance measures from central Krakow and information on size were obtained. For single apartment sales we obtained the geographic coordinates of the buildings, and for residential sales, a complete description of

the improvement Table G summarizes the main features of the database.

The following usage codes apply to that table:

Usage Codes

2	Single Apartment Sales
3	Land Sales
4 - 7	Commercial and Industrial Sales
41	Commercial Rents
21	Apartment Rents

Based on these data it was possible to investigate how well the real estate market was able to function. Looking at simple relationships like the relationship between size and value or between value and location allowed us to determine how well organized the market had become. For instance, Graph 2 shows a strong relationship between size and value for apartment sales. Like, Graphs 3 and 4 show that value expressed in total dollars and price per M2 is inversely related to distance from the center of the city. Graph 5, for example, shows that there is a rational rent gradient.

On the segments of the data that was the largest in sales (Table H), we were able to investigate, using GIS technology, the spatial distribution of price per square meter. Using the three-dimensional graphics and contour mapping capacity of our GIS software we were able to

the relation of prices per square foot distributed spatially in Krakow. Graph 6, for instance, shows that price per square foot *rise* as you approach the center of Krakow, known as Rynek Gloway, and then falls as you move away. Graph 7 shows the same information as ISO value curves. These are similar to contour elevation lines on a base map. Each line is representative of an equal value area. The value of this simulation is that it is possible to build value gradients for different property types that could be used as references for storefronts in planning for municipal officials making development decisions or for individual buyers and -sellers who are interested in making bids or ask offers for a particular property. As more information is added to the database, more accurate grids can be created that will enhance the information about values by location. This too can become available to the market makers. A formal market monitoring project was started during our second visit to Krakow in December of 1992. During that visit we established a formal market monitoring unit centered at the Krakow Real Estate Institute. A data collector and computer expert were hired to support the project.. Data listing sheets were developed for apartments, land, and non-residential building, and the problem of collecting data for market transactions of these property types was begun. (See Appendix 1 for data listing sheets and data base definitions).

The first data from the project are now available, detailing about 150 recent land sales. Graphs 7A, B, and C show the land price gradient developed from these sales (in two and three dimensions). The price gradient shows a 10 to 1 ratio for land value from the center of the city to 20 kilometers out. This is an exciting finding, because it indicates that location is being capitalized into the value of the land, and the magnitude of the capitalization effect is close to

international standards.

We were also able to develop from the data a very good land valuation model using multiple regression analysis, that had 13 factors and explained 75 percent of the variation in sales prices. This model could be used to price land for tax purposes or as the basis of land value estimation as part of a development project.

The analysis we can do with the data is also useful in identifying what data should be collected. In the Krakow land case, 39 factors were collected for the test, and analysis shows that only 13 are related to market value.

Application of CAMA/GIS to Moscow. Russia, Real Estate Data

In June of 1992, I was part of a World Bank Mission to look at local finance issues. One of its mandates, for which I was responsible, was to suggest an administrative structure for the property tax and investigate the viability of creating a Real Estate Information System that could be part of a GIS "gem. To accomplish this, I visited the existing institution that had property-related information.

The Moscow property inventory agency, the Bureau of Technical Inventorion (BTI), and the separate registration agencies, one for land and one each for residential and non-residential building; these three agencies are responsible for the privatization of property. Physical

information about all three types of property is kept in the BTI, ownership information is stored in the three registration time, ownership and market price information is done at no cost) we not being relayed back to the BTI. Appendix TV describes the agencies in the current system. The records of the BTI are extremely detailed and mostly manual. Two of the thirteen BTI offices are computerized using networked PC equipment; the land registration agency has not started privatizing yet, as legislation is still pending. The residential property registration agency (the most active of the three) has privatized 135,000 dwellings since it started recording in 3/92, the current rate is 2,000 privatization per day. They have a Sat file database system that is hard coded.

BTI produces a value estimated based on the cost of construction for each piece of property in its files; this value has not been indexed since 1984, so it is of relatively little use for assessing the market value of property. Actual transaction prices of sales are filed by the privatization agency. However, they may be incorrect, as they are under-reported by owners to avoid a 20 percent not on tax.

In order to remedy the situation and get more accurate reporting of sales data, several mission members a market monitoring program that used real estate brokers as primary sources of data. The arrangement with brokers was based on a simple trade. They would provide us with sales information and we would organize the sales and give them back value maps for apartment prices and a land price index on a regular bases (See Graphs 9 and 10).

Using Moscow data, we developed a model that required information on living area, kitchen size, number of floors in the building and the building's distance from Red Square. The model was developed from a sales file we were given that contained about 11,100 sales from the secondary apartment market. Each sale had 34 characteristics including price, (see Table L for available list). This model produced acceptable predictions on a subset of the sales that were withheld from the modeling. The coefficient of dispersion on the test sample was about 20 percent.

Mass appraisal techniques are useful for estimating land values even where there are no land sales. In the United States, econometric techniques have been developed to model prices that include land and improvements in such a way that the contributory value of each can be allocated and in many states taxed.

Russia does not sell land, yet the price of an improved parcel of land included the capitalized value of the land. The situation is no different than in many western cities where there is little or no land and parcel prices must be decomposed into land and building components using techniques. Using the Moscow data, for instance, we were able to create a price index that can be used to adjust the base rate for the land tax for location differential from the center of the city. Prior to our analysis their adjustments were just guessed at (see Graph 10 for Wu). The Wu is also an indicator of the development of the land market. Currently in Moscow the index is flat. This indicates that the value of location is not being fully capitalized into land values as yet. The ratio is about 1.5 to 1 as compared to 10 to 1 in Krakow.

Institutional Comparisons Between Poland and Russia

In creating real estate information systems to aid the development of real estate markets, no one solution or model will work everywhere. In Poland, for instance, the land records and maps are in good shape and the legal cadastre is well maintained. Selling prices are fairly accurate because they are monitored by the treasury department. Data from brokers and appraisers are also available as a cross check. Poland's weakness is the building registry. Some characteristics are available on size and construction type, but more data will be needed to construct accurate valuation models as the market develops. In addition, in Poland not all buildings are recorded on the land register. A discovery program is needed to ensure that all the property that can be taxed is discovered.

In contrast, in Russia the building registry is complete and very accurate, and the land records are incomplete. The titling process is fragmented and the legal cadastre has no central depository. In the long run this will cause major problems if some uniform method of recording titles is not put in place. Likewise, in Russia land is not sold as yet so there is no way to have a value-based land tax. Getting building values is also a problem, for two reasons. First, they are part of the total price of the parcel, and second the total parcel price is not reported accurately to the various titling committees. The first problem can be addressed because there are econometric techniques that can decompose prices that include both the value of land and

building into separate parts. The second problem must be addressed by using informal sources of data.

Valuation Issues in Poland and Russia

One of the interesting findings associated with valuation for both countries is that market approaches using mass valuation techniques will probably be preferred, at least in the short run, because capital, resources and land markets are not efficient as yet. Income and cost approaches are not feasible, yet market prices for various types of improved land are becoming available.

In Poland it is possible to get information from the legal cadastre managed by the courts, as transactions are monitored by the state treasury department and sales are not allowed to be completed if the prices are judged to be too low. In Russia, the information at the titling agencies is not accurate, but information we were able to get from brokers was reliable.

Technological Support for Land Privatization

In order for land to be privatized and have an effective market emerge, several steps need to be taken. Of primary importance is the establishment of a master cadastre that records both the physical attributes of land, its location and the rights that are to be transferred.

Without this information base in place, land markets cannot develop even if there is

legislation in place which allows for the sale of land. The establishing of a legal and fiscal cadastre can be facilitated by the installation of geography information systems that include as layers, in the system, the fiscal and legal information. Initially the information base need not be completely accurate, but based on existing maps and other property records that are scanned into the system.

The implementation of a land based tax for users of land, would also be an important strategic measure to take. Such a tax, particularly if it relied on a self declaration form that required the user to specify the land subject to tax would improve the information base about land parcels considerably. The tax could be based on value even if land is not initially sold as long as improved sales are available. This was demonstrated above in the Russia example. In the short run, sales information can be gathered from informal sources and generalized using mass appraisal methods. In the long run, incentives can be created to encourage accurate official reporting of sales. For instance a capital gains tax could be put in place while any existing transfer tax could be eliminated or reduced to a minimum.

The advantage of a value based land tax beyond providing information on land characteristics is that it would also relate the holding cost to location in urban areas and productivity in rural areas and this would encourage the land being put to its highest and best use. This could be a first step to starting rational land markets.

Conclusions

There are two main findings that can be made from the examination of institutional structures in both Poland and Russia. First, the land and building records are in fairly good shape, and mapping and planning documents have been kept up to date. Second, the markets are already beginning to work for many types of land uses. Once a system of mass valuation is established, it can be used to support many types of value-based taxes as well as provide all the players in real estate markets with information about how the market is developing. This information could greatly accelerate the rate of privatization as well as the functioning of an effective secondary sales market.

Table A

Key Elements of Changing Technology

Hardware

1. Powerful mini and micro computers
2. Network technology
3. Work stations

Software

1. Generic Data Base Management Software
 - A. flat file structure
 - B. tree structure
 - C. network structure
 - D. relational structure
2. Generic Statistical and Modeling Software
3. High Resolution Graphics Software
4. Computer-Assisted Drafting Systems
5. Word Processing Software
6. Project Planning
7. 4th Generation Application Development Software Languages

Table B

Applications of Technological Elements in Property Tax Administration

Technological Elements

1. Data Base Software
2. Statistical Software
3. Modeling Software
4. Word Processing Software
5. Project Planning Software
6. Computer Assisted Drafting
7. Mini/Micro Computer Hardware

Application - Computer-Assisted Mass Appraisal (CAMA)
- Computer-Assisted Mapping

Assessment Functions Supported

1. Assessment records management
2. Sale Analysis
3. Valuation
4. Quality Control (sales ratio studies)
5. Management reports and public information

Impact on Tax Policy and Administrative Efficiency

Supports:

1. market value assessment
2. short assessment cycles
3. up to date land and improvement data records and maps
4. statistical quality controls

Table C

CAMA Systems Capabilities

- * Importing Data
- * Selection of Data Items
- * Logical Ordering of Data and File Structure
- * Security
- * Data Editing and Manipulation
- * Creation of Specialized Files
(Sales file, Permit file, Tax Delinquent file)
- * Maintenance
- * Data Display and Tabulation
- * Statistical Testing
- * Valuation Modeling
- * Project Planning
- * Form Generation
- * Ad hoc Inquiry and Reporting

Table D

Application of Technological Elements in Land Use Planning

Technological Elements

1. database
2. computer-assisted drafting
3. modeling
4. high resolution graphics
5. mini/micro workstation technologies

Application -- geographic information systems (GIS)

Planning Functions Supported

1. public information
2. updating maps
3. monitor growth and development
4. aggregate data in subareas
5. perform/display professional analysis

Impact on Land Use Planning

1. improved policy formulation
2. system wide analysis
3. horizontal and vertical forecasting
4. multiple WHAT IF scenarios

Table E

CAMA/GIS Synthesis

Benefits -- Property Tax

1. access to demographic, environmental, and topographic data
(improved valuation)
2. access to integrated data base mapping capacity
(improved mapping capacity)
3. access to integrated data base graphic display capacity
(improved quality control)

Table G

Multi-Use Database

Data Report

	P R O P E R T Y	U S A G E	L O C A T I O N	A R E A	P R I C E	T R A N S A C T I O N	C U R R E N C Y
1	2	2	5	27	13640	0	0
2	2	2	11	42	20910	0	0
3	2	2	13	47	27270	0	0
4	2	2	10	47	21820	0	0
5	2	2	13	35	16360	0	0
6	2	2	2	136	67270	0	0
7	2	2	3	90	55000	0	1
8	2	2	4	38	20000	0	1
9	2	2	2	110	54550	0	0
10	2	2	3	98	53640	0	0
11	2	2	2	80	40910	0	0
12	2	2	2	92	50000	0	0
13	2	2	9	73	36360	0	0
14	2	2	3	70	32000	0	1
15	2	2	16	28	12730	0	0
16	2	2	3	38	20450	0	0
17	2	2	9	50	25450	0	0
18	3	3	7	750	15000	0	1
19	3	3	13	1090	7270	0	0
20	3	3	13	330	3180	0	0
21	3	3	16	2350	6800	0	0
22	3	3	16	8350	10540	0	0
23	3	3	13	2400	15000	0	1
24	3	3	15	1000	6500	0	1
25	3	3	9	1600	20360	0	0
26	3	3	15	700	38180	0	0
27	3	3	14	5900	214550	0	0
28	3	3	15	1500	5450	0	0
29	3	3	15	2000	16360	0	0
30	3	3	10	1000	12000	0	1
31	3	3	2	5700	54550	0	0
32	3	3	14	600	6360	0	0
33	3	3	15	1500	81820	0	0
34	3	3	12	2000	109090	0	0
35	4	4	1	140	63640	0	0
36	4	72	30	2700	318000	0	0
37	4	73	10	840	70000	0	1
38	4	2	3	660	105000	0	1
39	4	2	1	450	250000	0	1
40	4	5	2	65	50000	0	1
41	4	5	1	140	68730	0	0
42	4	41	2	60	1090	1	0
43	4	41	0	50	1360	1	0

Table G

Multi-Use Database

(cont.)

Data Report

	P R O P E R T Y	U S A G E	L O C A T I O N	A R E A	P R I C E	T R A N S A C T I O N	C U R R E N C Y
44	4	41	3	20	91	1	0
45	4	41	1	50	450	1	0
46	4	41	2	32	58	1	0
47	4	41	1	48	390	1	0
48	4	41	2	34	200	1	0
49	4	41	2	202	1470	1	0
50	4	41	6	110	400	1	0
51	4	41	4	137	500	1	0
52	4	41	7	80	255	1	0
53	4	41	4	600	2180	1	0
54	4	41	11	45	82	1	0
55	4	41	10	20	55	1	0
56	4	41	5	240	327	1	0
57	4	41	0	400	2180	1	0
58	4	41	1	250	795	1	0
59	2	41	2	110	727	1	0
60	2	41	1	150	1150	1	0
61	2	21	1	110	600	1	1
62	2	21	1	55	250	1	1
63	2	21	1	60	318	1	0
64	2	21	1	200	727	1	0
65	2	21	7	110	455	1	0
66	2	21	5	140	455	1	0

Table H
Apt. Database

NOSS Editor (Data List)
C:\poland\aptsales

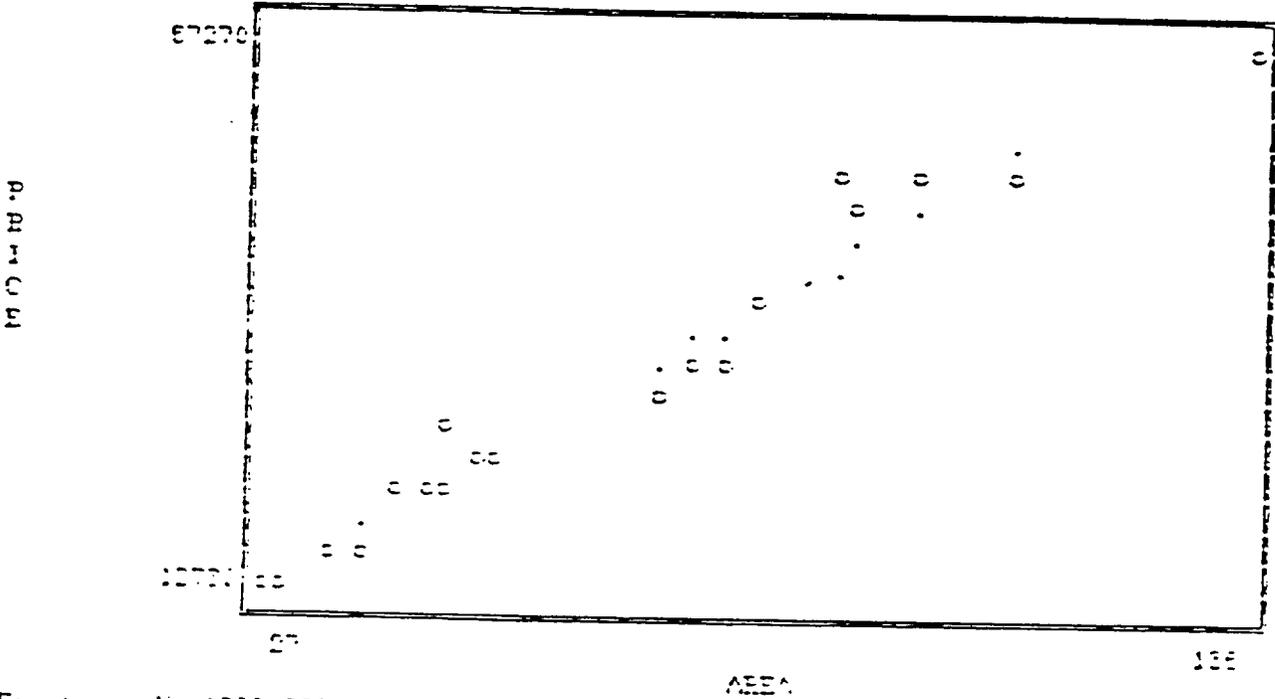
Row	Label	Row	PROPERTY	USAGE	LOCATION	AREA	PRICE	C14	C15
	Prekocim	1	2	2	5	27	13640	250	300
	os. Mispod	2	2	2	11	42	20910	100	500
	os. Na Ska	3	2	2	13	47	27270	500	500
	os. Struci	4	2	2	10	47	21820	500	100
	os. Na Ska	5	2	2	13	35	16360	100	10
	Zulawskiego	6	2	2	2	126	67270	200	150
	Krolowska	7	2	2	3	90	55000	300	150
	Olsza	8	2	2	4	38	20000	200	250
	Latnowska	9	2	2	1.5	110	54550	200	300
	Isa St.	10	2	2	3	98	52640	270	310
	Grzegorzana	11	2	2	2.5	80	40910	150	300
	Siewickiego	12	2	2	2	92	50000	150	250
	os. Oywiaz	13	2	2	9	73	36360	100	250
	Wroclawska	14	2	2	3	70	32000	400	250
	os. Na Ska	15	2	2	16	28	12730	300	200
	Falata St.	16	2	2	2.5	28	20450	270	200
	os. tyslac	17	2	2	9	50	25450	500	250
	nowa huta	18	2	21	8	29	13000	350	350
	nowa huta	19	2	21	6.6	27	16500	350	300
	nowa huta	20	2	21	9	44	21000	350	360

Enter ' to continue, or ESC to quit --

GRAPH 2

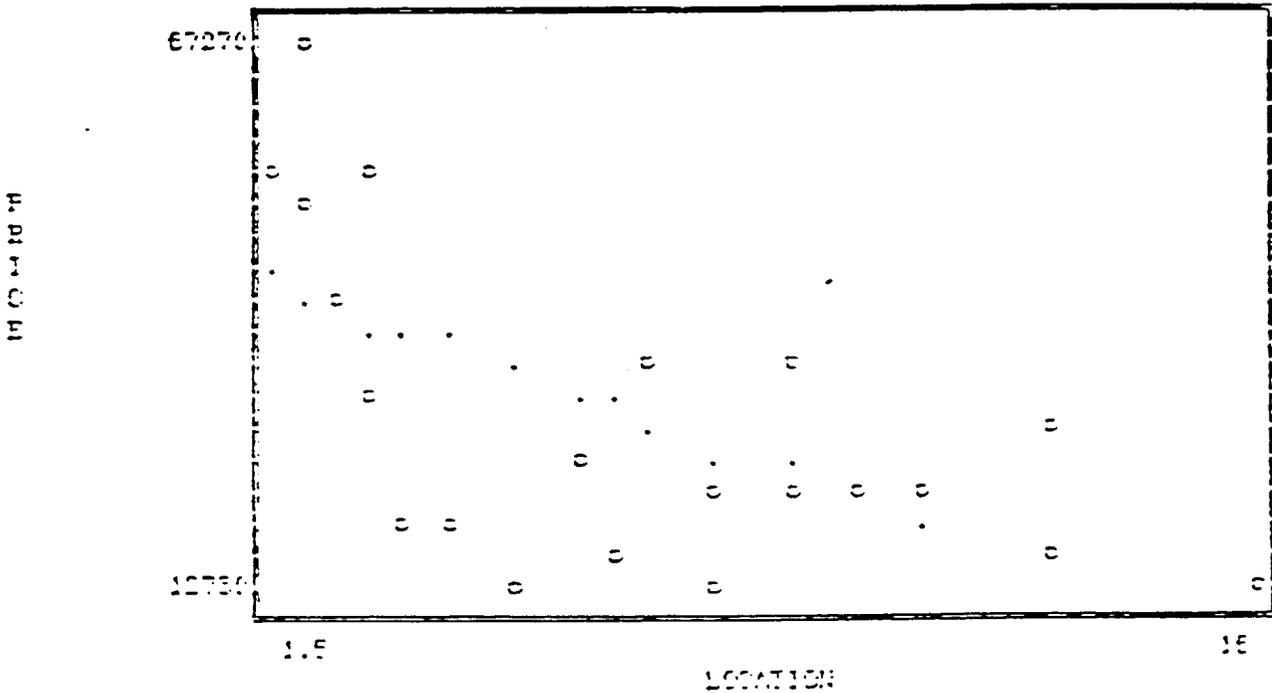
Apartment Sales

Quick Plot



GRAPH 3
 Apartment Sales
 Sales Gradient

Quick Plot



Equation: $Y = 47308.6 - 2476.195 \cdot X$; Correlation: -0.643576
 Enter 'C' to continue, or 'ESC' to quit --

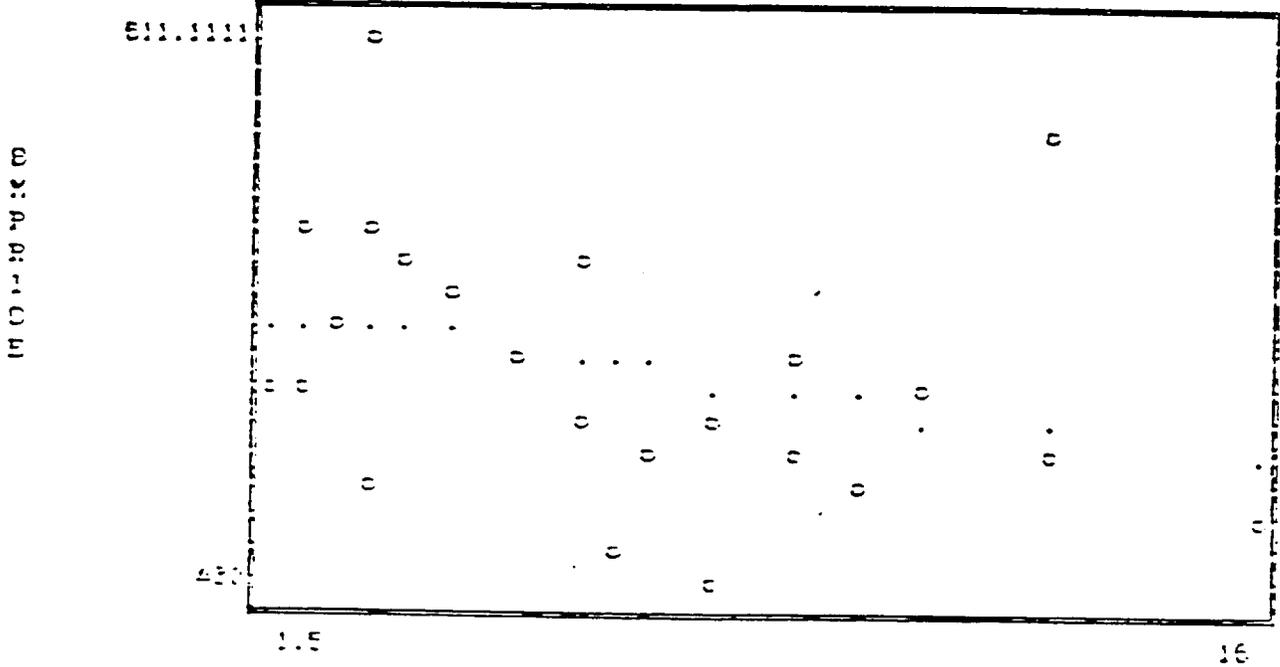
BEST AVAILABLE COPY

GRAPH 4

Apartment Sales

PSQM Gradient

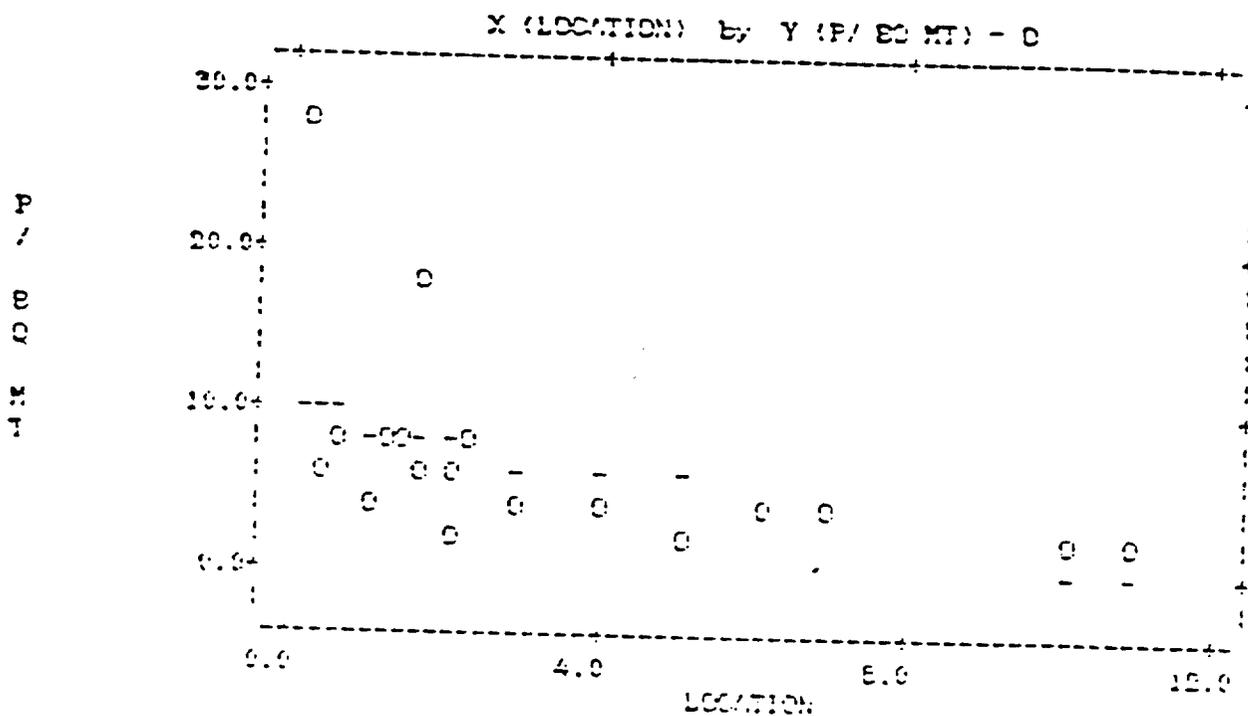
Quick Plot



Equation: $Y = 526.70574 - 3.413419 \cdot X$; Correlation: -0.315075
Enter 1 to continue, or EBI to quit --

BEST AVAILABLE COPY

GRAPH 5
Stores
Rent Gradient

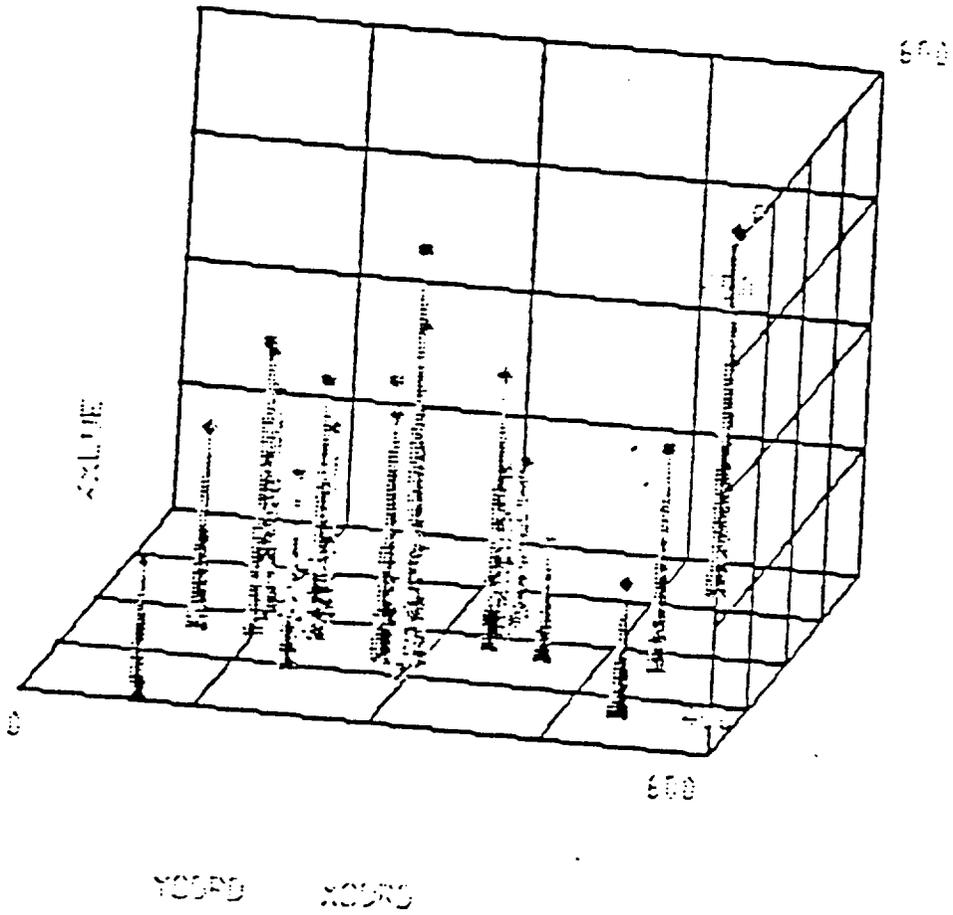


Enter ' to continue, or EBD to quit --

BEST AVAILABLE COPY

3D GRAPH 6

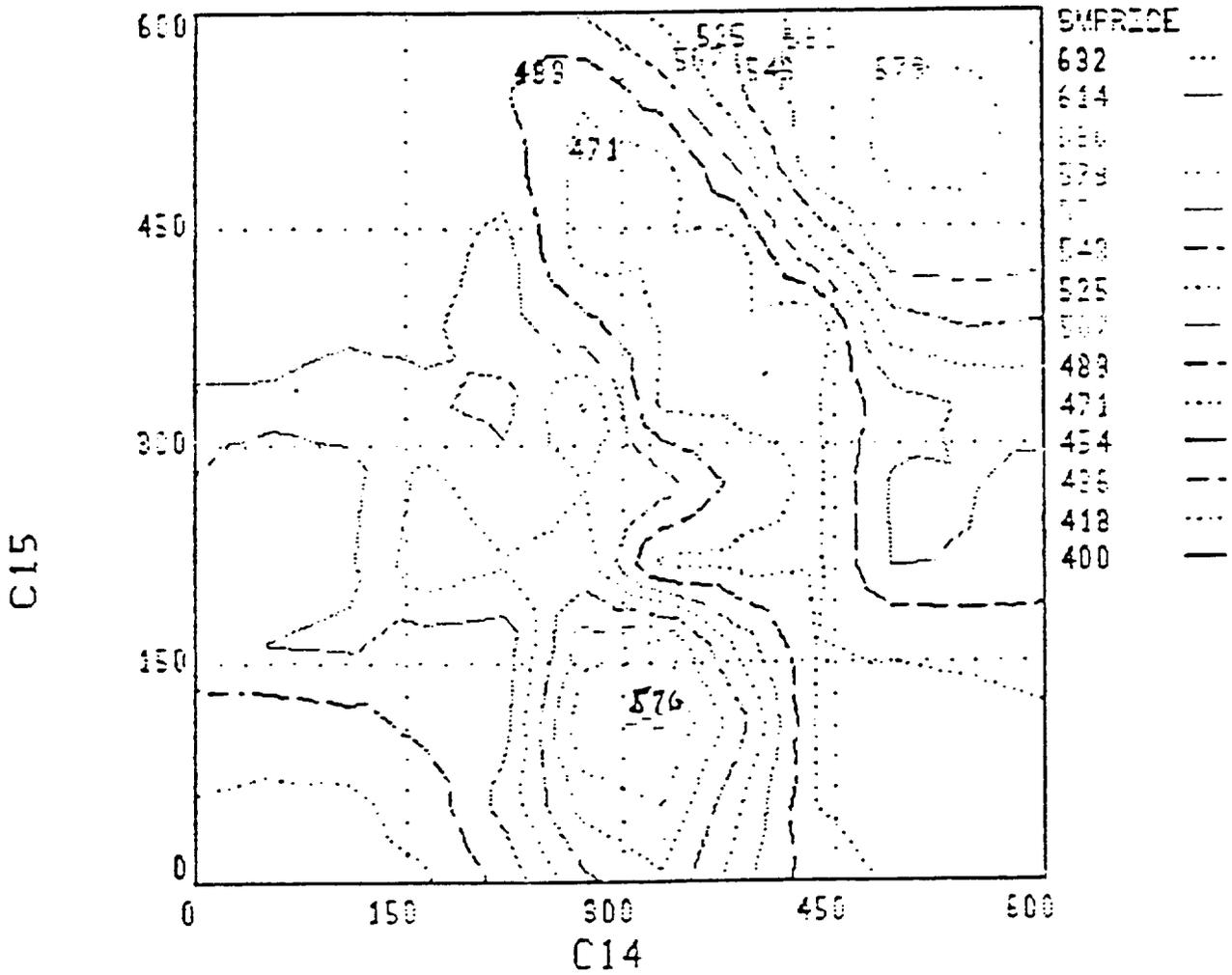
S/M^2 by X, Y Coordinate



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GRAPH 7
 PM^2 Isocurves

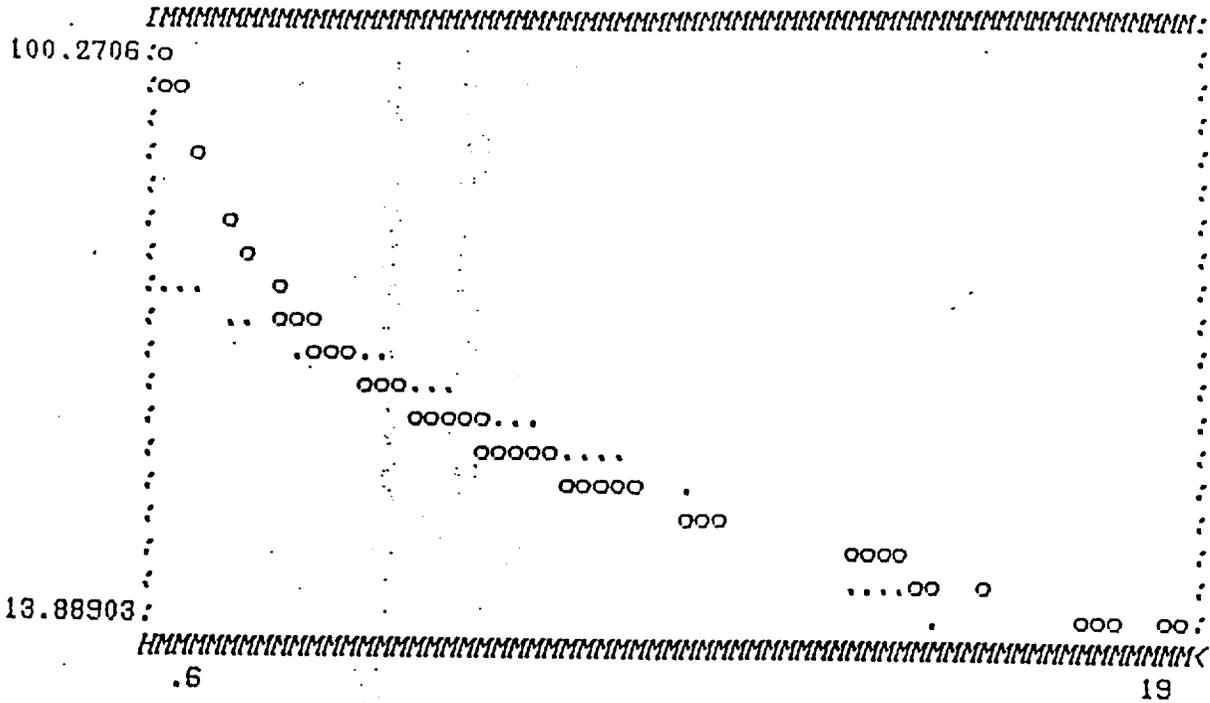
10/1/80 11:00 AM



BLS - AVAILABLE COPY

GRAPH 7A

Quick Plot

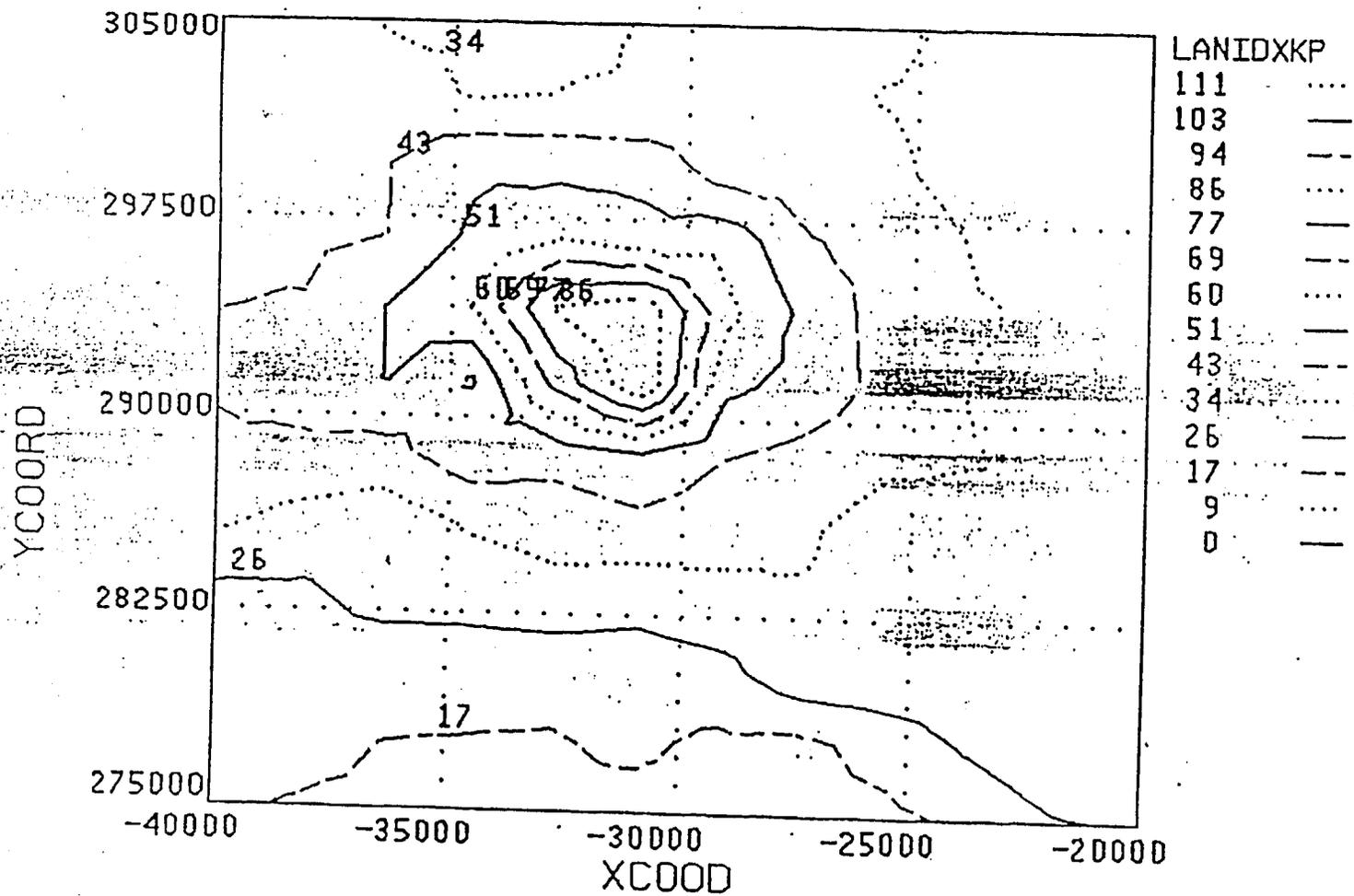


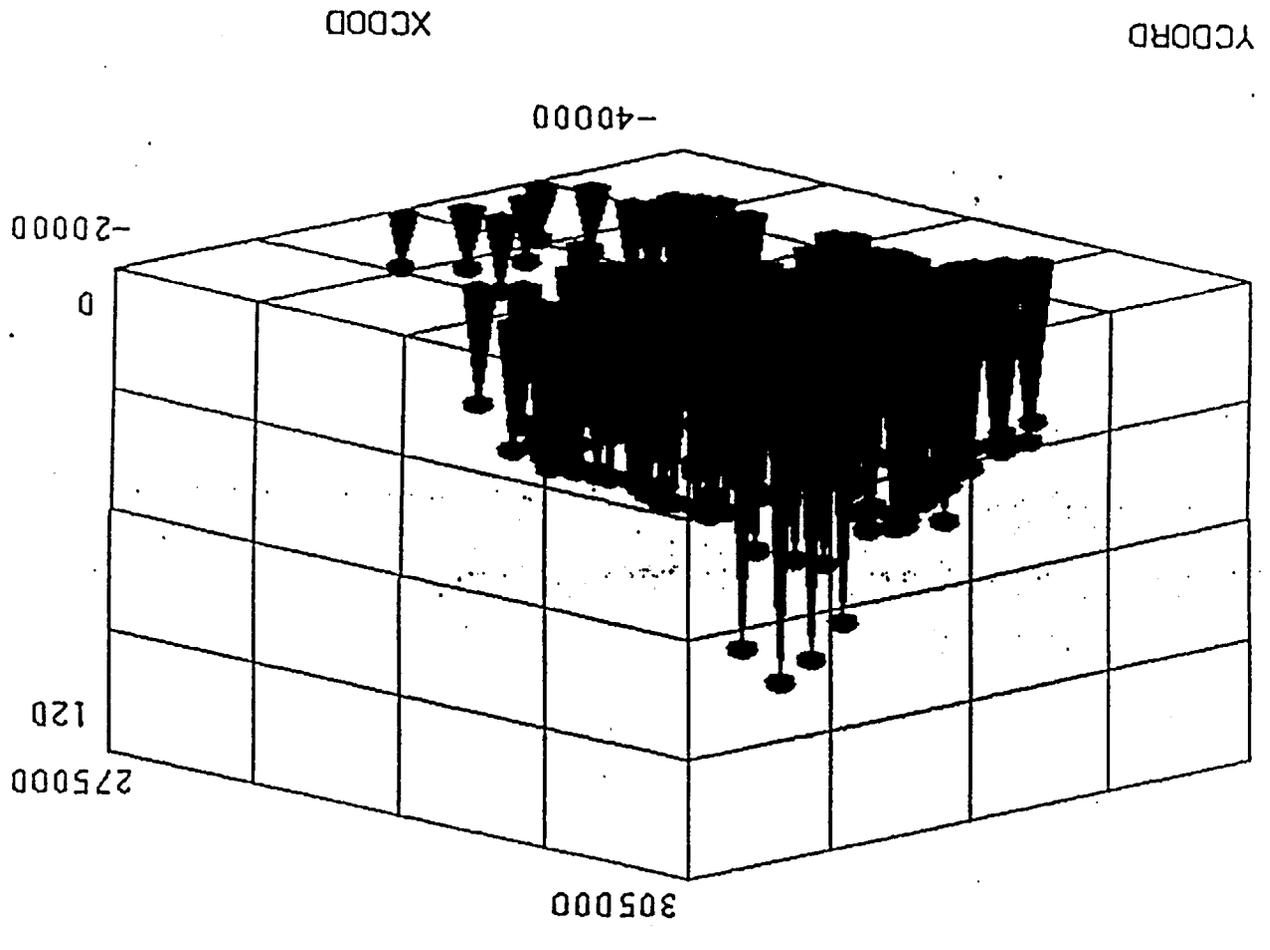
Equation: $Y = 67.91079 - 3.599598 * X$ Correlation: $-.9101867$
 Enter DY to continue, or ESC to quit --

FOR OFFICIAL USE ONLY

GRAPH 7B

Contours of LANIDXKP

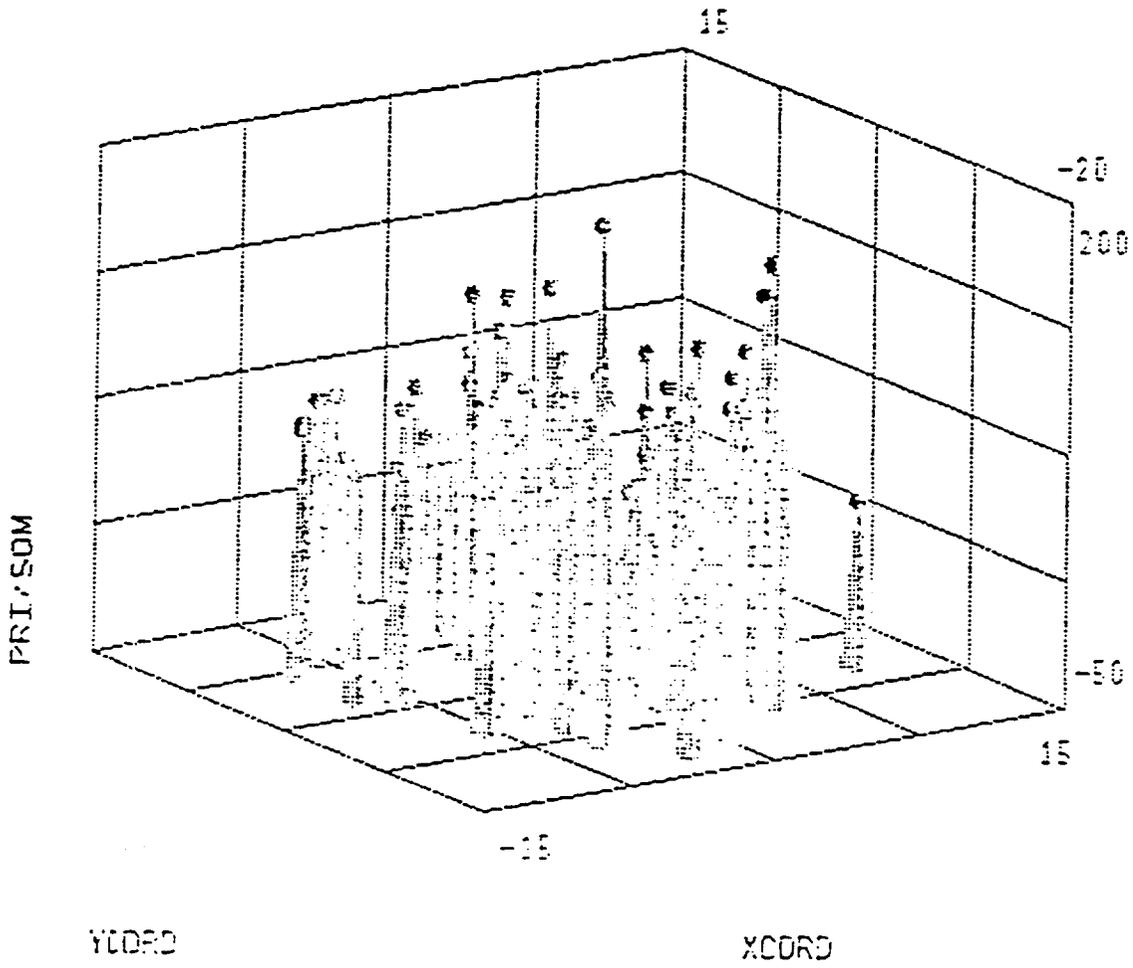




LANIDXKP

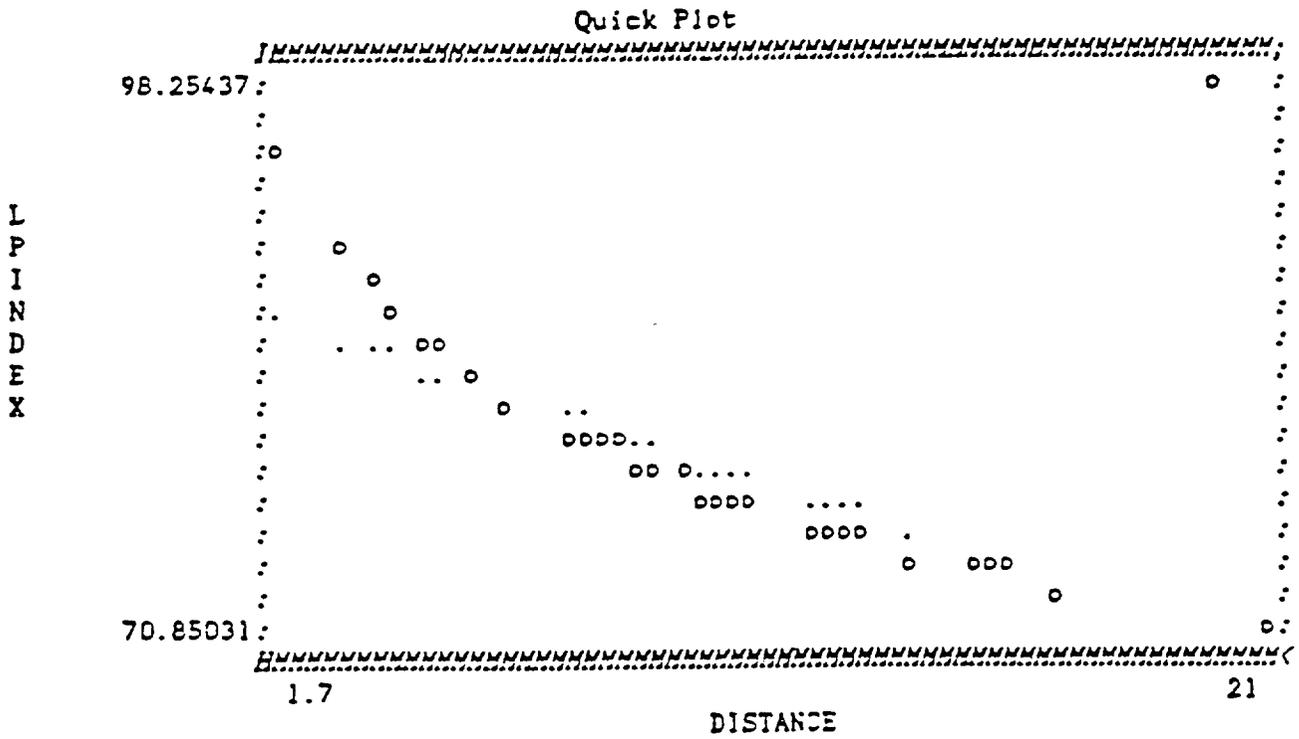
GRAPH 7C

GRAPH 9



GRAPH 10

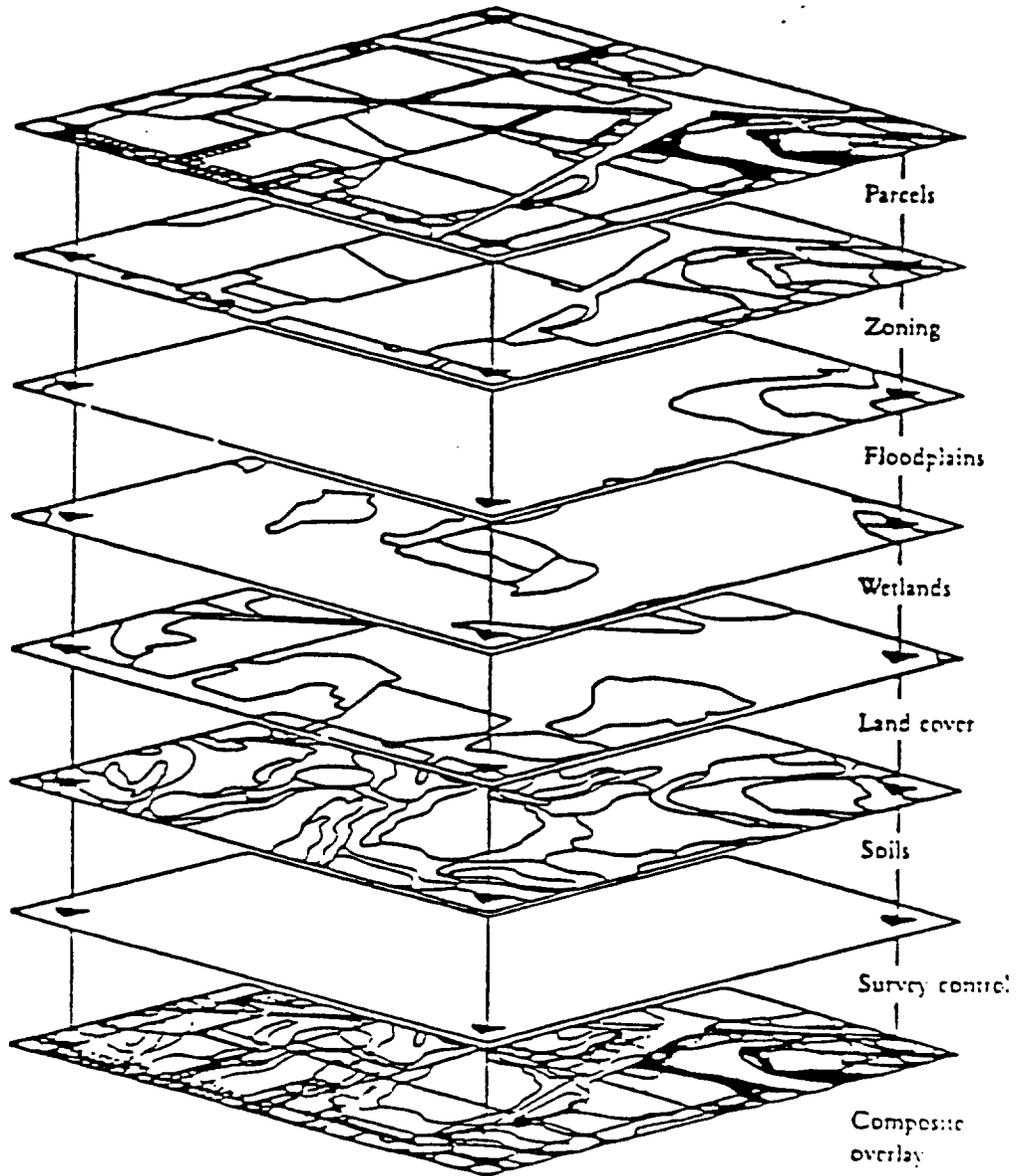
Land Area Index



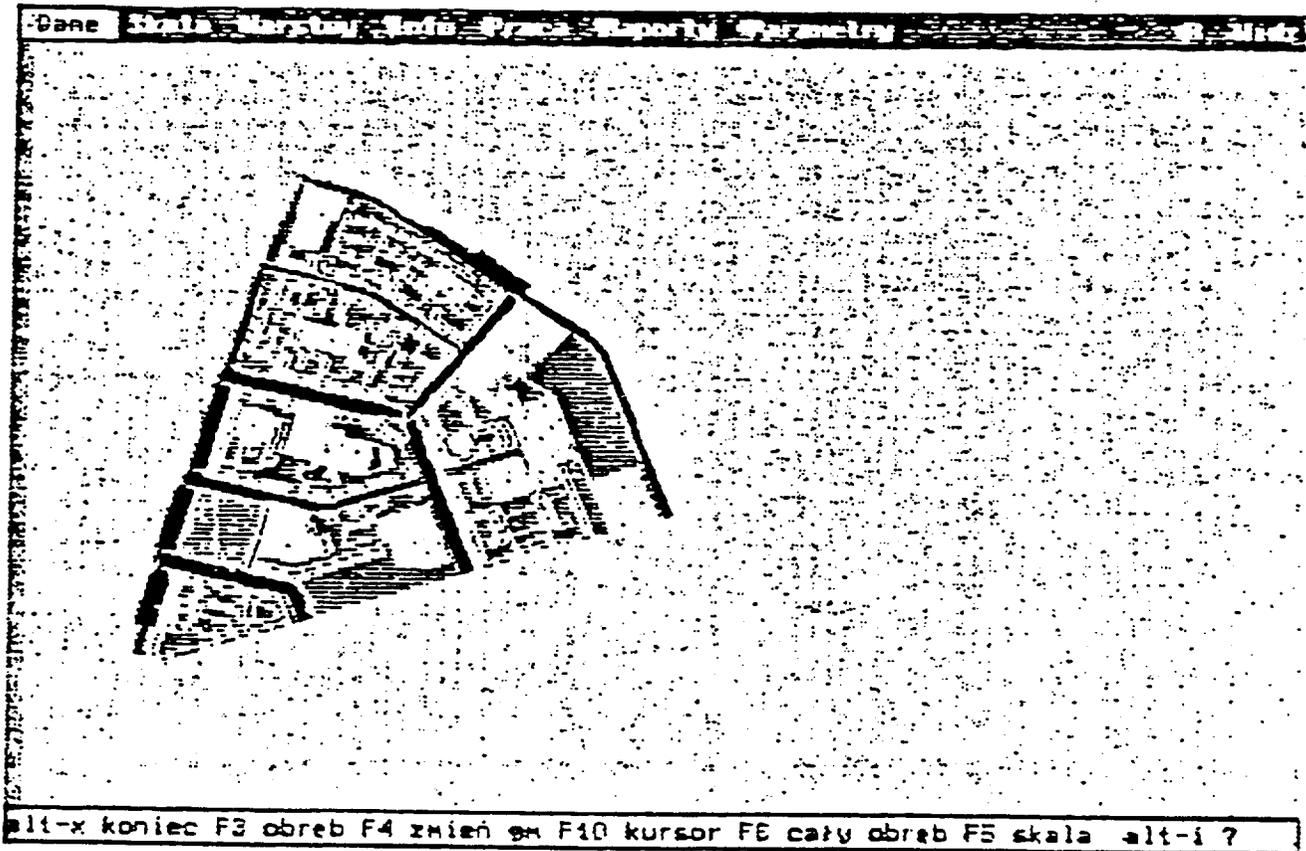
Equation: $Y = 88.10816 - .8863572 * X$; Correlation: $-.7658311$
Enter DY to continue, or ESC to quit —

FIGURE 1

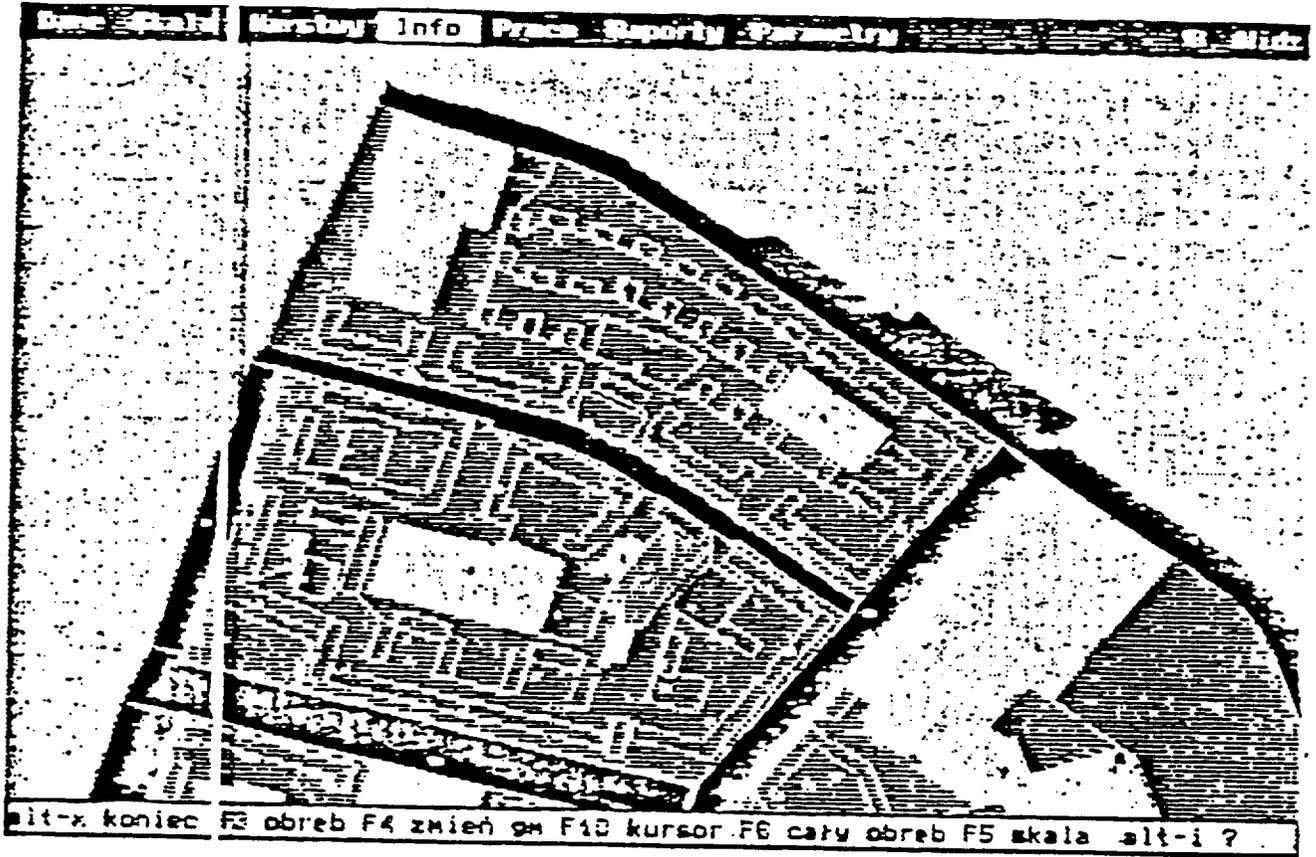
Multiple Layers in a Geographic Information System



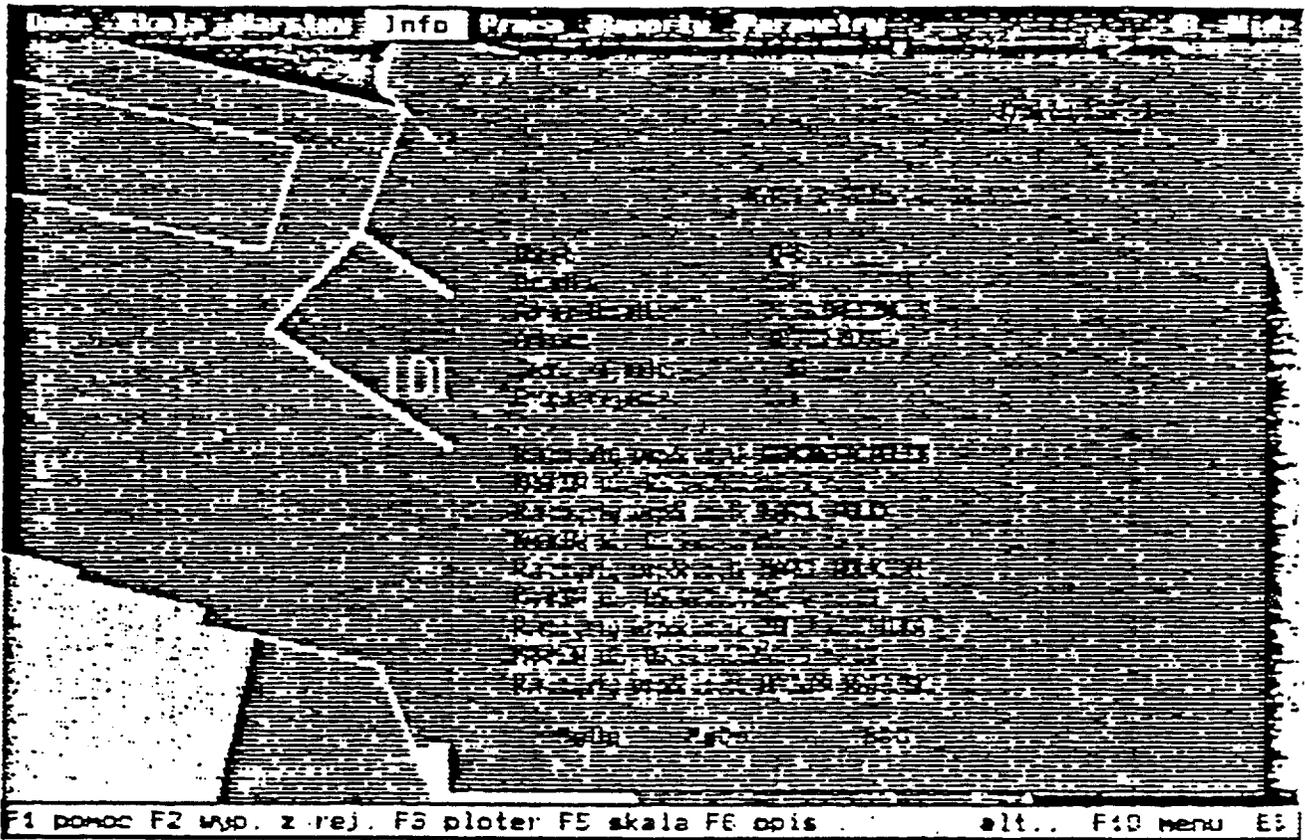
MAP 1



MAP 2



MAP 3



Appendix 1

This appendix describes the results of the data investigation project that was carried out to determine which data elements to collect relative to land, apartment and building that would support the valuation process necessary to implement a ad valorem property tax.

The market monitoring team to date has completed their work on the vacant land class. They collected data on 49 different vacant land elements. The lot sheet that follows and the attached data base dictionaries show these factors. A multiple regression analysis was carried out on the data. The sale price of the lot was the dependent variable, while the remaining 48 factors were the independent variables in the model. The analysis suggests that only 13 of the 48 variables contribute to the explanation of value. The model variables explain 75% of the variation in sales prices. These are factors C9, C12, C19, C20, C23, C25, C26, C30, C35, C37, C39, C40 and C44 (see data dictionary for definitions). The recommendation would be that only these data elements need be collected in the mass data collection process.

The data also allowed us to compute a land price index. The results show that the relative value of land in the center of the city is 10 times greater than land 20 km out on a square meter bases. This result is consistent with international standards. The two analysis taken together would indicate the market for land is working efficiently.

Identification No.			
Locality	District/Quarter	Section	
Lot No.	Perpetual book No.		
Coord. of centre	X =	Y =	
Lot address			
Owner			
Administrator			

Appraised value	Appraisal date
Offer value	Offer date
Transaction value	Transaction date
Tax	Mortgage liabilities

Outline:

Area	
Front/depth	
Distance from center	
Azimuth from center	N NE E ES S SW W WN
Kind of crop	B R L P S Ls Lz Tr N
Soil class	I II III IV V VI

Perpetual lease	Use	Easement	Lease	Lending for use
-----------------	-----	----------	-------	-----------------

Geotechnical conditions		Topography	
Very good	1	Flat	1
Good	2	Slightly sloped, easy to build	2
Moderate	3	Sleep, difficult to build	3
Poor	4	Impossible to build	4

View from the lot		Exposed to	
Nice	1	South	1
Average	2	East	2
Awkward	3	West	3
		North	4

Small architecture		Acces		Fencing	
Good	1	Good	1	Permanent	1
Average	2	Moderate	2	Non-permanent	2
Poor	3	Poor	3	No fencing	3

Current use		Planned land use		Restriction of use	
Single family	1	Low density housing	1	Protection zone	1
2-4 family	2	High density housing	2	Protected landscape	2
Multifamily	3	Industrial building	3	Nature reserve	3
Commercial	4	Vacation houses	4	Nature protection zone	4
Industrial	5	Commercial	5	Other	5
Other	6	Farm buildings	6	No restrictions	6
Free from any use	7	Farms	7		
		Other	8		

Electricity	Employment opportunities
Water supply	Access to supplies
Sewer	Access to public transport
Gas supply	Access to schools
District heating network	Access to recreations facilities
Telephone network	Access to public
Other infrastructure (1)	Access to healthcare facilities
Other infrastructure (2)	Police protections
1. On lot 2. Reachable 3. Lacking	1. Good 2. Moderate 3. Low 4. Poor

Ecological hazards	Subsidence from mining	Threat of natural disasters
--------------------	------------------------	-----------------------------

Location	1. Commercial center 2. Town center 3. Transitional 4. Peripheral 5. Suburban 6. Rural
Density	1. Scattered 2. Loose 3. Compact
Demand	1. Increasing 2. Stable 3. Declining
Supply	1. Increasing 2. Stable 3. Declining

Identificator No			
Locality	District/Quarter	Section	
Lot No.	Building No.	Perpet. book No.	
Coord. of center	X =	Y =	
Address			
Owner			
Administrator			

Appraised value	Appraisal date
Offer value	Offer date
Transaction value	Transaction date
Tax	Mortgage liabilities

Year construction	Year of last overhaul
Number of floor	Capacity
Footprint area	Total floor area
Living area	Living area
Front / Back	Historic building
Scope of last overhaul	Yes No

Kind of building	Technology	General assesment of techn. cond.	
Detached singlefamily	Traditional	1	Good
Semidelach	Big slab	2	Satisf.
Row house	Wood	3	Average
Multifamily	Steel	4	Poor
House of many appart.	Other	5	
Commercial			
Industrial			
Special purpose			

Basement	No	Partia	Full
----------	----	--------	------

Construction	Slan
- Foundation	1. Good (0-15% well maint) 2. Satisf. (16-30% well maint) 3. Average (31-50% well maint) 4. Poor (51-70% well maint)
- Basement	
- Supp. walls	
- Ceilings	
- Stairs	
- Roof	
- Roofcover	
- Outside plastery	
- Inside plaster	
- Windows/doors	

Standard of interior	High	Moderate	Low
----------------------	------	----------	-----

Installation	
- Sewers	1. Present 2. Easy to connect 3. Difficult to connect 4. No connection possible
- Water supply	
- Gas	
- District heating network	
- Local heating network	
- Hot water	
- Electricity 220V	
- Electricity 360V	
- Telephone	
- Cable TV	
- Other	

No. of garage	No. of island roofs for cars
---------------	------------------------------

Identification No.					
Locality	District/Quarter		Section		
Lot No.	Building No.	Apartment No.		Perpet. book No.	
Coord. of center	X =	Y =			
Address					
Owner					

Appraised value	Price 1m2 L.A.	Appraisal date
Offer value	Price 1m2 L.A.	Offer date
Transaction value	Price 1m2 L.A.	Transaction date
Rate	Market <input type="checkbox"/> Preferential <input type="checkbox"/> Tax <input type="checkbox"/>	Mortgage liabilities

Year of construction	Year of last overhaul
Number of floors	Floor of the apartment
Living area	Apartment living area
Type of building	Legal status
Front/Back	Historic building
Scope of last overhaul	

Construction	Layout	Kitchen
Traditional	Good	Full
Big-slab technology	Partially good	Annex
Wood	Waiting-through rooms	Absence
Steel		
Other		
No. of rooms	Bathroom	WC
1	Separate	Separate
2	With WC	With bathroom
3	No bathroom	No WC
4	Use	Use
5	Individual (separate)	Individual (separate)
	Join	Join

Balcony	Loggia	Terrace	Garage	Garbage chute	Elevator
---------	--------	---------	--------	---------------	----------

Installations	Network	Own
-Sewers		
-Water supply		
-Gas		
-District heating		
-Hot water		
-Electricity 220V		
-Electricity 360V		
-Telephone		
-Cable TV		
-Other		

1. Present
2. Easy to connect
3. Difficult to connect
4. No connection possible

Floor	Floor liels	Windows/doors
Wood planks	Ceramic liels	Indiv. design.
Wood parquet	Terazzo	Typical design
PCV	Other	
Other		

General technical assesment condition	Good <input type="checkbox"/>	Satisfactory <input type="checkbox"/>	Average <input type="checkbox"/>	Poor <input type="checkbox"/>
---------------------------------------	-------------------------------	---------------------------------------	----------------------------------	-------------------------------

date and signat

 DATABASE USA3

PLOTS

- C1 - VALUE OF PLOT ACCORDING TO APPRAISAL [z1]
- C2 - VALUE OF PLOT ACCORDING TO OFFERS [z1]
- C3 - VALUE OF PLOT ACCORDING TO TRANSACTION [z1]
- C4 - TAX
- C5 - DATE OF APPRAISAL [ddmmyy]
- C6 - DATE OF OFFER[ddmmyy]
- C7 - DATE OF TRANSACTION [ddmmyy]

- C9 - AREA [sq. m.]
- C10 - FRONTAGE
- C11 - WIDTH/LENGTH RATIO
- C12 - DISTANCE FROM THE CENTRE [km]
- C13 - AZIMUTH FROM THE CENTRE [km]
- N Info C14 - FORM OF OWNERSHIP [glossary 1] 2
- C15 - GEOTECHNICAL CONDITIONS [glossary 3] 4
- C16 - TYPE OF DEVELOPMENT [glossary 4] 4
- C17 - VIEW FROM THE PLOT [glossary 5] 3
- C18 - FRONTAGE (DIRECTION OF SLOPE) [glossary 6] 4
- C19 - COMMUNITY AMENITIES [glossary 7] 3
- C20 - ACCESS TO PLOT [glossary 8] 3
- C21 - FENCE [glossary 9] 2
- C22 - PRESENT USE [glossary 10] 7
- C23 - FUTURE USE IN LAND DEVELOPMENT PLAN [glossary 11] 2
- C24 - RESTRICTIONS TO USE [glossary 12] 6
- C25 - ELECTRICITY LINE [glossary 13] 3
- C26 - WATER SUPPLY [glossary 13] 3
- C27 - SEWAGE SYSTEM [glossary 13] 3
- C28 - GAS SUPPLY [glossary 13] 3
- C29 - CENTRAL HEATING [glossary 13] 3
- C30 - TELEPHONE LINE [glossary 13] 3
- C31 - ADDITIONAL (OTHER) INFRASTRUCTURE 1 [glossary 13] 3
- C32 - ADDITIONAL (OTHER) INFRASTRUCTURE 2 [glossary 13] 3
- C33 - EMPLOYMENT OPPORTUNITIES [glossary 14] 4
- C34 - ACCESS TO SHOPS [glossary 14] 4
- C35 - ACCESS TO PUBLIC TRANSPORT [glossary 14] 4
- C36 - ACCESS TO SCHOOLS [glossary 14] 4
- f C37 - ACCESS TO RECREATIONAL AREAS [glossary 14] 4
- C38 - ACCESS TO PUBLIC UTILITIES [glossary 14] 4
- C39 - ACCESS TO HEALTH SERVICES [glossary 14] 4
- C40 - POLICE PROTECTION [glossary 14] 4
- C41 - ENVIRONMENTAL HAZARDS [glossary 15] 2
- C42 - MINING DAMAGE [glossary 15] 2
- C43 - NATURAL THREATS (NATURAL DISASTERS [glossary 15] 2
- C44 - LOCATION [glossary 16] 6
- C45 - DENSITY OF BUILDINGS [glossary 17] 3
- C46 - DEMAND [glossary 18] 3
- C47 - SUPPLY [glossary 18] 3
- C48 - COORDINATE X
- C49 - COORDINATE Y

DATABASE USA5

PLOTS

C1 - APPRAISED VALUE [z1]
C2 - OFFERT VALUE [z1]
C3 - TRANSACTION VALUE [z1]
C4 - RATE [glossary 1]
C5 - APPRAISED PRICE m2 L.A. [z1]
C6 - OFFERT PRICE n2 L.A. [z1]
C7 - TRANSACTION PRICE m2 L.A. [z1]
C8 - YEAR OF CONSTRUCTION
C9 - NUMBER OF FLOORS
C10 - LIVING AREA [m2]
C11 - TYPE OF BUILDING [glossary 2]
C12 - FRONT/BACKROM [glossary 3]
C13 - YEAR OF LAST OVERHAULT
C14 - FLOOR OF THE APPARTAMENT
C15 - APPARTAMENT LIVING AREA
C16 - LEGAL STATUS [glossary 4]
C17 - HISTORIC BUILDING [glossary 5]
C18 - CONSTRUCTION [glossary 6]
C19 - LAYOUT [glossary 7]
C20 - KITCHEN [glossary 8]
C21 - NO. OF ROOMS
C22 - BATHROOM [glossary 9]
C23 - WC [glossary 10]
C24 - BATHROOM USE [glossary 11]
C25 - WC USE [glossary 11]
C26 - BALCONY
C27 - LOGGIA
C28 - TERRACE
C29 - GARAGE
C30 - GARBAGE SHUTE
C31 - ELEVATOR
C32 - SEWERS [glossary 12]
C33 - WATER SUPPLY [glossary 12]
C34 - GAS [glossary 12]
C35 - DISTRICT HEATING [glossary 12]
C36 - HOT WATER [glossary 12]
C37 - ELECTRICITY 220V [glossary 12]
C38 - ELECTRICITY 360C [glossary 12]
C39 - TELEPHONE [glossary 12]
C40 - CABLE TV [glossary 12]
C41 - OTHER INSTALLATIONS [glossary 12]
C42 - FLOOR [glossary 13]
C43 - FLOOR TIELS [glossary 14]
C44 - WINDOWS/DOORS [glossary 15]
C45 - GENERAL TECHNICAL ASSESMENT CONDITION [glossary 16]
C46 - COORDINATE X
C47 - COORDINATE Y

DICTIONARIES

DICTIONARY 1: 1. MARKET
2. PREFERENTIAL

DICTIONARY 2: 1. SINGLEFAMILY
2. MULTIFAMILY

DICTIONARY 3: 1. FRONT
2. BACK

DICTIONARY 4: 1. SEPARATE
2. COOPERATION

DICTIONARY 5: 1. YES
2. NO

DICTIONARY 6: 1. TRADITIONAL
2. BIG-SLAB TECHNOLOGY
3. WOOD
4. STEEL
5. OTHER

DICTIONARY 7: 1. GOOD
2. PARTIALLY GOOD
3. WALKING-THROUGH ROOMS

DICTIONARY 8: 1. FULL
2. ANEX
3. ABSENCE

DICTIONARY 9: 1. SEPARATE
2. WITH WC
3. NO BATHROOM

DICTIONARY 10: 1. SEPARATE
2. WITH BATHROOM
3. NO WC

DICTIONARY 11: 1. INDIVIDUAL (SEPARATE)
2. JOIN

DICTIONARY 12: 1. PRESENT
2. EASY TO CONNECT
3. DIFFICULT TO CONNECT
4. NO CONNECTION POSSIBLE

DICTIONARY 13: 1. WOOD PLANKS
2. WOOD PARQUET
3. PCV
4. OTHER

DICTIONARY 14: 1. CERAMIC TIELS
2. TERAZZO
3. OTHER

DICTIONARY 15: 1. INDIV. DESIGN.
2. TYPICAL DESIGN.

DICTIONARY 16: 1. GOOD
2. SATISFACTORY
3. AVERAGE
4. POOR

DICTIONARY 10: 1. SINGLE-FAMILY HOUSES
2. 2-4-FAMILY HOUSES
3. MULTIFAMILY HOUSES
4. TRADE, SERVICES
5. INDUSTRY
6. OTHERS
7. FREE SPACE

DICTIONARY 11: 1. SINGLE-FAMILY HOUSES
2. MULTIFAMILY HOUSES
3. INDUSTRIAL FACILITIES
4. HOLIDAY RESORT FACILITIES
5. TRADE, SERVICES
6. CONSTRUCTION AND AGRICULTURE
7. AGRICULTURE
8. OTHERS

DICTIONARY 12: 1. PROTECTIVE ZONE
2. LANDSCAPE PROTECTION ZONE
3. NATURAL RESERVE
4. NATURE CONSERVATION ZONE
5. OTHERS
6. NO RESTRICTIONS

DICTIONARY 13: 1. ON THE PLOT
2. ACCESSIBLE
3. NO ACCESS

DICTIONARY 14: 1. GOOD
2. AVERAGE
3. UNDER AVERAGE
4. POOR

DICTIONARY 15: 1. YES
2. NO

DICTIONARY 16: 1. URBAN CENTRAL
2. CITY CENTRE
3. URBAN INTERMEDIATE
4. URBAN PERIPHERAL
5. SUBURBAN
6. VILLAGE

DICTIONARY 17: 1. SCATTERED
2. SPARSE
3. DENSE

DICTIONARY 18: 1. INCREASE

APPENDIX

Institutes Responsible for the Administration of Property in the City of Moscow

Agencies and Their Functions

1. **Moscow Geotrust:** mapping, 1:3000 scale map used in hard copy by all institutions in the system.
2. **BTI (Bureau of Technical Inventorization):** physical inventory of property and land, detailed records on all residential, non-residential and land parcels in Moscow.
3. **Moscow Committee on Land Use:** currently, advice on regulation for land use (not yet concluded); eventually, privatization and registration of land parcels.
4. **Moscow Committee of Housing:** privatization and registration of residential property (excludes land parcels).
5. **Moscow Committee on Property:** privatization and registration of non-residential property (excludes land parcels).

6. **Administration of Architectural and Historical Buildings:** clearing privatization and sale transactions to prevent possible destruction of historical heritage.
7. **Institute of the General Plan of Moscow:** planning and zoning.
8. **State Tax Service (federal agency):** collecting property tax.

Description of Current Processes

The following is a description of these agencies, whose functions are all related to the administration of urban property in Moscow. The very definition of property is not yet clear in Moscow and the terminology used in report requires some clarification. "Objects of rights: are improvements such as houses, apartments, or shops (but no land itself, over which only use rights-as opposed to outright ownership-are defined at this time). "Subjects of rights" are individuals, firms or corporations that exert "rights," such as "lease," long term occupation," or ownership" over the objects. These rights may exist de facto or may be explicitly defined by means of a "contract." Objects of rights can be "residential" or "non-residential."

1. Geotrust

Geotrust is the institution responsible for all Moscow mapping and geological data. Its staff of 600-800 professionals included surveyors, geologists, cartographers and information

technology specialists. It has no role in titling, but provides source information to BTI.

The main map of Moscow was done manually to the scale 1:2000; and contains 1200 master planchettes, specially stored to protect them from deformation, humidity, etc. The original date on a planchette shown was 1959; its periodic updates were recorded in the back of the panel.

The map is the source distributed, in hard copy, to all users of geographical information in the city. A digital version of this map is in process. Geotrust technicians, working with the staff of a private Russian consulting company, are applying locally developed computerized techniques to increase the contrast, correct the geometric deformation of digitized planchettes and convert raster to vector images. The software separates lines, numbers and other elements into different layers.

In the next step, human operators, using menu-drive software and standard graphics editing procedures to guarantee consistency, identify all structures and enter their detailed description as attributes. About 20% of the main Moscow map has been processed at this time. They use Autocad, which could be replaced by any graphics software that can accept attributes.

A graphics retrieval system that uses standard graphics file formats (PCX, DXF) is under development to facilitate distribution to users. Distribution plans include hare copy, telecommunications (modem), and magnetic media.

Geotrust plans to produce a digital map to the scale 1:500, which will require 65,000 planchettes; resources for this project are not currently available. One planchette of this map, showing all utilities and underground networks, was produced as evidence that their staff has the required skills and information; a copy was provided to the mission.

2. Bureau of Technical Inventorization (BTI)

The Bureau of Technical Inventorization is responsible for the physical inventory of property rights. It has collected detailed physical information on 3 million projects. Of 70,000 buildings recorded, having a total space of 230 million square meters, 30,000 are residential, having 163 million square meters.

BTI stores little information about the subjects that hold rights over these properties. Terre has no information about the rights that the subject holds, or about the contract that may record these rights.

BTI estimates a "balance value" of the properties it inventories, based on cost and depreciation; it is indexed to a 1984 price level and therefore is not useful as an estimate of current market value. BTI is trying to establish a way of updating these prices to 1992 levels.

BTI records information about both residential and non-residential properties. It is loading records on residential properties onto a computer system; only two of its 14 regional

offices are even partially computerized. BTI holds records for 70,000 buildings in Moscow, about 3,000,000 dwellings in all. At the present time, records on non-residential property are not being loaded onto a computer system.

BTI contains no mapping information on the objects it records, though it has a detailed drawing of the object itself; the location information is the address of the object. BTI assigns city blocks (which have fairly irregular shapes) a unique number each. Within each block, buildings are assigned a number based on date of construction.

3. Moscow Property Committee. This Committee, a part of the Government of the City of Moscow, was formerly the "Privatization Committee." It is responsible for registering contracts on rights of subjects over non-residential objects only. Transactions are initiated by subjects requesting registration of their rights.

To avoid issuing double contracts on the same object, the Property Committee is loading subjects, objects and contracts into a Clipper (Dbase) database, which currently contains information on 30,000 Objects (keyed by address), 20,000 subjects, and 50,000 contracts. The Committee has no graphic or mapping information.

Information on objects is from BTI (key is "standard BTI" and has no postal address). Information on subjects is either from the police passport for individuals or from the Moscow Registering Office for firms or corporations. Information on contracts is provided by applicants

requesting registration of their rights. Contract information includes the terms of the contract and the BTI "balance value."

Information is received from BTI in paper form, as BTI is not currently entering non-residential properties into its database. The Property Committee does not send the information keyed into its database back to BTI in electronic form.

With respect to residential buildings, the buildings themselves (excluding the residential spaces) are considered non-residential property and may have contracts issued about them.

The Property Committee does not perform on-site verification of the information on rights that is contained in the subject's request for registration.

4. Moscow Government Committee of Housing.

Also known as "Residential Affairs Committee," it is responsible for registering contracts on residential property only. Initially contracts were issued for a price, but the Council decided to grant rights free of charge except for a small fee. Transactions are initiated by subjects requesting registration of their rights.

Registration is performed by a private organization, "Mosprivatization" (see below). All contracts registered by Mosprivatization are automatically accepted by the Committee of

Housing.

Three types of residential objects are handled by the Committee: Municipal, Cooperative and Private.

5. Mosprivatization.

This is a "self-accounting organization" (i.e., a private company) responsible for the registration of contracts of rights of subjects over residential property only. Transactions are of two types: "privatization" is the first-time registration of a contract (e.g., sales, inheritances).

Property information is entered into separate databases. There were 135,000 privatizations as of the end of June 1992 (started recording in 3/92), and they are proceeding at the rate of 2,000 per day with some 5,500 subsequent transactions. No graphic or mapping information is recorded.

Privatization transactions were previously done at a price calculated with a formula that used the BTI "balance value"; currently they are done free of charge. Subsequent transactions include the price (reported as) paid for the rights. Contracts for which a bank was used as an intermediary reflects the real price paid; contracts for which cash was paid may not accurately reflect that price. There is no indication whether a bank was used. Registration occurs only after payment has cleared the banking system.

Apparently these transactions are an accepted means of legitimizing funds; in those cases the price of the transaction is accurately reported.

To avoid double contracts on the same object, the postal address (load names taken from menus) is used as a key. To avoid granting two privatization contracts to the same subject or to members of the immediate family, the names of all family members that reside in the same household are recorded and checked at registration time.

All registered transactions are accepted with no further control by the Moscow Government Committee of Housing.

A service of 350 rubles (about 3 US dollars) is payable to the registering organization. As this is not enough to cover expenses, the organization is allowed to privatize some objects for its own use and obtain income from these objects.

6. Land Committee.

The Land Reform Committee is part of the Government of the City of Moscow and is responsible for granting rights (which do not at present include ownership) to use land resources and to recording the rights, conditions and contracts relating to the use of each parcel. Formerly the granting of land use rights included a survey of the boundaries of parcels performed and registered by the geodesic service of Geotrust (see below). This survey and

registration standard was abandoned in 1937. The Land Reform Committee is responsible for the survey and registration of land parcels whose use rights were granted after 1937. Geotrust provides the professionals for this service.

The Committee is also responsible for inventory of land resources and for establishing a policy for land valuation. At present several valuation methods have been proposed, but none has been accepted. There is an economic valuation of land performed by the Committee.

7. Genplana or General Planning Institute.

This institution is responsible for planning the development of the city. In this function it keeps track of land usage. Reporting to Genplana are the Architects Offices of the 10 Prefectures (formerly of the 33 Raions). Genplana's signature is one of four on the land "passport" (the other three: enterprise, prefecture/raion, and local architect's office). This passport does not grant ownership of land, only permission to build.

Genplana is digitizing into Autocad the approximately 1,200 planchettes of the 1:2000 map of Moscow provided by Geotrust the official mapping agency. They are inputting BTI-provided information as attributes on a related Dbase database. The graphic information is not up-to-date. They have separate databases for residential and non-residential objects, and use as keys the planchette number, the street code and the block code. On residential buildings they record the total living areas by number of rooms in the apartment (e.g. 5600 square meters of

2-room apartments, 3,500 of 1-room apartments).

**Problems of Housing and Communal Services Finance:
Pricing Reform and Housing and Communal Services Tariffs**

By

**A. Dron
Chairman, Ukraine State Committee
Of Housing and Public Services**

Dear participants of the conference:

In my report I will dwell on the issue of privatization of the State's housing resources, which has been started in contrast to small- and large-scale privatization of State enterprises and land. I hope this information will be useful for participants of the conference on issues of land reform and city development. I will try to coordinate it with the issue of land privatization.

First of all I will give brief information about Ukrainian citizens' housing supply. Our housing problem, notwithstanding numerous measures of the state, remains one of the most strained social and economic problems. At this time approximately 13 percent of the population does not have individual housing and lives in hostels and rented apartments. There are 116,100 apartments where families share housing for two and more families in each apartment (communal flats). Housing problems increased as a result of the catastrophe at the Chernobyl nuclear power plant, national migrations [causing an] increase of families without housing, and military personnel demobilization, all of which influence considerably the indexes which form

housing demand. With 2.6 million families registered for State apartments, this number increases annually to approximately 1,000,000 families.

The cost and quality of housing construction and rehabilitation do not meet the needs of society. Last year, in connection with a generally worsening economic situation, these [construction and rehabilitation] volumes were reduced abruptly.

Existing housing conditions require repair and renovation to a great extent. Four million square meters of state housing are classified as substandard and badly needing rehabilitation. Practically all housing stock constructed prior to 1955-1956 needs rehabilitation. The average housing supply is also inadequate at 16 square meters for one person in cities and about 21 square meters in rural areas.

We see the reason for such a state as a basic failure of housing policy, which has continued during recent years. The state has shouldered the back-breaking task of solving the housing problem. In 1991, 67 percent of new houses were constructed in cities and towns by the state. Over the last 30 years the number of individual residences was reduced 5 times.

Restriction of maximum housing size for a family (13.65 square meters of dwelling space for one person) forces the majority of citizens to solve their housing deficiency problems two to three times during their lives. The existing order of construction, maintenance and repair of state housing (practically everything is paid for by the state account) made the state

apartments holders act as just as consumers. This creates an element of social injustice for citizens who constructed and maintain their own housing, since the tax system they take part in constructs and maintains state housing.

Among other factors, the main one is the discrepancy between housing policy and changes in Ukraine that caused the necessity of radical reforms in this field. To my mind the concept of reforming housing policies, the creation of which has already begun, should be based on the following principles:

- Providing every citizen and family with a free choice of methods to supply their needs for housing (construction or purchasing of their own house or apartment, mutual holding in a cooperative society, company housing, or rental housing);
- Providing creation of economic conditions for realizing every citizen's right for his own housing;
- Creating conditions to involve non-State budget finance sources in housing construction;
- Developing private property and providing owners and businessmen housing property rights protection;

- Developing competition in housing construction and maintenance. The state, acting as consumer and contractor in housing construction and rehabilitation, should become the economic and legal foundation corresponding to the market economy and encouraging investments, development of infrastructure and financial support of low-income citizens.

The following steps are proposed for realization of housing reform:

- Making alternations in the constitution regarding the rights and guarantees for housing in accordance with market conditions;
- Adopting new housing laws;
- Reforming the system of housing payment by making housing fully self-supporting and providing social protection for low-income people;
- Creating a system of civilized land exchanges, such as auction land sales.

The settlement of the land property issue for housing construction and long-term rent is an important condition for realization of housing policy. This should be defined precisely in housing and land laws.

Privatization of state housing resources is one of the principal steps for creation of a housing market. First of all I will tell about the scope of [potential] privatization [property]. It is about 4 00 million square meters (8 million apartments) or 41 percent of all housing resources; basically, the state housing is located in cities (92%).

The Law of Ukraine On Privatization of the State's Housing Resources was adopted by the Supreme Rada in July 19, 1992, published and put into effect. When working out the draft law, the collected experience of some CIS and Eastern Europe countries was used. The experience in selling state apartments and one-flat houses to citizens who lived there was also taken into account. Also this process took place in our country in 1989-1992. More than 520,000 apartments were privatized during that time. The law was designed on the following principles:

- Voluntary privatization and free transfer of housing to its holders in accordance with specified rates - 21 square meters in of total space for one member of holdee's family plus 10 square meters for the whole family.
- Compensation for citizens who constructed or purchased their own housing, and for citizens who have no housing checks are charged according to the corresponding value of the existing state housing applied to every citizen of Ukraine. It is stipulated to use these checks for privatization of part of the state property and land resources.

There is a definition of state housing which can not be privatized, which includes apartments-museums, flats in closed military stations, and rooms in hostels and apartments determined according to the established order as unfit for dwelling.

There is a list of categories of citizens which can privatize the occupied apartment free of charge regardless of its size (one-room flat holders, victims of the Chernobyl disaster, veterans of war and labor, invalids, and some others). In accordance with calculations, more than 90 percent of the state housing resources should be transferred free of charge.

The law provides a simplified order of transferring state housing into citizens' possession. The maintenance of privatized housing is provided for the holder. The apartment owner in a tenement house is a co-owner of auxiliary lodgings of the house and its technical equipment. It is assumed that companies (unions, associations) of apartment owners will be created for efficient maintenance of privatized houses. The creation and activity shall be stimulated by providing privileges in taxation.

By the way, we are solving the problem of housing exploitation, especially of houses of mixed-type ownership, in cooperation with experts from the Agency for International Development of the USA.

It is necessary to keep the existing system of state subsidies for maintenance and repair of privatized housing and public services till the system of labor payment is reformed.

Therefore, the apartment owner's payment for maintenance of the house and the territory around it should not exceed the rent which he paid while being the apartment holder. This law is defined in the decree of the Cabinet of Ministers of Ukraine dated October 8, 1992.

After seven months, from the beginning of work to the transfer of the state housing to citizens' ownership, it is possible to state that privatization in the housing sector of our economy has made its first real steps. Privatization bodies and institutions for document registration are created and working in all regions. About 900 licenses were issued by the State Committee of Housing and Public Services, giving the right to implement this work.

By May. 1, 1993 about 80,000 state apartments or one-flat houses were privatized. That is 1 percent of the total amount. 175 thousand citizens have used their right to become homeowners. The past two months were especially active, with almost 70 thousand apartments transferred to citizens' ownership. So it is possible to conclude that people make their mind, and local authorities get down to business.

But there are cities and regions where privatization is going slowly, and passivity of the state housing owners is a reason of that. It is possible to make one more conclusion: for the present, the housing of local authorities is basically privatized. Enterprises and organizations that possess or control the housing resources are still making up their minds. Only 8 percent of such apartments were privatized.

It is necessary to note that, besides the sluggishness of the local authorities in some cities, privatization is detained because of unsettled questions on the government level. In particular, the amount of tax for privatized apartments has not been established yet, nor has the issue regarding the housing checks war, not clear up to the present. It is known that in accordance with the decree of the Cabinet of Ministers, dated April 26, the privatization housing certificates will be issued as deposit accounts in the Savings Bank. Soon the question concerning the tax for property will be also settled. In the draft Decree the tax amount is defined as 0.05 percent for the corresponding value per year.

Problems which were not solved in documents appear in the privatization process. They are summarized, and corresponding changes are made in the law. In general, radical changes should be made in the housing laws, as they do not correspond to the essence of the transition period.

In the beginning of my report I told about the basic principles which have to be the basis for working out documents. Now I want to point out that if the question of property is not settled, working out a new housing policy, reforming housing conditions, and realization of the housing privatization law will meet considerable obstacles. For example, the limits of the territory around tenement houses were not defined up to this time. There was no need to do it as the state was the owner of such houses as well as of land.

Land privatization creates new conditions and problems. The first owners' companies,

the formation of which has been started, require the determination of limits around the house and the definition the status of this land. Can this land be transferred to the ownership of the company (union) of apartment owners or not? What documents should be officially registered? These questions should urgently be answered. In article 10 of the *Law On Privatization of the State Housing Resources*, it is said that owners of tenement houses are co-owners of the elements of external development, and they should maintain the territory around the house. It is also said there that use of land applied to the privatized house is implemented according to the order and on conditions stipulated in the Land Code of Ukraine. But unfortunately, it does not give a clear-cut answer to this question.

The issues of the non-state houses and structures on the state territory as well as confiscation of land for the state and public needs are not determined with respect to relations between owners and the state. It is known that the Cabinet of Ministers of Ukraine defined the transfer of land parcels, given for construction and maintenance of houses and household buildings, etc., to the private ownership of Ukrainian citizens by the Decree On Privatization of land parcels adopted in December of last year . And what about obtaining land parcels for housing construction, and about those who have not gotten such parcels yet? Privatization of the existing state apartments will not create a housing market any more than realization of the right through the decree will create a land market for developers.

It seems to me, our legislation should stipulate the right of developer to get ownership of land for housing construction on territories defined by development documents. Private

individuals as well as juridical persons should have this right, not just to meet their needs in housing but to construct the housing for sale or to rent out newly-built apartments. Granting such a right will allow them to draw in private capital in order to intensify the housing construction, and that will support Ukraine's new housing policy.

I understand the prudence of my colleague, B.M.Guenkov, and the Russian proverb, "Score twice before you cut once" is appropriate here. But nevertheless, it is impossible to go slowly, since the transfer of the whole economy, including the housing economy, to market conditions depends on land reform.

Double Ownership of Land

By

Z. Pidlisny

Director

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The form of land ownership is one of the determining factors of the socioeconomic system of a state. Most of the Ukrainian population has no experience in possessing inherited land. Serfdom as a form of non-free collective labor has its long history both in the tsarist and Soviet periods.

Thus, in working out new laws on land utilization, we should take into account not only the world's experience, but also the tragic experience of the millions of Ukrainian peasants killed for even having a dream of their own patch of land. Almost all conscientious owners and their children were starved and moved by force to GULAGs. Their places were taken by the poorest peasants, Komsomol and party activists and poor migrants from Russia for whom this land would never become their own. So the majority of today's peasants have no inherited family traditions in farming and thrifty land preservation.

Nowadays only some of them are ready to take responsibilities for land utilization. Others envisage themselves as collective workers who are daily told what to do and monthly paid their wages even if they do not earn them. In their understanding, the collective is not

theirs; one can steal it, embezzle it for drinks or sell it. For this very reason some of the peasants wouldn't take the land on lease and start their own production. They would prefer to go on working at a collective farm with low productivity and everlasting state subsidy.

At the same time just and equal share distribution of land among all the inhabitants of the rural areas, providing the collective farms are preserved, creates some difficulties for the farmers. But if the land has not been used for decades, it is not only the owner who suffers. The conclusion could easily be drawn that the concept of double ownership can be applied to land. Now that the land has not been privatized yet, this concept must be constitutionally legalized.

The concept of double ownership of land becomes extremely urgent when the land is used for new construction (building of communications, roads, sewage purification systems and others). And furthermore, there arises a problem of priority right to lease and own land. For instance, in some rural areas 40 to 60 kilometers' distance from a large city, there exist some water collectors which, together with their sanitary protection zone, occupy the territory of 8 to 12 hectares. In such cases a conflict often takes place when the law does not determine the priority right to lease or own in each definite case. It is necessary to differentiate between the co-owners' rights to land according to the state, regional and group interests providing vital activity of the majority of citizens.

In realizing the urban development projects, there often appear situations when some

urban or rural territory has a reserve for constructing additional apartments without breaking any townbuilding or sanitary norms for the residents already living in this territory. But, lacking proper legislation, the people residing in these territories by their actions have no possibility of realizing additional building projects through leasehold and land privatization. To my mind, the following variant of legal interpretation can be suggested: the territory allotted to build at the cost of the land or allocation of another territory.

Summarizing all [the points] stated above, I'd like to emphasize that, while the land in Ukraine is a state property, it is necessary to adopt such laws on land tenure that would guarantee the interests of both the person and the state, i.e. would take into consideration the concept of double ownership of land.

Right to Land Ownership and Entrepreneur Activities:

Contradictions and Perspectives

By
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Business development in Ukraine in many respects is determined by the extent to which the subjects of entrepreneurial activity (both physical and juridical) are able to implement their natural right to own land parcels and to use them to their own discretion. In this connection a relevant question arises as follows: Are there provisions in Ukrainian legislation for entrepreneurs to practically implement their right to own the land? Positive or negative answers can hardly be provided without a proper analysis of the current legal framework in this sphere, and really existing conditions of purchasing land parcels for the purposes of entrepreneur activity.

At present a most general juridical basis has been established in Ukraine for regulating land relationships whose subjects are individual entrepreneurs, enterprises, firms, companies and other juridical persons, set up on the basis of various types of ownership. First of all there is the Law of Ukraine *On Forms of Land Ownership*, dated January 30, 1992, the new Edition of the Land Code of Ukraine, dated March 13, 1992, the Decree by the Supreme Rada of

Ukraine *On Speeding Up Land Reform and Privatization of Land*, Ukraine's Laws *On Payment for Land* and *On Foreign Investments* dated July 3, 1992 and March 13, 1992 respectively, *On Urban Development Foundations*, dated November 17, 1992, Decree by the Cabinet of Ministers of Ukraine *On Privatization of Land Parcels* dated December 26, 1992, as also other legislative and sub-law Acts which in one way or another regulate land relationships and other relations in the sphere of entrepreneur activities for both juridical and physical persons.

The above legislative acts contain theoretical provisions for entrepreneurs to exercise their right to land parcel ownership. As an example, plurality of forms of land ownership was adopted on the state level which was supplemented by legislative approval. In contrast with the Land Code of Ukraine of 1990, in which the principle of the state exclusive right to land ownership was reproduced in a concealed way from the Decree *On Land* by the Society of People's Deputies of 1917, now in the Law of Ukraine *On Types of Land Ownership* it was established that land ownership in Ukraine can be of three types: state, collective and private. Besides it was specified in the above Law that the three types of ownership are equal. The standard of this Law was also reproduced in Article 3 of the Land Code of Ukraine.

Apart from the standard on right to land ownership, the legislation of Ukraine has a large number of standards which regulate permanent or temporary use of land parcels (including land leasing). The Land Code of Ukraine also makes provisions for standards dealing with compensation of damages of land owners and land users, with control of land use and the procedure for settling land disputes. Provisions are also made for responsibilities for land legal

framework infringements.

The analysis that I conducted of the regulations of land legal framework and their practical implementation by the entrepreneurs in Kiev and other cities of Ukraine gives me confidence to claim that the standards of existing laws now are mostly declarative and in practical life provide no possibility for entrepreneurs to purchase a land parcel as their property unless there is a house or any other structure on it. Standards of land legislation are in many respects in variance with the real interests of entrepreneurs who are willing to buy land for developing their business activities. The above standards sometimes contradict other laws on entrepreneur activity.

The Laws of Ukraine *On Entrepreneur Activities*, *On Enterprises in Ukraine*, and *On Economic Partnerships* make provisions for businessmen to carry out activities authorized by the legislation, to freely choose their sphere of activity, to involve and use material and technical, financial, natural and any other types of resources whose usage is not prohibited or limited by the current legislation. As a rule, most of the laws and other standard acts in the sphere of entrepreneur activity make provisions for realizing a free choice activity. As far as the legal framework for land, its standards do not provide juridical basis for free entrepreneur activity in the existing conditions, particularly in bigger towns and other population centers. This can be accounted for by reasons of both objective and subjective character. In spite of Article 3 of the Land Code of Ukraine which proclaims the equality of the three types of ownership, in practical life there exists for the entrepreneurs the principle of exclusive right of

the state to land. This means even today that the state remains unified as the only owner of the major categories of land, represented by central and local organs of power and management. Therefore, an entrepreneur seeking to obtain (purchase) a land parcel and having no other option is compelled to apply to local or higher organs of power asking for a land parcel to be provided for his own usage, as it is stipulated by the law.

In accordance with Article 19 in the Land Code of Ukraine, land parcels are provided by way of alienation. The procedure to obtain the land parcel takes a long in time and is complicated as to its content. Thus, enterprises, organizations or individuals looking for a land parcel address their solicitation (in the case of individuals, with an application) to the local Rada of People's Deputies, which is authorized to alienate land. In those cases when land parcels are to be granted by the Supreme Rada of Ukraine, the solicitation will be submitted to the regional, Kiev and Sevastopol City Radas of People's Deputies. Attached to the solicitation will be such necessary documents as: a copy of the general plan of construction or any other graphical materials to substantiate the dimensions of the site to be alienated, title list, a document specifying the financing plans, the project of reclaiming the land, and also other materials. Then the respective Rada of People's Deputies will consider the solicitation for [approximately] a month and will come with the approval for the project for alienation of the land parcel. Tiresome negotiations and approvals will follow between the land owners and land users, with the local Rada of People's Deputies and agencies dealing with sanitary and environmental protection, architecture institutes and other state structures as the case may be. As a result, it takes much time, effort and financial means to go from preliminary coordination of the location

and dimensions of the land parcel until actual alienation on location and obtaining all the necessary documents. Taking into account the current financial position in Ukraine, with the high inflation rate, we can conclude that the procedure of land parcel alienation as envisaged by current legislation brings about only losses to entrepreneurs-investors. For businessmen in Ukraine as well as for foreign investors it is obvious now that it is easier to construct a large building rather than to obtain a land parcel. I think the procedure for land parcel grants existing today is a serious obstacle for a rapid and effective development of entrepreneur activity in Ukraine, and this situation will remain until comprehensive privatization of land is carried out and unless land markets will come into being.

To be objective, it is impossible not to mention that the acting laws of Ukraine contain some minor premises giving ground for denationalization and privatization of land plots. The Land Law of Ukraine in particular contains some norms regulating the transfer of land to persons or juridical subjects in private or collective ownership. The Law also provides that not all the Ukrainian land categories can be subject to denationalization and privatization. Privatization is limited to farming lands and those of community settlements (towns, urban-type communities, villages). As to the lands of industry, transportation, communication, defense, environmental protection, sanitation, recreation, historical and cultural purpose, and forest and water resources, according to Article 4 of the Land Code of Ukraine, they are, with a few exceptions, exclusively objects of state property and cannot be privatized.

Not to touch upon the farming lands, I want to note that at the present time, according to

the acting land legislation and other normative acts, only those land plots can be privatized in the community settlements of Ukraine which were allotted to the people for construction, within the stipulated limits, of individual houses, garages and summer cottages. Thus, the land limits set up for construction of a house and other buildings needed for its maintenance should not exceed 0.1 hectare in town or 0.15 hectare in an urban-type community. 0.25 hectare intages should not exceed 0.1 hectare and [there should not be] more than 0.01 hectare for construction of an individual garage. It is also possible to transfer to private ownership the plots of land which were acquired for the above mentioned purposes by concluding civil right transactions about the immovable property that was on these plots of land, or there may be other grounds provided by the legislation. By "other grounds," we mean that the residences and other buildings on the land plots may have been inherited or received as part of the property of the spouse.

There is a provision that the local Radas of People's Deputies can, by its decision, allocate to people's private ownership plots of land for households. These plots of land should not exceed 0.6 hectares and must be within the boundaries of the settlement. As to the other lands that are within the boundaries of the settlement, according to the acting legislation, they are under the jurisdiction of Local Radas of People's Deputies and are exclusively the property of the government, and can be allocated only for use. This means that the privatization of land plots in Ukraine, according to the Decree of the Cabinet of Ministers of Ukraine, is of a limited character and has not yet become a universal process. It does not affect business relations and market development in the Ukrainian economy. Therefore, the land plots that are within the

boundaries of settlements may be allocated only for permanent use by housing, housing construction and summer cottage construction cooperatives. The Law permits using farm lands as arable lands of collective property, but it does not provide such a form of ownership for the lands within the boundaries of the settlements. These lands can be used only for collective orchards.

The industrial structures (economic associations, enterprises, companies, firms) set up on the basis of collective ownership do not enjoy the right to receive land plots in their ownership.

Having considered some of the norms of land legislation, we can come to the conclusion that only people's individual plots of land that are within the boundaries of the settlements, and, as an exception, those of collective orchards cooperatives, are subject to privatization.

Other subjects of market relations, including entrepreneurs, can have plots of land only for use. This does not properly guarantee protection of finances, property, land and other rights of the subjects of economic activity in various fields of economy.

It is quite natural that such an approach to privatization of the lands that are within the boundaries of settlements restricts the entrepreneurs and does not create good conditions for development of the land market in Ukraine. Moreover, the acting land legislation in Ukraine contains provisions which impede development of market relations in the use of land, both

around settlements and other categories.

Besides the already considered principle of the exclusive right to land ownership, it is also possible to speak about another principle that gives legal provision to use the plots of land for special purposes (Articles 2, 6, 7, 30, 40, 56, 57, 66, 67, and others). The essence of this principle is that plots of land can be allocated (purchased) as property to be used only for purposes indicated in the law.

The named Articles of the Land Code practically contradict the norms of the *Law On Enterprise*. Thus, for example, Article 6 of the Land Code of Ukraine provides that citizens of Ukraine have the right to privatize plots of land for the following purposes:

- Individual farms
- Individual peasant households
- Building a living house and subsidiary building (individual households)
- Orchards, summer cottage and garage construction.

Individual citizens cannot acquire or purchase plots of land for other purposes. Such

plots of land can be allotted to individuals only for use. The strictly purposeful use of land, provided by the law, limits the rights of the landowner. Thus, for example, when the right in property (house and other buildings) will transfer to another owner, the plot of land will be automatically transferred too, and with it the purposeful use of land, which, according to the Law, cannot be changed.

If the new owner of the immovables (house, buildings, constructions) would like to use the acquired land for other than the stipulated purpose, he will have to appeal to the Local Rada of People's Deputies that this plot of land be given to him as an allotment. This provision of the Law is at least not logical and consistent, and in some cases it becomes absurd. However, it is necessary to note that there is only one condition under which the entrepreneur can become an owner of a land plot, and this is when he acquires the right to ownership of the buildings and constructions.

A rather weighty obstacle on the way to privatization and development of the land market is the fact that Ukraine has practically no legislation that would regulate land privatization civil right transactions. The Decree of the Cabinet of Ministers of Ukraine "*On Privatization of Land Plots*" suspends the action of the second part of Article 23 of the Land Code of Ukraine concerning purchase-and-sell of privatized land plots. It is established, in particular, that the citizens of Ukraine have the right to sell the land plots that are in their private ownership or alienate them in some other ways without the right to change the stated purpose of the land.

The buy-and-sell transaction agreement should be certified by the notary office and is to be registered in the village, urban-type community, or a town Rada of People's Deputies. As to the mechanism of land plots alienation, it is non-existent in the legislation of Ukraine.

The legislation of Ukraine provides more profound regulation of mortgaging land plots. According to Article 31 of the Law of Ukraine *On Security*, the property bound with land (buildings, constructions, apartments, enterprises and their structural units) as complete property complexes and other things which are qualified by Law as immovables can be the objects of mortgage. According to part two of the given Article, the plots of land that are in private ownership, as well as perennial plantings, can be the objects of mortgage, too.

Proceeding from the content of this norm, it is possible to come to the conclusion that mortgage is of a limited character and concerns only individuals who privatize the plots of land. As to the entrepreneurs, the land security law does not pass on to them. Besides, the mortgage or other land banks are non-existent yet in Ukraine.

Proceeding from the above consideration, we can come to the conclusion that at present there is no proper organization and law mechanism in Ukraine that would secure effective realization by enterprise subjects the right to private ownership of land plots and to use them in their own way for production, economic and financial activity.

The legislation that is now in force does not create equal conditions for individual and

juridical persons to develop their land ownership relations. It ensures only limited privatization of land and impedes in various legal forms the activity of entrepreneurs. Therefore, we suggest that a new concept of the right to private ownership of land in Ukraine be worked out under the conditions of formation and development of market relations. We also suggest that a new Land Code of Ukraine be adopted.

Urban Development and Land Privatization

By

V. Semenov

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Disintegration of the USSR has brought about irregularities in economic and spiritual ties and in a number of cases resulted in confrontation of former union republics. The instability of the political situation, optional character of relationship agreements, and the rapture of a once unified and strong economic mechanism have reduced the economic complex of former fraternal republics. These processes have dramatically changed the procedure, mechanism and volume of investments into urban development which have significantly influenced the development of the cities. For all that, urban development factors, whose parameters had been previously envisaged as a basis for calculating master plans, have lost their relevance.

The attitude of industrial (more than 500 major industrial enterprises) and scientific potential has also changed. As a result, projected capacities of the civil engineering industry were not put into operation in time. The program of priority construction in the city was never carried out, either, as hazardous productions and enterprises were not transferred with the aim of creating better environmental conditions and improving the ecology, etc. Such major governmental programs as the "Food Program" and "Housing For The Year 2000" were not realized, nor was a special decree by the former USSR Council of Ministers "On Measures of

Urban Development in the City of Kharkiv," No. 226, dated October 1986, which wasn't even begun.

At the same time, arbitrarily chosen development directions and also former management systems turned out to be faulty. Therefore, there appeared a necessity to modernize the existing system which had proved to be an ineffective structure.

That is why the sprouts of new economic and entrepreneur structures cannot grow in a momentum under conditions of hastily adopted laws and decrees and absence of guarantees for investments into capital construction. Besides, since the system of adopting the laws at the highest level is far from perfect, it cannot provide smooth and regular urban development. Moreover, discrepancies in details of privatization decrees for land and housing and for investments unfortunately can cause the most serious destabilization. For example, the existing city planning structure does not stipulate a transfer of part of city territory into private ownership, since the land parcels with individual houses on them differ a great deal from each other. Thus, some residential districts due to certain objective reasons will have to be functionally restructured or renovated, or else they are the territories to be used for infrastructure development. Besides, adjacent parcels to houses vary in size. They differ in terms of provision by engineering infrastructures; they are located in zones having different levels of social service provision, etc. Last, but not least, houses and auxiliary objects on these [land] parcels vary in terms of comfort or, on the contrary, shabbiness.

Taking into account the existing situation in urban development, incongruity in the intensity of the city infrastructure development with building in territories, the unrealistic character of percentage ratio between territories prone to reconstruction and territories of new construction adopted by the Master Plan, and also the absence of a clear-cut system or urban development management, it is imperative to urgently modify the existing urban development documentation. The concept of the city urban development program should contain provisions to correct or to work out new documentation. The concept will formulate both tactical and strategic directions in urban development which are being built up in social and economic situations.

Tactical directions include:

- Valuation of the fundamentals of the Master Plan of the city from the viewpoint of their practical implementation;
- Collection of initial data for developing immediate programs for allocating housing construction with projects providing all types of services;
- Solution of problems dealing with preparation of territories for housing construction to be supplemented by engineering infrastructure;

- Selecting types of housing and volumes of production with due regard to capacities of the civil engineering and construction complex.

Strategic directions of the Concept include:

- Creation of the urban development management system, taking into consideration vital components such as urban development design, architectural and artistic environmental solutions, investments, engineering support, historical legacy -- all these components make up Kharkiv's historical, economic and social-cultural peculiarities.
- Development of specific planning documents (schemes), which are part of city development and reflect the condition of agencies providing the city's survival.

For all that, we have to consider a number of factors and to urgently carry out a number of experiments. It is common knowledge that neither flat plane projecting on the drawing board nor 3-dimensional projecting meet today's requirements. That's why all plane elements should be brought to a thoroughly contemplated diplomatic balance. In modern designing solutions, it is not only merely space connections which exert influence; there appear some factors which make the look of the city unique. Genuine harmony of the city is based on these functions of the society. None of these functions, including technical and industrial ones, should dominate over or on the account of the other ones. Technical and industrial aspects of urban development

should not hamper the development of urban construction. On the contrary, it should encourage it. Therefore, it is essential to proceed from static conditions to a free natural balance.

In elaborating the concept of a comprehensive urban development program (local parcel inclusive), it is important to employ the methods of participating designing, i.e., projecting how all persons concerned would be involved -- first of all consumers-to-be, then customers and maintenance staff. In other words, designing should not be done by just professionally "architectural" or "urban development" types.

Professionals can participate as experts or advisors, and they will help avoid many a problem in coordination, realization, usage and consumption of products resulting from conceptual and programming designing research and techniques. The most important step would be games, in which participants would represent all professional spheres contributing to the city's survival. This approach will contribute to setting up a monitoring research service to manage urban development in Kharkiv, which will be charged with elaborating the contents, goals, projects and programs of urban and regional development by instituting new poli-professional and social-cultural practices in close cooperation with consumers, customers, sponsors, public funds holders, entrepreneurs, etc.

The most serious attention should be given to the experiment in attracting investments into civil engineering combined with land privatization. Various methods of housing construction followed by land privatization can reasonably be applied. For land parcels with or

without major demolition, or those with or without engineering infrastructure. To all appearances, it would be instrumental to charge some five to six categories of customers with the right to construction: a private individual, company with limited liability, small enterprise, joint venture with foreign participation and foreign investors. Such a project should possibly be supplemented by governmental documents. Therefore, urban developers and urban development managers have to unite their efforts and to work out at least three documents:

- An urban development program supported by standard documents at possibly the regional level

- A system of urban development management

- Recommendations aimed at attracting investments into urban development based on land legislation and the law on privatization.

Due consideration should be given to psychology of the investor. The majority of foreign and domestic commercial structures would like to have their capital investments guaranteed. Here there appears a paradoxical situation, when the investor invests his own financial means while no one's property including the land receive official services. It is true the land belongs to the people, but then the land should become a property having a certain cost. When transferring it for construction purposes, the city should simultaneously transfer its right

to ownership for one price or another. City engineering services dealing with laying down communication and power networks to construction sites must be informed of the price per one hectare of territory equipped with engineering networks. Today, nobody knows it. Only technical conditions based on a subjective approach can be offered. This results in delays in decision-making on municipal project design and, as a final result, lack of confidence on the part of the prospective client -- city authorities.

Therefore, if we are looking for drastic changes in urban development and for attracting investments from absolutely new sources, it is imperative to intensify efforts in the above directions. The city of Kharkiv has been involved in this type of activity for some time now. The analysis has been made of the city Master Plan, and evaluation of land costs for urban development was carried out. Foreign experience in monitoring city development was scrutinized, and fundamental techniques have been designed to apply to new types of housing as well as to new products of the civil engineering industry.

The most serious job is to work out the urban development cadastre. The municipality has made a decision to approve a group of specialists that will be in charge of working out the concept of the urban development program. We expect national funding support in conducting social and urban development experiments, supplemented by monitoring, which will facilitate finding the best solutions in the situations to come. Experiments should be accomplished by independent expertise and technical assistance.

It is essential that experiments should be conducted at both national and regional levels, including games and testing situations with experts from both NIS states and foreign countries participating, followed by an analysis of the results and elaboration of methods, standards and recommendations. Drawing up social projects, concepts and programs will bring about qualitative reforms in all stages of social sphere development.

Relevant Problems Of Urban Development in the Lviv Region

By

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The urban development situation now prevalent in this region is typical of the whole former Soviet Union. Development of the population centers could never fit in the Procrustean bed of our Master plans, whose design was always based on the method of what is known as "labor balance". But life had its own record of the development of our cities and villages. People had to wait for 15 to 20 years to obtain housing whose quality could not compare with the standards accepted elsewhere in the world -- no adequate water supply, sewage, heat and gas supply, electric power and a shorter waiting list for having residential telephone problems fixed.

Let alone architecture! Dull multi-storied panel-type boxes of inexpressive architecture, closely surrounded by sad industrial enterprises of equally inexpressive architecture whose emissions into the atmosphere by far exceeding all permissible sanitary standards. [There was an] absence of an efficient public transportation system, normal and accessible for people every day, and social trading and medical services. Architectural landmarks were neglected and existed in horrible conditions (one could well wonder how these landmarks survived at all). This is a typical picture of the residential center we are used to.

The advent of new people to power gives hope for improving the situation. A number of laws were adopted which guard the interests of a man as an individual. Among them one will find the new Land Code of Ukraine, the Law on Property, the Law on Local Radas of People's Deputies and the Law on the Basics of Urban Development, etc.

However a number of Articles in those laws brought about still greater chaos in our urban development. In the first place there is no mechanism for regulating land relations, for solving the problems of location of projects vital for the survival of our population centers as well as engineering, transportation and communications.

Belonging to the same category of problems is the right to land ownership, which has virtually become the right of "Veto" to any attempts to develop the land and to furnish at least some traces of organizational approach. This is especially obvious in the case of villages, where absence of timely advice by a qualified architect resulted in a situation where, having practically unlimited expanses of land, they cannot find a site for constructing a new house because land parcels had been provided to farmers for kitchen gardens.

Such a situation has occurred because according to Chapter 78 of the Land Code of Ukraine (Land of Population Centers), it is only villages which can own the land lying beyond their boundaries (Article 65), while towns and townships own the land which is within the limits of the existing habitation area (Articles, 63, 64). Besides, land parcels within towns and townships boundaries, being under the jurisdiction of local rural radas, cannot be used for

development of those towns and townships without the consent of the respective rural rada of people's deputies (paragraph 4 or Article 63 of the Land Cod of Ukraine).

Item 1 of Article 12 and Items 1 and 2 of Article 132 of the Land Code of Ukraine, dealing with the competence of district and regional radas in regulating land relations, particularly in land allocation, are not in effect either because of Article 31 of the Land Code of Ukraine, according to which conveyance of land for state and public use can be carried out only with the permission of the landowner, i.e. the village rada of people's deputies. The same applies to Article 18 (paragraph 3 and 4).

Article 33 of the Land Code of Ukraine should be treated separately. It prohibits alienation of particularly valuable fertile land as well as land with natural, historical and cultural objects on it. Categorically formulated, this article in many cases reduces a township's vitality; therefore, it should be modified to comply with the provisions of Article 32 of the Land Code of Ukraine, which determines that a special process of land conveyance will be permitted only as an exception following the decision of the Supreme Rada of Ukraine.

The Land Code of Ukraine and the Decree of the Supreme Rada of Ukraine dated March 18, 1992 (Number 220-II) "On Speeding Up Land Reform and Land Privatization" do not define a concrete procedure and mechanism of alienation of land belonging to the local (rural) Rada for state and public use if there is no consent of the local radas. This makes it impossible to solve problems of land development such as road construction, laying down engineering

communications, construction of sewage purification installations, water intakes, setting up of garbage sites, and other communal projects, including construction of blocks of low-rise housing for urban people who are on the town priority lists and are willing to be accommodated in the rural areas. Such a situation leads to violations in urban development and investment policy and gives rise to conflicts with the local population.

We suggest that the state administration should be given the right to alienate land for the above purposes without the landowner's or land-user's consent, complying with the provisions of Articles 48 and 52 of the Land Code of Ukraine "On Property" dealing with compensation claims and awarding damages.

At the same time the Law of Ukraine "On the President's Representative in Ukraine" (Article 7) and "Regulations on Local State Administration" (Article 26) state that neither the President's representative in Ukraine nor the local state administration have the right to solve problems which are within the competence of local or regional self-governments. If the decision of the Head of the Executive Committee of the rural, township or city rada, or that of the Rada Executive Committee are found to be in variance with the power delegated to them, the President's representative can only submit a representation for consideration by the local rada to relieve the Head of the Executive Committee of his post or dismiss the Executive Committee (Article 27, paragraphs 1, 2, and 3 of the "Regulations"). For all that, no procedure of interaction is envisioned between local state administration and the rada of people's deputies, thus heads of administrations possess no means to influence local Radas whereas court will not

commence a suit against a Rada of People's Deputies. Therefore, we hold it expedient to make proper amendments to the adopted legislative acts which would enable local state administrations to exercise their duties properly.

Besides, under the Law of the Ukrainian SSR "On Local Soviets of People's Deputies of the Ukrainian SSR and Self-Government" (Section 3, Article 37, Item 9) regional radas were granted the right to introduce legal initiatives into the Supreme Rada of Ukraine. Following the amendments to this Law (which were approved by the Supreme Rada of Ukraine on March 27, 1992), regional radas are deprived of the above right to introduce legal initiatives. Thus, the possibility for the radas of people's deputies to affect the law-making process in Ukraine is practically ruled out.

To preserve the legal status of radas, we would suggest that they write to introduce legislative initiatives into the Supreme Rada by the regional rada of people's deputies [that regional radas] be restored.

Herewith is a short list of but a few facts of conflicts with local radas which were not resolved in the legitimate way:

1. Supreme Rada of Ukraine regulations on land disposition for individual construction and kitchen gardens to residents of towns and population center of Lviv, Drohobich, Truskavets, Homslav, Sambir, etc. (Number 2200-XII dated March 18, 1992). were fully neglected by all

local radas of the basic level.

2. The town Rada of Stebnik in the Drohobich District has blocked laying down the sewage collector from Truskavets to Drohobich purification installations.
3. The rural Rada of the village of Borisovychy in the Poostomitivsky District has blocked the expansion of the Lviv purification system.
4. The rural Rada of the village of Gribovychy, Zhovkivsky District has prohibited the utilization of Lviv solid wastes site.
5. The rural Rada of Kahujiv and the District Rada of Mikolajiv have blocked the design of the Lviv site for solid waste.
6. The rural Rada of Vishianka and the district Rada of Mosisk have blocked the design of the Lviv site for solid waster.
7. Three rural radas of the Zolochivsk District have blocked the construction and operation of the Upper-Buzk water intake for the city of Lviv.
- (8) The rural Rada of Yasinska village of the Yavoriv District has blocked utilization of the site for radioactive waste storage near Buda village.

(9) The rural Radas of Kavsko and Vivnia villages and the Strij District Rada have blocked the solution to utilize the waste storage site for the Stebnikiv potassium production factory.

The Law of Ukraine "Land Rent" put into effect on July 1, 1992 (Article 6) envisages introduction of average tax-rates on plots of land, while the tax on land parcels used for housing stock, garage-building, summer cottage-building, orchard cooperatives, individual garages and dachas is three percent of the land tax-rate. Since minimum land tax-rates are established without taking into account inflation processes, the real land cost cannot be fixed. This is an important element in the regulation of land use and, at the same time, budget tax proceeds will be insignificant. It is necessary to improve this situation (a) to make land tax-rates subject to indexation according to yearly inflation and (b) to make all juridical and physical persons pay taxes on plots of land in accordance with fixed rates, without reducing them to three percent as it is stipulated by Article 6, paragraph 3. Besides, it is expedient to differentiate taxes on land parcels in accordance with the methods and forms of land use: industrial, agricultural, or other forms.

We would also point out that land under industrial constructions of any type cannot be considered as agricultural land; therefore, it is necessary to exclude paragraph 1 of Article 6 from the Law, which reads that land under agricultural constructions is referred to as agricultural land.

Section 4 of the above Law provides a list of privileges in land. Rent must be excluded

from the given law, and instead, it is necessary to foresee subsidies to the identified juridical and physical persons for paying land tax. Hence, due financial control should be exercised in this field of land relations.

Since there is no mechanism for leasing and paying for land as well as for trading the land, we cannot use our land, our major asset, only to provide local governments with necessary money for maintenance and proper development of a town or a village, let alone project creation and design documentation.

There is one more reason that contributes to such a state of affairs: we lack a sufficient number of specialists -- experienced architects and planners who would be able to work in these new conditions. On the other hand, there are also a lack of scientifically substantiated means and methods for solving architectural and design problems today.

Another outstanding problem is anarchy in construction and the complete helplessness of local governments in this sphere, because there is no legislation regulating land use, planning, construction, and utilization of projects constructed with clearly defined defects, including penalties for the same. Elaboration has only begun on the laws on state control in urban development, administrative liability of enterprises, entities, organizations and amalgamation for any infringements in construction.

Possible solutions to this situation were worked out in our region:

1. Foremost, to speed up the privatization process and to grant local radas the right to sell land by auctioning instead of allocation to all interested persons, enterprises and organizations.
2. To set up conditions for budget making mostly from funds collected from lease payments for land.
3. To establish a clear-cut system of penalties, provisions in the law on urban development stipulating criminal punishment and administrative penalties, thus expanding the list of outlaw actions which lead to punishment of planning, building and inhabiting [a land parcel], considerably increasing penalty rates for such actions with the minimum penalty of not less than one month minimum salary for an individual and not less than a hundred-fold salary for organizations, institutions and enterprises. This can be done by analogy with the law on urban development in Czechoslovakia.

Financing of project and planning works (elaboration of Master Plans for townships) at the expense of the local budget is not sufficient as it is today because of lack of money at the local radas. It is necessary to make a legislative provision for a definite percentage from national and regional budgets to be allocate for centralized financing of project and planning work.

4. Since we reject the practice of traditional Master Plans, further development of a population center should be carried out in combination with the development of a definite

region. Simultaneously, multi-storied housing will be substituted by one or two-story individual houses to be supplemented by engineering infrastructure, an every day services center, and small-scale educational and medical facilities. Small industrial enterprises using ecologically safe technological processes can be located nearby.

(5) A search is underway for new forms and types of project and design documentation that would provide to local governments an architecture and design service and possibility would handle any specific urban development situation in a more efficient way to better use the land.

**How to Realize the Right to Private Land Ownership
in City Planning in the Capital City of Kiev**

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The legalization of the right to private ownership of land in Ukraine is, undoubtedly, an important step towards the development of a market economy and intensification of land resources utilization. The December 26, 1992 Decree of the Cabinet of Ministers of Ukraine "On Privatization of Land Plots" is the first step in this direction.

As it is known, subject to privatization at this stage are plots of land allotted to persons for individual use as household plots for construction and maintenance of habitable individual houses and other subsidiary buildings, for gardening, for individual dachas, and for garage construction. The area of the lands of this category within the boundaries of Kiev amounts to 45 square kilometers, which is more than 5% of the total territory and over 13% of the territory with buildings on it.

It is obvious that realization of the right to private ownership of land will essentially differ, depending on the parameters and the significance and character of settlement building.

The problems of the capital city of Kiev are essentially acute and most typical of a group of the biggest towns of the country. Here the transfer of land to private ownership entails many difficulties, such as the necessity to solve a number of town planning problems bound up with both the specific properties of the land to be privatized and the development of the city under the conditions of private land ownership.

The first group of problems is caused by the utmost heterogeneity of the townbuilding properties of privatized lands. These problems are most vividly manifested in the largest area of this category of lands - the districts of individual residential buildings, the total area of which exceeds 32 square kilometers, which amounts to more than 70% of all lands potentially fit for privatization in the city.

Three typical groups of individual residential buildings can be distinguished in the districts. First of all, these are territories of former villages, which were engulfed by the city when the building area increased five times. The second group includes the districts built by individual houses during the first post-war years, and the third group - individual residential plots dispersed all over the city that were built at the end of the 19th and the beginning of the 20th centuries.

The typical representatives of the first group are the former villages Zhuliany, Troyestchina, Pozniaky, Osokorky, Tchapayevka, and others. The most typical town building characteristics for them are strongly pronounced chaotic town planning; a very low level of organization of public services; and rather big plots of households, the area of which very often exceeds 3-5 times the limits of the plots of land determined for towns by the Land Code. Here a considerable part of the land is used not only for maintenance of living houses and subsidiary buildings but also for subsidiary farming. In these districts one can find many cases of illegal seizure of land. Many of the buildings here are not legalized.

The characteristic features of the second group, which is represented by such urban villages as Zhovtnevy, Nivky, Peremoga, Karavayevy Datchy, Shevtchenko, Montazhniky, Nivky, DVRS, Bykovnia, and others, are regular planning and a sufficiently high level of engineering construction and organization of public service. In almost all cases the dimensions of the plots of land in these districts correspond to the existing normatives for plots of land for individual buildings and are equal to 0.05 or 0.06 hectare.

The third group, which is the most diverse according to its town planning characteristics, combines the features of both the first and the second groups. This is due to the fact that many of the constituents of these districts were preserved in the town texture as they were located in the zones of limited building because of sanitary and hygienic conditions, relief conditions, presence of dangerous geological processes, and nature and landscape isolation of separate sections from the general mass of townbuilding. The typical representatives of this group are

Sovky, Shirma, Myshelovka, Batyeva Gora, Ateksandrovskaya Slobodka, and others.

Unfortunately, the Decree does not take into consideration the wide spectrum of townbuilding peculiarities considered above. Really, under the diverse conditions formed in separate districts, privatization without corresponding provisions for town planning can result in negative consequences and unjustified violation of the principle of social justice. Thus, the dimensions of the plots of land, transferred to private ownership free of charge, will differ in various districts of the city 1.5 - 2 times. If, in the case of former villages, it is possible to allocate plots of land up to 0.1 hectare, this is practically impossible to do in regular building districts.

The living conditions of the people in the territories of separate districts will be considerably different from the point of view of the possibility to provide them with engineering construction and organization of public service. The residents of chaotically-built districts with irregular planning, located far away from the main engineering and communication networks, will be deprived of essential amenities, because it will be impossible to create here in the near future the engineering infrastructure of required standards, since the cost for its creation, as calculations reveal, will exceed the value of existing housing stock in these districts. In addition the Decree does not take into account such an important factor of townbuilding as the limited possibility to use for housing construction the lands located in the zones of stable unfavorable technogenic and natural influence (in the sanitary protection zones of enterprises, airport and railway noise zones, in the territories endangered by high floods, and in the zones with

dangerous geological processes). Thus, approximately one-third of the residents of Kiev, who have individual houses will be not able to fully realize their right to land private ownership.

There is no doubt that a complex solution of the problems, connected with privatization of land under such diverse conditions, requires a preliminary study of ecological and townplanning conditions. In this connection, an inventory of lands for privatization is being made in order to determine their value and to classify their suitability for townbuilding. Moreover, the normative and legal regulations of the Decree do not sufficiently satisfy both the problems of the privatization process and the problems connected with townbuilding under specific conditions of the Capital.

The practice of solving complex legal, townbuilding, ecological and organizational problems demanded that a city programmed for land privatization be elaborated, and this is what we are working at now. It seems to us that it is expedient to supplement the Decree with some regulations that would take into account Kiev's peculiarities. First, it is necessary to lower the upper limit of land plots for building and maintenance of a house and subsidiary buildings to the level of 0.04-0.06 hectare. Second, it is obvious that, with considerable shortage of territories in Kiev, it is necessary to stop allocating plots of land to private ownership which would be used for individual households - individual farming is, no doubt, not compatible with the status of the capital city. Third, and not less important, it is urgently necessary to determine the mechanism for alienation of the lands that are in excess of the existing norm and to work out the order of allocating them for temporary use until the time

comes for building condensation. This is very urgent for Kiev, as this category of lands in the city amounts to more than 12 square kilometers. In addition it is expedient to supplement the Decree by a regulation limiting privatization of lands not only in the areas subject to aftereffects of the Chernobyl catastrophe but also those zones where housing construction is limited because of sanitation, landscape, and other conditions.

The problems of land privatization cannot be considered out-of-touch with the problems of Kiev development called forth by the need to intensify its capital city functions. This is very essential for the process of creation of the statehood of Ukraine. It is rather essential that a considerable number of projects, formerly absent in Kiev structure, be concentrated in Kiev in the nearest future. This process will inevitably call for great changes in the functional use of its territory, as the development of the territories within the city boundaries is strictly limited by the need to preserve ecological balance and historical environment. Out of 820 square kilometers of total town territory, only 400 square kilometers can be used for townbuilding, and 350 square kilometers out of these have already been built.

The available resources of unimproved town lands, located mostly in the outskirts, far away from the center, will be exhausted in the next 10-12 years with the existing rate of town development. At the same time, the city, to meet the complex functions of the Capital, acutely needs territories close to the center. Thus, to create an infrastructure that would ensure the work of diplomatic missions, establishment of offices, business centers, banks, trade representations, commodity exchanges, hotels, etc., the city will need 5 square kilometers of territory in the next

3-5 years. Besides, to ensure vital activity of the central part of the city, the plans provide for realization of large-scale projects in order to create engineering and transport infrastructure in the already formed building composition.

The main sources to meet the demands for territories were traditionally the lands with small individual houses and lands under collective orchards, located in the zones of town junctions and mains, (on the lines of perspective main roads and communications, on territories to be used for creation of public centers, etc.). These categories of lands are notable for very low utilization of the territory. Thus, the average density of households is not more than 500 square meters of total area per hectare, which is 9-10 times less than in districts with multi-storied buildings. Therefore, utilization of the lands was, until now, considered as temporary - until there is a call to realize new corresponding townbuilding programs to meet the demands of public interests. Therefore, during the last 30 years the Law limited large construction projects on these territories. This is why complex engineering reconstruction of this territory was frozen.

As a result, in 99% of the total housing stock of III-IV degree of fundamentality, more than one third of them are dilapidated, and the number of such is growing. At the same time, it is these lands, as it was mentioned above, that are, according to the Decree, subject to privatization.

It becomes clear, that, if to follow the Decree to the letter, without supplementing it with

corresponding legal acts that take into account the peculiarities of the Capital, this can cause disproportions of city territories developed and thus deteriorate the function of the city as the Capital.

It is evident, that privatization of lands in Kiev and other large cities should be exercised by taking into account the townbuilding properties of separate plots and their planned utilization according to the approved townbuilding project documentation. Indeed, it would be shortsighted to transfer to private ownership land plots whose normative price now, though much reduced, exceeds the cost of the houses and constructions located on them. These lands include, for example, residential plots near the acting Metro stations "Slavutytch", "Osokorky" and others; the lands of Rusanovka orchards, located close to the center of the city, between Sviyatoshino-Brovary and Podol-Voskresiyenka metro lines; the plots under individual garages allocated for temporary use (till the time the projects of the perspective red line mains are to be realized); and the sites, reserved for construction of capital multistoried garages, and others.

We consider that it is essentially important to supplement the Decree with regulations on functional utilization of city lands, which should constitute the main elements of the mechanism for exercising the right to private land ownership. To balance the interests of individuals and those of the city in townbuilding, it is necessary to legalize the priority right of the local governments to purchase, for a normative price, the lands intended by the approved townbuilding documentation for development of settlements or other public needs.

This will allow us not only to exercise a systematic balanced development of the city but also to prevent profiteering on land speculation, traces of which can already be seen.

The first steps of realization of the Decree on privatization testify to the fact that, besides legalization of the process, it is necessary to revise radically a great number of approaches to townbuilding and to normatives and methods, and to revise the composition and content of project documentation on town planning and development.

In a new legal situation, which resulted due to multiple forms of land ownership, it is very important to develop general plans and urban development projects as well as other projects and planning documents to determine with high precision the conditions of urban development in the city, i.e. to bring them down to the level of separate blocks, to their parts, to land plots. Some materials on zoning and on territory planning, created in other countries can be used as prototypes of such documentation.

The problem of integral development of the Capital, interconnected with its agglomeration, occupies a special place in the townbuilding aspects of land privatization. In the nearest future it will be necessary to build in Kiev a new international airport, two marshalling (sorting) yards, new large sewage purification systems, garbage utilization fields, by-pass highways and railways, etc. Tens of thousands of Kievites express their wish to build private cottages close to Kiev. To build all these projects, provided in the approval general plan, it is necessary to alienate approximately 30-35 square kilometers of territory beyond city boundaries.

At the same time, according to the Law of Ukraine, *On Fundamentals of Townbuilding* the lands that are allotted for perspective development of settlements can be used by the owners of the lands, according to the Land Code, to the moment of their alienation and transfer to the townbuilding needs.

In our specific case the vitally important lands for Kiev prospective development belong to more than 30 villages radas. As there is no mechanism for coordination of the aims of city development and the interests of the land owners, the village radas make decisions to allocate Kievreserve lands for collective orchards, construction of dachas, or other capital projects as well as for perennial planting, without taking into account the plans for prospective land utilization.

Thus, for example, 3.5 square kilometers of the territory within the limits of the reserve site for Kiev housing construction are allocated for dachas in the area of the villages Khodosovka and Podgortsy. This is despite the fact that by the Ukrainian Government Decree about the approval of the Kiev General Plan and the project of planning Kiev suburban zones, it was specially stressed that no capital construction and perennial planting should be made on Kiev development reserve sites.

It is not difficult to forecast that, if we go on with land privatization without observing the city planning documentation, we will doom the land owners to worthless capital investments, on the one hand, and, on the other hand, the city will face an essential increase of

spending for alienation of these lands.

Thus, it seems to us that it is expedient to develop the mechanism to make officials responsible for allocation of land plots to private or collective ownership, which are in the territories intended, according to the approved documentation, for prospective development of townbuilding.

The new requirements for creating townbuilding documentation, its approval and implementation will also indirectly promote systematic realization of land privatization in Ukraine.

Land Privatization in Ukraine

By

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I am absolutely unaware of the experience in cadastre valuation and land privatization in the USA. There is practically no experience in this sphere in Ukraine. In my report, I am deliberately not going to refer to any standard or legislative acts of either Ukraine or the United States. I will try to express my own understanding of the problem. In case my points will turn out controversial, they will serve as the subject for discussion. But I really hope I shall be able to introduce some new viewpoints, and thus will contribute to further development of the subject under discussion to the benefit of the parties concerned.

Every land parcel has a certain cost which is made up of the components representing fauna, flora and natural deposits provided by nature plus or minus values due to the anthropogenic activity of man.

For all that, the results of man's allegedly constructive activity can have negative consequences with regard to the land cost. I would suggest to value any land parcel not only from the viewpoint of its size, but as a complexity of a larger number of cost indices.

Number one is, of course, the factor of nature, i.e., the existence of forest stock,

potential possibilities for wild animal hunting and, in the case of water reserves, fishing. Of no less importance are natural deposits -- I mean the opportunity to extract various mineral resources. I would emphasize that this issue is very subjective of involvement of any specific territory into immediate response in terms of extracting natural deposits or growing very productive agricultural crops or vice versa--the organization of natural reserves or national parks.

If we are speaking about a specific valuation of territory which is subject to distribution, selling, privatization, etc., I think we have to consider a number of factors which would facilitate evaluating this territory in the most comprehensive manner. We have to pursue not only the goal of obtaining objective characteristics of the land, but, to a larger extent, to obtain the data about the land's shortcomings -- in other words to contemplate the program of land improvement.

To proceed from theoretical observation to practical implementation, I would suggest the following technique of land valuation. We need quite a wide number of indices. We could confine ourselves to a dozen, but as an ideal this list can be enlarged infinitely. Within reasonable limits this list could concentrate on the most vital indices, though. On the other hand we should not be afraid of the ideal either, because modern computers will facilitate to absorb, systematize and qualitatively process an indefinite plurality of indices. I am proposing the technique as follows:

To determine a number of principle indices for potential valuation of a land parcel or land territory. I would suggest drawing a horizontal cross-section of the territory to be valued. The existing condition of the land parcel or territory today should be reflected by every cross-section. It reflects in the first place land's natural value. Here superficial factors are considered, i.e., vegetation, forest, natural wildlife, water reservoirs respectively rich or poor in fish, as well as the factor of explored or expected natural deposits in the earth's bowels.

In every particular cross-section, the valuation will be done by experts of a particular qualification, i.e., urban developers in the case of habitation zones, engineers of infrastructure, environmentalists, ichthyologists and other specialists of wildlife, geologists for natural deposits, etc.

Since we speak about valuing [land in] the whole country of Ukraine, I would suggest completely different tasks regarding the valuation of land from the viewpoint of land privatization. There are intact territories which can be adjusted for national parks, natural reserves, or, on the contrary, there are potential possibilities for their radical transformation into quarries, mines, or experimental ranges with unpredictable consequences. Along with this there are urbanized territories bearing both positive and negative consequences of anthropogenic activities. Every parcel will be objectively valued in terms of its cost, considering that there is a long list of the above cross-sections.

Cross-sections will be made as per the following indices:

1. Explored or prospective natural deposits.
2. Forest or water resources in combination with valuable vegetable plants and animal world.
3. Absence of existence of habitation and its characteristics.
4. Power supply.
5. Water supply.
6. Sewage system.
7. Gas supply.
8. Radio installations.
9. Transportation service. (The plan is enclosed.)

In the process of collecting information, the extent of provision by every index of infrastructure is qualitatively evaluated, including the degree of development of natural resources. Simultaneously a study is made of saturation of this particular territory with the

engineering service in question as well as its age and availability for further operation.

Every cross-section represents a graphical reflection of this particular branch condition. The obtained data will be entered into the computer. In the future, the computer will be a guideline for taking actions regarding removing shortcomings and providing the best possible service of this particular branch. Therefore, every communal service will be equipped with the program of measures for a certain period of time. Information on the above branches can be recovered from the computer at all times. The best advantage of the proposed approach is the sum total, i.e., the imposition of cross-sections one over another will show the plurality of advantages and disadvantages of any land parcel which objectively reflects the condition today and a perspective for its rapid or gradual improvement. Depending on the existence or absence of definite type of infrastructure, the owner-to-be or investor can be defined easily by natural selection. In case a certain parcel has forest massive, water reservoir, sufficient stock of wildlife or natural deposits, it can be evaluated according to additional criteria.

Concluding my speculations on the issue of valuation and privatization of land in Ukraine, I would suggest that, if my ideas come true, not only objective evaluation of the territory will be obtained, but also ways to improve it. For municipal agencies this is going to be a guidance for completing housing construction and infrastructure, while for individual owners this will be a quantitative estimation of the potential contribution to improve the quality of land and construction.

Having an objective picture of the condition of the land resources, administrative organizations will have an opportunity for to radically improve the State's land parcel. An example is the case when, according to cadastre valuation, the land parcel will prove to be inappropriate for agricultural purposes, but the administration will be able to allot the parcel free for the period of several years to an individual who would be willing to improve the land.. During these years, the lessee will recultivate the land, restore its fertile layer and after that will use the land for a small fee or will return it to the State.

In summary, I would like to emphasize some pertinent problems of land resources usage in the Odessa region. Councils of Ministers of the USSR and Ukraine have duly approved a number of decisions regulating the use of land in 3-kilometer zones of the Black Sea coast. It was prohibited to construct projects having nothing to do with servicing and supplying the resort area. Historically, in this zone there are many residential areas, but new families are not eligible for new housing construction.

Residents of Odessa and other coastal towns have no right to construct their housing in the same zone. Parcels for country-house construction are allotted beyond the 3-kilometer zone. Thus people living in coastal area are practically cut off from the sea. On the other hand some 250 kilometers of coastline in the Odessa region are not used for new resort construction. In fact, there isn't any need for that. I personally think the best land parcels remote from industrial production should be allotted for new resort construction, while the coastal zone adjacent to Odessa and the port of Illichevsk should be allocated for individual cottage and

country-house construction. Moreover, due to anthropogenic activities, this territory cannot be used for resort purposes.

Methods of Land Privatization in the United States and Western Europe

By

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I. Introduction

In the United States and countries of Western Europe, the majority of land ownership is in private hands. These countries predominantly rely on a private land market to supply sufficient sites for houses, apartment buildings, factories, offices, stores, and other privately constructed developments that form the built environment. When privatization of state-owned land occurs, it usually takes place on a case-by-case basis, with one parcel here and one parcel there, rather than on a vast scale involving hundreds or thousands of parcels all at once.

Of course, this was not always the case. At one time, the United States resembled today's Ukraine, with a majority of land under state ownership. But from the late 1700s through the early 1900s, the United States government pursued an aggressive program of privatizing its constantly growing stock of land. Western European countries similarly began with much of their land in a near-monopoly, albeit non-public, form of ownership: the king and his noblemen owned much of the land, and the peasants worked the land for the king and noblemen. But social and industrial revolutions spawned a substantial redistribution of private property rights in land from the nobility to people.

This paper first summarizes the history of one country's efforts at large-scale land privatization. It then presents a description and analysis of the objectives and current methods for privatizing state-owned parcels of land in the United States and Western Europe.

II. Large-Scale Privatization of Land in the United States

The first 150 years of United States' land history is largely a story of the national government gaining possession of land through purchase, military victory, or outright conquest, followed by purposeful efforts to dispose of the majority of this land to farmers, settlers, and businesses, especially railroad companies. Although the particulars of land privatization programs varied over the years, the basic approach remained constant. The government would conduct a survey to determine which land would be available. In many cases, the survey would include a parcelization of the land to be made available for privatization. The government would then hold regional public auctions at which individuals or businesses bidding the most money would obtain the land. These auctions frequently required that a minimum amount (from the seller's point of view, a reserve price) be offered for each hectare. If the highest bid fell below this minimum price, then no winner would be declared and the land would remain available at the minimum price on a first come, first served, basis. As more families moved westward and settled without express permission from the government on state-owned property, their interests became a factor in the privatization process. The national government introduced the so-called "right of preemption," giving settlers a priority right to purchase the land they occupied at a fixed and usually inexpensive price.

How did the United States fare in this large-scale privatization effort? Not surprisingly, the program had its share of problems. Corruption in the auctions and collusion among potential buyers marred the fairness of the process. Some businesses and individuals accumulated larger amounts of land than others, often at concessionary rates, raising serious questions about distribution of wealth and power in the nation. But, flawed as it was, the privatization program constituted a roaring success in one fundamental respect. Large amounts of state-owned land shifted from public to private ownership, thus helping to establish and fortify viable private land markets appropriate for the buying, selling, and developing of land.

Today, close to sixty percent of all land in the United States is privately owned. That private land market supplies the sites to satisfy virtually all housing, office, industrial, retail, and agricultural needs of the country. Ownership of the rest of the land is divided among the several levels of government and Native American nations. The national government owns about 35%, the lower levels (state, county, city) about 6%, and Native Americans (Indian tribes) about 2%. Much of the nationally owned stock is natural resource land (forests, sub-surface mineral deposits, grazing pastures) and national parks. Some of this land is leased at statutorily determined fees to private businesses for logging, mining, and grazing activities. Much of the state, county, and city land is devoted to streets, infrastructure facilities, government buildings, and regional and municipal parks.

III. Objectives of Recent Land Privatization Activities in the United States and Western Europe

In those countries where almost all land is in state ownership, the purpose of land privatization might be to generate the critical mass of privately owned land essential for the functioning of private real estate markets. Because most land in the United States and Western Europe is already held in private ownership, however, and much of the government-owned land is already devoted to necessary public purposes, land privatization tends to occur on a site-specific parcel-by-parcel, rather than a mass disposition, basis. At national, regional, and local levels, governments typically privatize land for four reasons.

First, governments no longer need the land for public purposes. For example, the city of Boston owns a number of car parking garages. In the 1980s, the city government concluded that several of its garages required expensive rehabilitation if they were to continue in use, and that the cost of such an effort was not justified by the benefits. Thus, the city declared the garages and the land underneath them surplus public property, and the garages and underlying land were sold to private developers. The private developers in turn demolished the garages and constructed new private buildings.

Second, governments want to procure money for their ongoing operations. Governments must pay for their annual operating expenses and capital infrastructure investments. Because land is a valuable asset, its sale to the private sector can generate

substantial revenues to supplement the traditional stream of tax collections, fees and charges, and intergovernmental transfers. It should be noted, however, that the sale of publicly-owned land solely to generate revenue for government operations may be a bad public policy. If the money received is used to pay for annual operating expenses, then government is using a permanent asset to cover annual expenses, a practice that would violate accepted municipal finance accounting practices.

Third, governments hope to accomplish economic or social objectives that serve the public interest. A city may want to spur development of a new commercial complex near the city center that will create new jobs and economic vitality for city residents. Thus, the city sells or leases a strategically located parcel of land to a private developer, who in turn agrees to construct the desired project. In another case, a city may make land available at an inexpensive price to a private developer who agrees to build housing for poor families.

Fourth, governments may need to mobilize capacities possessed by the private sector and absent in the government sector. These capacities may include entrepreneurial skills, knowledge of the marketplace, and private capital. To this end, the government may offer land as an enticement for gaining the participation, and thus the capacities, of the private sector.

IV. Methods of Land Privatization in the United States and Western Europe

Assume that a local government wants to privatize a 10-hectare parcel of land it owns

near the center of the city. Governments traditionally use one of three methods: **auction**, **request for proposal (RFP)**, or **negotiated deal**. This paper will address the first two methods.

A. Sale Versus Lease

No matter what method is adopted, however, the government faces the preliminary decision whether to sell outright the land into private ownership of the fee simple absolute, or whether to employ a long-term lease (50 years, 99 years, 999 years, etc.), maintaining nominal public ownership while allowing for full private development (see paper by William Doebele). A lease of sufficient length, at least 50, preferably 99 years or more, made expressly transferable in the private market by the lessee to other private parties, will generate financial offers from the private sector that are not dissimilar in magnitude from those tendered for the fee simple absolute. The decision to employ a lease turns on the government's interest in maintaining nominal public ownership, in participating in the financial gains from the project, and in exercising greater control over the project than that normally afforded by disposition of the fee simple absolute. Cities frequently employ land leases, sometimes called ground leases, when the development projects proposed for the land are large, raise sensitive political issues, and are designed to achieve complex economic or social objectives. Leases, however, lack the perception of the same degree of market liquidity provided by fee simple absolute ownership.

B. Auction Method

The auction method of land privatization relies on a competitive bidding process in which the highest responsible offer prevails. The usual auction has bidders submitting sealed written bids by a certain date. Sometimes, however, the auction involves an open meeting at which private persons bid openly and orally against one another until a highest bidder prevails. In either case, the auction includes five steps.

First, the government announces that the parcel is for sale or lease. Depending on the type of parcel, the government places an advertisement in an appropriate newspaper. If the parcel would potentially arouse national or international attention, the announcement might be placed in such newspapers of international circulation as the *Wall Street Journal* or the *Financial Times*. If the parcel is likely to interest only local persons or juridical entities, the announcement would be limited to local newspapers. The advertisement describes the property and its location, states that sealed bids are due by a specific date at a specific place, tells when and where the bids will be unsealed, indicates where more information may be obtained, and declares that the government is not obligated to choose a winner from among the bids. If the auction is planned as an event in which bidders verbally bid against one another, the advertisement will state the place and time of such a meeting.

Second, interested private parties analyze the opportunity to purchase or lease the land. They usually visit the site for a visual inspection, obtain relevant information on market,

infrastructure, environmental, regulatory, legal, and other important constraints, calculate the financial value of the parcel based on potential uses, and prepare and submit sealed bids.

Third, the government opens and reviews the sealed bids within a transparent process. The government can guarantee the integrity of its effort by demonstrating that the bids are indeed sealed until the time they are opened, that they are all opened at the same time, and that the opened bids are available for immediate public inspection. If the bidding process involves an open verbal auction, then people gather at the announced date and time in a room and openly bid against one another. The event is overseen by a professional auctioneer, who keeps the bidding moving until only one party is left. It is essential that this process is transparent

Fourth, the "highest responsible bidder" wins. By "responsible" is meant that the prevailing party is not only genuinely interested in obtaining the property, but has the financial means to convert the promise represented by the bid into actual payment of money. The "responsible" criterion may be satisfied by requiring the bidder to submit along with its bid its "bonafides" (certified financial statements, bank statements) proving financial capability or by imposing a small fee ("earnest" money) for participation in the auction itself. Occasionally, governments will set a "reserve" price for the land. If bids do not exceed the reserve price, then the land will not be sold or leased. In order to determine a reserve price, governments must employ real estate financial analysis techniques to calculate a market value for the site.

Fifth, the government and prevailing private party sign a sales or lease agreement.

Because the price has already been determined and there are no other conditions to be met, there is usually little or no negotiation between the government and winning bidder. The deal is consummated and the land is transferred from public to private ownership or control.

C. Request for Proposal (RFP) Method

Unlike the auction method, where the highest bid automatically secures acquisition of the parcel, the RFP method involves a more elaborate, discretionary process. Unlike the auction, where the amount offered for the land, standing alone, is the dispositive factor for deciding who obtains the site, the RFP method asks potential purchasers to respond affirmatively to the city's ambitions for the site. In this way, RFPs are normally employed when government seeks to promote a specific development project or wants to maintain greater control over what is constructed. The RFP method involves four basic steps.

First, the Government makes a public request, inviting private parties to submit proposals for the acquisition and development of the site in question. In addition to the information provided in the newspaper advertisement for an auction, the advertisement informs interested parties how they may obtain additional information about the city's desires for the site. This additional information, frequently packaged as a brochure or report several pages in length (known by some as the "developer's kit") is a collection of written and visual materials describing in detail what the city wants. The developer's kit or RFP describes what the city has in mind and what the developer needs to include in his or her proposal to the local government.

The city usually charges a set fee for participation in the RFP process to pay for the administrative costs incurred by the city's review of all submissions. Sometimes, RFPs are preceded by "Requests For Qualifications" (RFQs), asking that developers interested in obtaining the site submit their qualifications for doing the desired work. The city reviews these qualifications and chooses several developers who are then allowed to compete in the RFP process.

RFPs come in two basic varieties: **with and without conditions**. RFPs are occasionally issued without conditions, effectively as open-ended requests to private developers to make suggestions about what should be done with the site. The far more common variety, **RFPs with conditions**, expressly announce conditions related to the development of the site that potential acquirers must meet in preparing their proposals. Typical conditions relate to the type of development desired on the site, especially with regard to use (residential, commercial, industrial, etc.), density (number of square meters, apartment units, etc.), design (height of buildings, placement on the site, materials and colors, architectural style, etc.), infrastructure (roads, water and sewer), open space (parks, public spaces), and social and economic objectives (housing for poor families, retail activities, etc.). The conditions are expressed either as **requirements** or **preferences**. For example, a requirement condition may state that the proposed development must include 20 units of housing, 10 units of which are designated for poor families; water and sewer connections to the main system; a small park; and that the building must not exceed 20 square meters in height. A preference condition may state that proposals comprising 20 units of housing, with 10 units set aside for poor families, will receive preference in the government's process for selecting a winner. In addition, conditions may be

expressed **quantitatively** or **qualitatively**. For example, the project must not exceed 20 square meters in height (quantitative), or the project must be in character with the existing scale of the surrounding structures (qualitative).

RFP conditions are normally written by the local government's city planners (city architects), frequently with input from interested members of the public and sometimes with technical assistance from professional private planning consultants. In order to formulate such conditions, a local government must define the **public goals** it hopes to achieve through disposition of the site, generate and assess the feasibility and desirability of **alternative** development scenarios that embody such goals, and choose a **preferred development scenario**. The process is iterative rather than linear, meaning that goal determination may be altered by subsequent alternatives analysis.

For example, a city wants to revitalize its central business district to create new jobs and a more attractive physical environment. To accomplish this goal, the city preliminarily decides to sell or lease a large vacant parcel for a new commercial civic center comprising a meeting convention hall, hotel, office building, stores, and parking. This development scenario must be tested for market feasibility and site compatibility. Is there a market demand for the proposed civic center, what impact will it have on the surrounding neighborhood? Is the existing water and sewer infrastructure and road system adequate? What about the loss of open space and shadows cast on neighboring buildings? . . . and so forth.

The generation of alternative development scenarios -- a retail commercial center with a

10-story versus a [one] story building, a housing development with 10 units for poor families versus 20 units for poor families -- allows the planners to test the proposal, to ask "what if" questions: what will happen to the economic viability of a commercial center if we limit height to 10 stories? What will happen to the selling price of the land if we require inclusion of 20 units of housing? Each scenario should be examined for its social, physical and economic impacts. The planners should also compare these development scenarios with the "highest and best use" development of the site, defined as what the private market would do with it subject only to necessary and normal government regulations. Because the highest and best use development would yield the highest market value, and therefore the maximum revenue to the city upon sale or lease, it is important to understand how the RFP's conditions may affect the amount to be received from the private developer.

Second, the developer prepares its proposal for submission to the local government.

The typical proposal contains text describing in detail the proposed project, photographs of the site area, maps and land-use plans siting the proposed project, architectural elevations and sketches, financial proformas, and descriptions of the backgrounds of the key members of the development team. The proposal will also state the amount of money offered for the site. Some proposals are perfunctory, while others are very detailed and are very costly to prepare.

Third, the local government reviews the proposals and makes a tentative designation of the winner. Local governments sometimes include members of the public and outside experts on the reviewing committee, and many if not all of the meetings are open to the public.

The proposals are evaluated and ranked according to many disparate criteria. One proposal, for example, might offer the greatest revenue to the city, while another may embody a more attractive design. It is the job of the reviewing committee to compare these apples and oranges and make a choice. That choice may result in a winning lower financial bid. Occasionally, two or more finalists are chosen and asked to resubmit for a final review by the committee.

Fourth, the local government negotiates with the tentative developer to reach a final legally binding agreement. The city need not be bound by the exact contours of the winning proposal and may make additional requests that the developer improve the proposal. At the same time, the final deal must not substantially deviate from the winning proposal, lest the losing bidders have the legitimate right to complain that they too should have the opportunity to resubmit. Lawyers for the city and developer are traditionally involved in this stage of the RFP process.

V. Conclusion

This paper has reviewed the existing experience with land privatization in the United States and Western Europe, first with mass programs, more recently with case-by-case activities. As described above, local governments now widely use land auctions and RFPs to dispose of state-owned land. In deciding between the two approaches, local governments must define their overall goals for privatizing land as well as the social and economic context in which they operate.

**Tackling Land Reform in Ukraine:
Lessons From the People's Republic of China**

by

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Introduction

Despite the obvious size and cultural differences, Ukraine can learn a lot from the well-established land and housing market reforms underway in the People's Republic of China. This paper summarizes the major features of China's land management reforms and offers lessons for Ukraine.

Land Allocation and Property Rights

Up until 1988, cities in China were prohibited from selling or leasing land to individuals, foreign joint ventures or domestic companies. Now in many cities, officials are experimenting with auctions, tenders and other forms of land transfer. Moving to a market system in which land is sold or leased at competitively bid prices is undoubtedly the most important step in reforming China's urban land management system (Dowall, 1993).

¹ Between 1989 and 1992 the author was a consultant to the china department of the World Bank and assisted in the preparation of two comprehensive sector studies on China's housing and urban land market reforms. This is a revised version.

Without market mechanisms such as competitive tendering or auctions, land in urban areas is allocated administratively. In most cities and provinces, Land Administration Bureaus review applications for land. In urban areas these applications come from enterprises, real estate development corporations (REDCs) and government agencies. Requests for land are evaluated according to a number of criteria, including: 1) is the request consistent with the applicants's (usually an enterprise or real estate development corporation) economic plan? 2) does the applicant have the resources to carry out the project, and will its investment plan be approved by economic planners? 3) is the site requested located in an appropriately designated master plan area? and 4) is the applicant willing and financially able to pay compensation to current users of the site?

Up until recently, land allocation in most cities was made without any market-determined payment of compensation. Real estate development corporation (REDCs) were allocated land "free" -- they only had to pay the costs of relocating current users. Such payments do not reflect either the site's productive or accessibility value, and therefore levels of compensation are normally below the actual land value which would prevail in the marketplace.

Non-market administrative allocation of land has several severe drawbacks {Reiner, 1990} and {Bahl and Zhang, 1989}. First and foremost, the assignment of land does not reflect either economic and social opportunity costs, and as a consequence users have no incentive to economize on their use of land. Scores of studies of land use in centrally planned economies point out widespread patterns of under-utilization of land in urban areas (e.g. outdoor

warehousing activities or gardens in and around central business districts). Despite shortages of land for productive urban uses, enterprises which have been allocated land have absolutely no incentive to use it more intensely. Secondly, land assignments aggravate existing price distortions in the economy, putting enterprises and households on different economic footing so that effective competition is unlikely. For example, inefficient firms can out-compete efficient ones if they have been allocated well located productive sites. Thirdly, bureaucratic procedures for land allocation are inflexible and cannot respond to rapid economic, social and technological change.

To illustrate the process of land allocation and to highlight an attempt to shift from an allocation to a market based system of land management system, two contrasting examples of land allocation are provided below for Tianjin and Guangzhou.

Land Allocation in Tianjin: Far, Rigid and Bureaucratic

Tianjin's Urban and Rural Construction Committee (URCC), is responsible for physical planning and development. The URCC is divided into nine bureaus. The Land Bureau oversees and regulates the process of land allocation. The Director of the URCC acts to coordinate the policies of the Land and Planning Bureaus. The Land Bureau is responsible for:

1. Ensuring that State Land Administration policy is followed;

2. Carrying out surveys of land utilization; and
3. Setting land use policy (in consultation with the Planning Bureau).

Since virtually all unused urban and suburban lands are under the control of the municipality, the development process begins with the allocation of land for projects. In making its allocation decisions, the Planning Bureau uses the policies set out in the Tianjin Urban District Master Plan. Between 1980 and 1988, the URCC developed 18 new Master Plan-designated areas. At present, ten new areas are being targeted for development to the year 2000. These areas will form the basis for making allocations of land for industrial and residential development. A review of the Master Plan-designated sites reveals the limited future development to these ten sites is likely to constrain housing development, cause imbalances between the location of jobs and housing, and force far too much separation between new and existing commercial and industrial areas.

Enterprises wishing to expand operations must submit a proposal for an allocation of land to the Land Bureau (With the introduction of housing reforms, enterprises can no longer apply for land for housing development, and must now procure housing from real estate development corporations.). The proposal must request a specific parcel of land located in one of the designated areas, and it must conform to planning and land development standards set by the land and Planning Bureaus. These standards include: land requirements for plant, ancillary activities, and warehousing facilities. The total amount of land requests by the plant must

reflect the projected production levels of the enterprise.

The request is reviewed by the Land Use Division of the Land Bureau to determine whether it conforms with planning targets and whether there are sufficient land reserves to be allocated that year. If the request is approved by the Land Use Division, the Land Bureau will acquire the land, and existing users will be compensated by the new user.

A second aspect of the allocation system is that all housing development projects must be reviewed and approved by the Planning Administrative Division of the URCC. Each year the State Council assigns the Tianjin Municipality a housing construction quota (specified in square meters). This level is based on a number of factors, including the availability of construction materials and population and economic growth targets. The State Council-set target is used to control the allocation of housing construction to all subordinate government units in the nation.

Based on the Master Plan for Tianjin, the Planning Bureau selects sites for possible housing development projects. Individual sites are chosen in order to decentralize urban development out of the city center and to provide housing opportunities to suburban factory workers. The number of sites to be allocated in any given year depends on the housing construction target set for that year. For example, in 1988 a total of 46 hectares of land was set for allocation. The announced sites are then evaluated by the various real estate development companies. Each company then discusses its preferred sites with the Planning Bureau. Site allocation is determined bureaucratically, not competitively. There is no bidding process.

Clearly, the process of land allocation in Tianjin is in no way driven by market-mechanisms. In Guangzhou, the situation is different.

Land Allocation in Guangzhou: Market-Driven

Guangzhou's process of land allocation has been evolving over the past decade, and is gradually approaching a market-based system. There have been three relatively distinct phases of land allocation. The first phase, prior to 1984, was for the government to allocate land (normally vacant agricultural plots) to real estate development corporations or enterprises for projects. Modest compensation was paid to farmers to assist them in reestablishing farms. In the early years, major off-site infrastructure, such as roads to the site, was provided by the government, not by developers. Also, there was no attempt to capture any development gain from projects.

During the second phase of land allocation (since 1984), the municipal government, through its Planning Bureau, started to negotiate with real estate development corporations for the transfer of specific sites. The negotiations center on the degree to which the proposed development scheme meets planning objectives and on the level of off-site infrastructure that the developer is willing to provide. In a recent negotiation between the Pearl River House Property Corporation and the Planning Bureau, the developer agreed to build a 20 million yuan car park as partial compensation for the site. The City's policy is to obtain from the developer as much off-site infrastructure as possible to help finance urban expansion. Another objective of these

negotiations is to have developers reconvey improved land to the Planning Bureau for public use, providing the City with serviced land at no cost. Despite the scale and complexity of the negotiations, they are concluded quickly, usually over two to three months. While the actual amount that developers contribute in infrastructure and community facilities varies from project to project, in new areas its value ranges from 150 to 300 yuan per square meter of constructed space.

In the third phase, which is now slowly being implemented, specific parcels will be put out to bid. While an actual auction has not yet taken place, individual parcels designated for development have been announced, and several developers have made proposals to the Planning Bureau. It is clear that this auction process will be open to foreign as well as domestic firms. The direction that Guangzhou planners are following is to get developers to pay cash for sites (to obtain leasehold interests), similar to practices used by the Hong Kong government.

According to Guangzhou's Real Estate Administrative Bureau, during the 1980s, real estate development corporations financed the construction of 680 million yuan in infrastructure and community facilities. These investments are the direct result of the negotiated land-allocation process. It is interesting to note that many of the established real estate development firms, who for years received allocations of land from the government, are now having difficulty competing for sites. Most of these firms are working off their inventory of land stocks acquired before 1984. In contrast, more entrepreneurial development firms are obtaining sites and in some instances selling improved building sites to their competitors.

Guangzhou's land supply, like Tianjin's, is controlled by the Planning Bureau. It determines which parcels of land are to be made available for competitive allocation. However, unlike in Tianjin, where developers and enterprises complained about the lack of land for urban development, there is no concern about the amount of land allocated in Guangzhou. Between 1985 and 1989 and 1991. At the time of the project, the exchange rate was 5.5 Yuan = 1 USD. A total of 939 hectares of land were allocated by the Guangzhou Planning Bureau to various real estate development corporations. Of this amount about 85 percent has been in so-called "new areas." In fact many developers have substantial inventories of raw land to use for future urban development.

Contrasts in Land Allocation

In both cities, land allocation is closely controlled by the overall planning and physical development regulations set by their respective Planning Bureaus. However, in Tianjin, the options for new development are far too restrictive, and consequently urban development is poorly sited in relation to existing services and residential areas. In contrast, Guangzhou's planning framework is less restrictive because ample land has been targeted for future industrial, commercial, and residential development. Without a market-driven land market, the planning framework is too stringent, the repercussions can be severe. The planning system must, therefore be more demand-driven if urban growth is to be accommodated.

The current system of development control is impeding urban land management reforms

in several ways. First, far too much emphasis is placed on norms and standards which are divorced from the realities of building and land development economics and macrospatial planning. Implicitly, there is a notion that "scientific" planning standards can and should be used to set and shape development. The major problem with such standards is that they do not reflect market demands (either willingness or ability to pay) for space or the social opportunity costs of land consumption (The World Bank, 1987).

For example, Tianjin's master plan uses a gross residential floor area ratio of 0.5:1 to estimate residential land throughout the city, failing to consider higher FARs for more central locations. While the application of a consistent FAR may reflect socialist principles of equality in housing consumption, it completely ignores location and accessibility. By flattening out the density curve, more households are forced to commute long distances and in older central city areas, redevelopment is rendered infeasible because new development must be low density.

In Guangzhou, height limits and FAR constraints have made redevelopment difficult due to planning standards and requirements for public facilities. For example, subdistrict planning standards in Guangzhou limit building coverage to between 30 and 35 percent for multistory projects (6 to 8 floors). Residential land area is set at between 6 and 11 square meters per capita, and public facilities, 1.5 to 3 square meters for roads and 1 to 2 square meters for green space.

Across China, the floor area ratio (FAR) of new housing projects averages 0.7 (for

every 7 square meters of built space, there is 10 square meters of land). By international standards this ratio is low for low-income urban housing. In Seoul, for example, current regulations call for FARs of up to 3.0. In Hong Kong, FARs range from 1.6 to 10. Rigid development standards impose resource costs on cities and reduce the flexibility of development corporations to offer different housing products (low-rise-high-density town houses for example).

Land allocation powerfully conditions how efficiently developers will utilize sites. Despite rhetoric about housing reform and the establishment of competition among housing developers in Tianjin, the housing delivery system is far more competitive: developers do not compete for sites. The results of this process are quite clear, and projects are homogeneous--new residential projects five kilometers from the city center are absolutely no different than ones located 15 kilometers away, despite the fact that closer sites are far more valuable and desirable to potential residents and accordingly should be developed more intensively.

In Guangzhou, even though there is no formal land market, competitive bidding for residential sites forces real estate development corporations to utilize sites more efficiently in order to make the highest possible bids. The resulting pattern of residential development is more varied in terms of density and design, and developers are more parsimonious in their use of land, especially of close-in parcels with good access to services. In the long term as all land allocations are made on the basis of competitive bidding, a land market will gradually emerge.

When developers compete for sites, municipalities will generate far more resources to finance the construction of infrastructure. In Tianjin, real estate development corporations obtain land without having to pay for all necessary off-site infrastructure, they pay no more than the costs of compensating and relocating prior users. The municipality fails to capture any of the land value it has created through its urban development activities. Over time, the failure to capture development gain will make it extremely difficult for the city to finance urban growth.

Guangzhou's evolving approach to land allocation is highly appropriate, and should be closely studied. By auctioning off land, the municipality is insuring that land is used efficiently and that it receives proper compensation. Combined with legal framework to enable users of land to sell their use rights, and auction system of land allocation can be used to create a functioning urban land market.

Fortunately in Fuzhou, Shenzhen and Shanghai, similar experiments with competitive auctions and leasing activities are under way, although in a somewhat limited fashion. In Shenzhen, the most dynamic of all of the special economic zones, 645 parcels were leased over the period from 1987 to 1991, generating some 440 million yuan in revenues. In Fuzhou, a smaller economic zone, 17 hectares has been leased to foreign investors. Leasing activity in Shanghai has been modest with only 16 parcels leased between 1988-91. All leasing has been limited to foreign joint ventures. The leases have generated 106 million yuan in income. In no Chinese city has leasing activity "taken-off", since transactions are so far limited to international users.

Recent experience with land use fees suggest that they are a promising source for funding infrastructure. In the wake of economic reforms, cities across China have started imposing a wide range of land use fees and charges. Revenues from these sources have increased dramatically over the past five years. For example, in Shanghai and Hangzhou collections doubled over the last five years. Receipts have increased by over 14 times in Fuzhou and over 100 times in Guangzhou [World Bank, 1993]. To be sure, the absolute level of collections is still small in proportion to municipal budgets and most of the revenues are diverted away from infrastructure investments, but the potential is there to harness land use fees to pay for infrastructures.

Urban governments should expand the base and increase the rates of these land use fees over time and use them to fund the construction of large-scale trunk infrastructure and support services. Projects should be planned and implemented to insure development. In the process of financing infrastructure, the government should recognize that significant land value gains are generated. Consequently, land should be auctioned after infrastructure is constructed to maximize financial returns. Such strategies will require some form of financing to reconcile the flow of front-end infrastructure expenditures with back-end land auction revenues.

In all likelihood, the next stages of China's land market reforms will permit domestic as well as foreign land users to purchase, sell, sublease or exchange properties freely. This will require a further modification of property rights and the recreation of a land registration system to record such transactions. New institutions to facilitate the exchange of land and real estate

brokering, consulting and property management are needed. Most services can be provided by private firms. Procedures for professional licensing and oversight should be considered. The land titling and registration functions are best provided by the government with information made available to the public on a fee for service basis.

Lessons for Ukraine

Policy makers in Ukraine can learn from China's ten years of land management reform experience. Based on the World Bank's ongoing assessments of the urban land management sector, there are eight lessons which seem applicable to Ukraine. These are:

(1) Land market reforms should be initiated incrementally. China hasn't tried to make the move to a market system in one jump. Instead, it has worked on various aspects of land reform, such as parcel tendering, public private partnerships, and land registration. While incrementalism can generate a range of problems it makes it vast easier to launch and manage land reforms.

(2) Land market reforms should be implemented on a decentralized based, giving cities latitude to experiment with different reform approaches. Land reform is difficult, and novel, programs to change procedures should be viewed as experimental and the national-level policy makers should encourage alternative approaches to see what works.

(3) Land allocation should be gradually altered. As a first step, land should be allocated among users on the basis of negotiation. Later, as both governments and private developers gain more experience with market mechanisms, land should be allocated by competitive tender and auctions.

(4) Urban land privatization should be viewed as a mechanism for generating local government revenues. Such revenues should be used to finance infrastructure development to improve urban environmental conditions and to promote economic development.

(5) Special care should be taken to develop a proper legal infrastructure to attract foreign investors. Property rights should be clarified and to the extent possible they should follow international norms and procedures.

(6) Collateral reform activities should be undertaken to create a competitive property development industry. Cities should have multiple property developers competing for land and customers.

(7) It is particularly important to undertake reforms which "level the playing field between public and private sector. Small emerging property and land development firms should be able to successfully compete against public housing and land development corporations.

(8) All land management reforms, including those related to land use planning and

regulation, land transactions and registration and real estate finance should be based on clear, fully transparent rules and procedures.

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Lessons From Land Privatization in China and Poland

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This paper discusses the recent experiences of China and Poland in land, urban development reform, and privatization. Both of these countries have so far had very good experience and success in steering their economies from central planning towards market-based economic systems of allocation. Both economies are now doing quite well. China, for example, has been growing at a real rate, after inflation, of about 8% per year in terms of its gross national product. In Poland, in 1993, the economy will grow in positive real terms. Poland will be the first economy in Eastern Europe to break into positive economic growth. As such, they offer interesting experiences that might be of use to policy-makers in Ukraine.

The experience of new countries provides eight key lessons:

(1) First, and probably, most importantly, both countries have taken an incremental approach to land reform. Both countries have been moving very fast in the reforms, but they have not tried to undertake massive radical land reform. They've not tried to privatize everything. What they've done instead is to focus on specific aspects. For example, cities in China and Poland are beginning to develop the kinds of mechanism discussed in a paper by

Jerold Kayden, namely, taking parcels of land that are under public ownership and making them available for sale through either competitive tender or through auction.

(2) Both countries have pursued a highly decentralized approach in land reform and land policy. That is not to say that the national government has not played a key role in setting the land reform but that they have allowed cities in the country to have a wide range of discretion in how they pursue land privatization.

(3) Cities in China and Poland have gradually and systematically moved from a process of administrative allocation of land to a negotiated process and then finally towards a process of competitive bidding and auctioning through this step-by-step movement from what we commonly find in centrally planned economies to what we find in market economy.

Administrative allocation on the one hand, moving towards auctions and competitive tenders on the other.

(4) Both countries have been highly successful in generating financial resources from land privatization. These countries have been successful in generating resources to finance the construction of critical infrastructure. This infrastructure in turn has helped to enhance the economic productivity of cities, making them more attractive for economic development, job creation and, perhaps, most importantly, for attraction of foreign investment.

(5) Both countries have carefully structured legal frameworks to attract foreign investment

into the urban development area.

(6) In conjunction with activities to privatize land markets, both countries have worked very diligently in the area of creating competitive environments for housing and urban development construction. For example, if you compare the cities in China -- Shanghai and Guanjou -- with Kiev or with Moscow or with Warsaw, you will find that, back at the beginning of the 1980s, the Chinese cities would typically have one or two construction combinants responsible for housing provision. Now, in these Chinese cities, it is quite common to find 100 or even 200 individual companies competing to provide housing and urban development projects. This is not by chance: this has been the result of deliberate policy to foster competition in land development. And programs to reform land privatization must also consider the competitive environment of the construction industry.

(7) As Peter Abeles suggests, what's important in land privatization is to level the playing field between the public and the private sectors. They need to be on a level playing field so that private firms can compete on equal footing with public or state enterprise. I think the point that Jerold Kayden has made about fair bids is an example of how to achieve such parity or such level in competition.

(8) Both countries have worked very carefully and diligently to create very clear rules and transparent regulations that are easy to understand; and, perhaps, most importantly, they have implemented legislation in a way that assures private investors, whether they are domestic or

foreign, that the approach is consistent.

With that background let me give an overview of the situation in China, limiting my comments to the city of Guanzou, in Southern China, which is perhaps the most dynamic example in the Chinese case. Since 1984 the city of Guanzou has changed its program for land allocation. Prior to 1984, all land was allocated through administrative channels. State enterprise and housing cooperatives combinants all made administrative applications to the municipalities for land allocations. Following the process quite similar to what Mr. Piskovsky describes in the context of Kiev, but starting in 1984, the city began to shift away from this process by requiring entities needing land to negotiate with the city for the allocation. The negotiations centered upon essentially two things: first, how much land was needed in this location, and secondly, what price or what financial resources would they make available to the city in exchange for the transaction. Typically the city was aiming at maximizing the amount of investments it could get from the entity requesting land, either in terms of cash or in terms of infrastructure investment. This system has gradually started to move towards a competitive bidding process in which the city essentially identifies parcels of land that it wishes to make available for urban development and invites qualified bidders to bid for the parcels, with the highest qualified bidder receiving the authorization to proceed with the project. During the 1980s, Guanzou was able to generate 130 million dollars of resources from these competitive bids and over this time period, it negotiated and tendered 1400 hectares of land .

Other cities in China have begun to pursue the same activity. Shanjen, a small economic

zone south of Guanzou near Hong Kong, has generated over 500 million dollars in resources over the last 7 years. Another city entering this business a bit later has been able to generate about 100 million dollars, tendering only 10 sites over the last three years. These tender procedures have begun to be quite systematic and copied in other cities across China, which brings me back to the point about decentralization. One of the reasons why land privatization has been working so successfully and so rapidly in China is because the cities across China have been experimenting. Guanzou will try something. If it works, other cities will learn about it and copy it. Huigou will try something, it does not, they tell other cities - don't try to do it, it seems to create problems. There is experimentation, there is mutual learning, and it helps to motivate and accelerate the process of reform.

Let me turn to foreign investment in China. In the foreign investment case, the Chinese have been very clear about how they want to attract foreign investment. They have identified specific zones or areas in most cities or regions. They have set up special economic zones, they have created districts around the major cities for attracting foreign capital, and they have provided a legal framework that stipulates the roles and responsibilities of the foreign investor. The legal framework for foreign investment has essentially stipulated that foreign investors are required to have a joint venture with a Chinese partner; the Chinese partner should have a 51 % interest and the foreign investor 49%; and typically the land is allocated to the foreign joint venture on a long-term lease basis, typically running from 50 to 70 years. There is competitive bidding for the leases, and the lease fee is paid up front. Many of the cities have set up foreign zones and they are now highly successful, particularly in the southern part of China.

Let me turn to Poland. Poland has implemented a large-scale denationalization of certain categories of state property. Most of the properties are being allocated from the central government to the "gaminas," or local authorities. Each gamina is allowed to apply for land and there are a number of approaches that limit what land can be privatized. The first approach is automatic transfer. The following types of land can be automatically transferred from the state or from the national government to the gamina. The first is state property, which until the start of the economic reforms, was in control of former basic territorial units of the state, or state entities there were operating at the local level. [The second type of] property was owned by the state enterprises of organizational units which until the reforms were controlled by territorial units of the state. And [the] third [type was] state property which was in the control of the voichips and the enterprises that were managed by the local authorities. These properties are now automatically transferred to the gaminas. If property was jointly administered between two gaminas, there would be a cooperation agreement. The second method is that the gaminas can also request to transfer the state property that is not used to satisfy public needs, if the property is incidental to the function of the gamina, and the gamina can also request the transfer of agricultural land from the state. The point here, though, is that the state first transfers the land to the local level - to the gamina either automatically or through application. The gamina in turn proceeds with its own privatization strategy, and [it] is very clear [the] step-by-step process that the gamina will use. And this process in many ways is similar to some of the points made by Mr. Kayden when he was describing the practices in Western Europe and the USA. So what is now happening in Poland is that [the] gamina is beginning to develop an inventory of property that it in turn can begin to privatize. The way it is doing this is

preparing packages, putting advertisements in the European edition of the *Wall Street Journal* and the *Financial Times*, and they are beginning to attract foreign investors to come in and purchase or acquire these properties from the local authorities. The rate of sale is quite high. In fact, at this moment in Warsaw there are approximately 4,000 hectares of land on the market that are being offered for sale by the 7 gaminas that make up the Warsaw metropolitan area. As the market begins to shift, the demand for these parcels becomes quite substantial.

Of course, there are broader issues of economic transition that influence land market demand and privatization. Warsaw is a city that is now beginning to be very successful in attracting foreign capital. Foreign capital inflows are now clearly starting to flow into Poland. The international donor community is very active in Poland, and, as a consequence, the demand for land for urban activities is starting to pick up. If you think about Poland and you think about Warsaw, we might actually be talking about Kiev 5 or 6 years from now as it begins to move into a liberalized economic environment with stronger trade relations with EEC countries. As this begins to develop, it is very likely that the demand for property in Kiev and Kharkiv and other cities in the country will increase. For example, in Warsaw the current demand for office space is running about 60 to 75 thousand square meters per year. Much of the state property, state enterprise and government space which is redundant is not suitable for use by foreign businesses. So the demand for space in Warsaw remains considerable, and that means that there is substantial demand for office development.

In the retail sector, the demand is also very high. The annual demand for retail shops is

now running on the order of 5,000 to 8,000 square meters. per year. There needs to be space made available. In response to demand for the investment, the gaminas are actively attracting foreign investors and joint venture operations to come into the city. In fact, many of the brochures that Mr. Kayden describes about San Francisco, my home town, and Springfield, and so forth, look absolutely no different than the ones you see being now used in Warsaw. So Poland and Warsaw in particular have been moving very systematically and very gradually into this system by providing sites for urban development.

In conclusion, it's extremely important to think about the incremental nature of the privatization problem. If we undertake privatization in one go or in one bite, it's very likely to get indigestion. It's too much; it's too radical; it causes too many problems. I think in a Chinese case, in the Polish case and the Hungarian case we are seeing a very systematic incremental process which is focusing on privatization. Policy-makers in this country are not talking about privatizing everything at once. There are discussions about housing privatization, transferring the housing stock to residences, and there are very different discussions taking place about the transfer of land resources for non-residential uses. The second issue relates to the concerns that have been raised on equity issues. I think this issue of leveling the playing field, of having openness and transparency in the process, is important and these issues can be addressed to insure that the process and access is fair and equitable. In a longer run the biggest equity issue may be trying to steer Ukraine's economy into a market environment that creates jobs and economic opportunities for all citizens of Ukraine. Clearly, the land is going to be a critical factor in creating the framework or foundation upon which economic development takes

place. These two examples of China and Poland are hopefully valuable to the discussions that are going to take place during several months as regards to land privatization.

**Public-Private Partnerships and the Joint Venture Approach
in Private Land Markets**

By

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The pivotal role of private property in a society arouses the most intense passions. Emotions and ideology too often dominate the debate without resort either to empiric realities or to the potentials of tapping the strengths of the competing public and private sectors of the social order.

In formulating and enacting policies for the revolutionary privatization of its land, Ukraine has a unique opportunity to undertake a comprehensive revision of its system that will call forth the best energies of the private sector and of the public governments.

The Ideological Revolution in Land Law

When Sir William Blackstone delivered his famous lectures at Oxford in 1791, later codified as the *Commentaries on the Laws of England*, a work destined to have the most profound impact on the law of private property in both Great Britain and the United States, he was announcing, (perhaps without fully realizing it), the demise of the feudal land law system. His book, which became the Bible for legislators, courts, and lawyers in England, crossed the

Atlantic and dominated the United States as its territory expanded over the western lands in the 19th century. It was the book from which Abraham Lincoln learned his law; it was also the repelling force for another president, Thomas Jefferson, who wrote a sharp criticism of this approach. In its attack upon feudal tithes, taxes, and restraints on land, the book was a justification invoked as a rationale for the American Revolution.

More specifically for our purposes of considering transition to a market economy, Blackstone attacked the feudal land system, as it then existed (no matter in how weak a form) in England. He fought the idea of feudal estates, and the system of landholdings directly from the king, the basis for the military and financial rule of the Crown and the nobility. Feudal laws controlling land use no longer served the needs of a market society, he explained. His book was a defense, in legal terms, of a free market system--how individual decision making is essential to efficient political and economic activity. And he defined individual ownership of property in the broadest terms: the "sole and despotic dominion over land." The emphasis upon individual free will and power to use, dispose, sell and hypothecate land was the underlying principle of the new capitalist legal system for treating land.

However, even in its pure state of theory, ("Regard of the law for private property," he writes, "is so great...that it will not authorize the least violation of it, not even for the general good of the whole community") Blackstone recognized the need for, and the existence of, controls over the individual owner's power of decision-making. As the law of property deals with the rights and duties of people in relation to parcels of land, he recognized the need for

nuisance law, the common law evolving over the centuries that required people to so use their land as not to interfere with the reasonable use and enjoyment of other landowners. Land was also subject to servitudes, covenants, easements and fee simple determinables and fee simple subject to a condition subsequent, legal techniques that permit long-rang planning by a landowner: By tying up land and limiting the exercise of the next generation's desire to use land in a particular way, the private property of the ordinal generation could be limited.

But what Blackstone could not foresee was the full impact of the Industrial Revolution as it churned through the 19th Century--the growth of population, the rise of cities, the changes from an agricultural rural system to an industrialized status--all changes that highlighted interdependencies of land and made inevitable conflicts between individual landowners and society at large. For economic and social changes meant a new equation in carving out the legal land system. And the twentieth century brought about a tremendous change in the relationship of government and the private landowner, one that made the *Commentaries* more of an historic relic. Health and safety laws and ordinances impinged upon the freedom to do as one wills with land. The pace of legal change increased with the pace of changes in the patterns of human settlements. Then, in the 1920s, as land in metropolitan areas grew scarcer, more expensive and the interrelated uses of buildings more complex, English and American land law changed accordingly. In England, the Law of Property Act of 1925 finally abolished the last remnants of feudal land law--not untypical of the pace of the British response to new conditions. In the United States, under the aegis of that national draftsman, the U.S. Chamber of Commerce, the standard state planned enabling act and standard city zoning enabling act were promulgated,

widely accepted and disseminated in states and cities, until finally, in 1926, after a see-saw struggle in state courts, in *Euclid v. the Ambler Realty*, they received constitutional blessing.

The New Form of Land Capitalism

In any dealings with a new legal system for land, it is the relations of public and private wills that remain the ever evolving, changing and crucial questions for decision. From the rigid state controls of feudalism to the absolute individualism of Blackstone to the changing patterns of land controls and uses in 20th century society, the underlying ideology has to be understood. And, it is submitted, the key to understanding the major common law systems of property today is that of forging a bridge between the two dominant ideologies of individualism and social control. What capitalism is evolving into is a joint venture society.

As the various positions evolve on the legal chessboard, joint venture is the key that can best explain the situation and how the legal system affecting land ownership can, on the one hand, best meet private needs for an efficient market and, at the same time, satisfy public values, so that the requirements of society are reasonably met. The reason for the rapid rise and evolution of the joint venture is the realization that each extreme is inadequate even in its own terms. It has become clear that when government is landowner and developer, serious problems arise: inefficiency, red tape, potential corruption, a lack of that competition that brings out the best ideas; lack of resources, budgetary deficits and estrangements from government have done away with the nationalization myth. With respect to the private sector, the individual landowner

operates to maximize her profit, put in the most intensive uses that receive the highest market prices--often at the expense of neighbors and of future generations. The drawbacks of private ownership have become even clearer as the environmental impact of land uses has grown upon the national consciousness-- pollution and fouling of air and water, consequent upon the uses of land, become an "externality" so far as the private developer is concerned, a cost which she needs not incorporate into her balance sheet and income statement despite the general loss to society's gross product.

Putting this analysis more affirmatively, the growth of a joint venture form of property law society is attributable not only to avoidance of the inadequacies of either public or private sector taking the predominant role, but also due to the advantages inherent in a solution where the greatest strengths of each sector are combined. This being the desired result for the new system of land organization in Ukraine, the question becomes: what special talents can government provide, and along with the public contribution, what does the private sector bring to the table? At the present time, listing of the strength and weakness of each sector cannot be exhaustive, as they naturally evolve over time, but it presents a good starting point for examining the extent and nature of privatization of land that would be desirable in Ukraine.

The Joint Venture: Implications for Public Policy

As government grows larger, as the private sector expands, and as the nature of our cities, metropolitan areas and land development grows more complex and more dependent on

novel financing, a partnership of public and private forces becomes the dominant form of entrepreneurship in the development of land. It is, nevertheless, a fact often overlooked in its significance for public policies. In the United States and in England there has always been some form of joint venture between the private and public sector-- almost automatically without explicit recognition in so many words, drafting of contracts-- and too often without any spelling out of rights, powers, and responsibilities in the venture. But this process is being clarified and codified-- and the outset in Ukraine of a new form of ownership in land is a good point for settling new legislation and standards.

Understanding the nature of modern land systems of property to be joint ventures leads to an understanding of major land policies that must be evaluated by countries undertaking a revolution in their system of land ownership and controls, especially ones seeking to substitute a private property system of one owned and dominated by the sovereign.

A. Constitutional Protection of Private Property

The new constitution of Ukraine, following similar clauses in other Eastern European nations, probably enacts the Blackstonian principle that no person shall be deprived of property without due process of law. What of the other protection, that of prohibiting the taking of property for a public use without the payment of just compensation? [It is] enacted into the 5th Amendment of the U.S. Bill of Rights and found in similar language in the states, definitional problems inhere in these broad terms. With the hindsight that it is a joint venture system of

property holdings which the nation is facing, it would be useful to substitute "public benefit" for "public use", for the exercise of eminent domain by the sovereign will often be for the end of transferral of land to a quasi-public or private entity. Many of the innovative programs for mixed-income housing or community development programs require this type of broad empowerment, leaving the exercise of the power of compulsory acquisition where it belongs-- the executive branch subject to review only for capricious or arbitrary action.

B. The Role of the Comprehensive Plan

If joint venture is to be the dominant form of major land developments, then a comprehensive plan, fashioned jointly by government and the private sector, for the development of a metropolitan area is essential. It furnishes a strategy for the deployment of public finances and for the land initiatives of the private developer.

It becomes essential when a society is about to devolve its land ownership and titles to the private sector, that a program be developed as to future uses of that land. Otherwise, sporadic, haphazard, and wasteful development will occur. Society cannot rest upon each owner following his own interests, that somehow, the invisible hand of Adam Smith will appear to assure the best use of resources. Land has always been regarded as a special commodity even by neoclassical economists; the interdependence of land, the externalities of use, the problem of the freeloader mean that the exploitation of land has to be subjected, in some degree, to collective will in order to produce a desired pattern of residential, commercial and industrial

settlement. A series of policy guidelines outlined in a strategy document is necessary for pricing land before distribution and for assuring spatial order for the community. Private developers will know how to proceed, and the action of both public and private sectors will have a base line against which their actions can be measured.

C. Outright Sale or Leasing

Strangely, the most obvious example-- yet not so perceived by the public at large-- of the joint venture is the property tax. If the cities and metropolitan areas of Ukraine undertake such a levy, as have so many other societies, several issues are raised. In assessing the property value and fixing the tax rate each year, the city is, in effect, the universal landlord. Owning an underlying ground lease, all land and housing is held from the city. Each time the tax is paid, it can be termed payment of rent (despite the abolition of feudal "quit-rents" in the American Revolution). This explains why, after long neglect, municipalities came to realize that they were the ones most directly affected by substandard housing, by inadequate land uses, and by improper maintenance and neglect of buildings. For the city is the ultimate landlord-reversioner of the property and the value of its underlying lease depends upon a sound caretaking of the properties. Thus in the urban renewal program, the large programs of land acquisition, clearance, and redevelopment of lands- the primary program in the United States for revitalizing cities in the 1950s and 1960s-- is a prime example of the combining of public and private energies. The federal government paid two-thirds of the cost of land, the city did the clearance and forgave property taxes, and the developer contributed money and energies to

their rebuilding of the area, all pursuant to the city's comprehensive plan.

The recent pressure exerted by U.S. mayors for enterprise zones, as they had for the earlier programs of model cities, also comes from a realization that the land (both public and private) is the government's major asset, most deserving of special public fostering.

In Ukraine, where an enormous quantity of land is being devolved to the private sector, policy analysis must be made of where this landlord-reversioner role should be expanded or contracted. Under a lease, control and sharing of profits and risks are more easily decipherable, but the terms have to be subject to circumstances, negotiation, and the bargaining power of individual entrepreneurs.

D. Land Banks

Ukraine is in a unique position, with ownership so concentrated in the public sector, to adopt an option that may be most useful for carrying out the metropolitan comprehensive plan-- land banks. Their more specialized purposes are:

1. Advance acquisition of land for public purposes

Many government services-- roads, schools, hospitals, recreation to name but a few-- require substantial amounts of land. Land assembly is complicated, legally vexatious, costly ,

uncertain and time consuming. And this is a continuing process, so long as government endures. Therefore, for purposes of convenience, so that the necessary land is available in an appropriate amount when the time comes to provide the government service, and also for considerations of cost, advance acquisition would be an important function of a land bank.

2. Avoiding the expenses of urban sprawl.

The ragged process of subdivision development, including leapfrogging, is often dictated by the price of land as well as by its availability. Consequently, urban infrastructure, paid for by government, has to follow--however reluctantly and expensively --this path of growth. This means that land relatively close to developed centers often remains idle or unoccupied, while land further from the center is being freshly developed and occupied.

3. An Instrument for Perfecting the Land Market

Land banks are well adapted to correct the errors and scars of the past. This function emphasizes a most appropriate resole for government activity and support--perfecting the market for urban land. This land market is one of the more laggard sectors of the economy. It performs its jobs--setting prices and allocating resources--poorly. Many reasons have been given for this condition, most notably the nature of the land commodity, which is non-homogeneous. It is also "lumpy" or discontinuous and costly relative to the financial capacities of the participants in the market. There is also poor flow of information, aggravated by

political boundaries and fragmentations of the market. Holdouts have monopoly power. Indeed, it can be said that, in the urban land market, relative prices do not correspond to real economic scarcities, and resources are therefore not allocated to their most efficient uses. By acquiring such land, and making it available in a planned pattern that imparted more order to the whole process of urban growth, the bank would reduce uncertainty and confusion in the land market.

4. Stabilizing the Price of Land

Not only in its dealing with the knowledge and supply side of the equation, but in its other activities, the metropolitan land bank, guided by considerations of urban development, and having a clearly discernible basis for its decisions on price and the rate of release of land from its inventories, would be acting to moderate fluctuations in the price of land.

E. Government Regulation of Private Land

The early 20th century regulation of land can be described accurately as a command-and-control system. The typical zoning ordinance, for example, divided the city into use districts, height districts, bulk districts and commanded certain activities to take place in designated districts while excluding others from districts not designated for them. Again, height limitations were imposed in districts beyond which ceiling the private developer was not allowed to exceed. Similarly, bulk was controlled in their fashion. Rights of development were automatic in

districts where they were permitted and automatically excluded in other districts.

But with the increased recognition that command land controls are too rigid, inefficient, or unaware of local circumstances, and do not foster initiatives of the private sector, controls have been shaped to give up their adverse regulatory mien. Room is made for private initiative and development. New techniques for regulation of land have evolved. Primary among them is performance standards formulation. Rather than a statement of a predetermined end for the way land should be used, a goal is set out but the precise methods of reaching it are left to the private landowner. This is not only a drafting change, but a new regulatory technique that widens the scope for individual discretion-- the private sector is encouraged to be more ingenious in evolving new methods and technologies to satisfy the public ends.

Again, another regulatory technique that gives up confrontation with the private sector is the incentive zoning. As indicated by its name, under incentive zoning (which is the dominant zoning control under which recent skyscrapers have been built in New York City, San Francisco or Boston), the standard density minima are changed for a developer--usually giving him more floor space than allowed under the existing regulation--in return or the private developer furnishing an amenity desired by the public. Thus, plazas, bridgeways, open spaces and public furniture are provided in this quid pro quo by which the joint partnership of public and private sectors provides a needed public facility that the city could not pay for or constitutionality could not mandate, and at the same time the developer receives the right to more economically useful space.

Another prominent example of the joint venture form of regulation is transfer development rights. It is based upon the British system and their Town and Country Planning Acts which make a formal legal division between existing use and future development use. The right to sell the rights of development is given to landowners in return for restricting their ownership rights so as to preserve a landmark or historic building or to keep agricultural land free of subdivision exploitation. The diminution of land values receives compensation from the public treasury. The transfer of rights is at times even more directly a partnership where the municipality sets up a bank to buy development rights. This middleman approach makes sure that the original owner, who is being restricted, can find a true market compensation because the right now becomes sellable. Indeed, under the New York law the existence of a public bank is a prerequisite of transfer development rights.

Other examples abound of this flexible way of applying the regulatory power of the state. And it is this format of regulation that requires serious consideration by Ukraine.

F. The Provision of Public Facilities

The introduction of development timing (a virtual fourth dimension) into land use controls is a major contribution of the system of managed growth control that has flourished in the United States since the 1970s. It is relevant for Ukraine because it highlights the importance of closely tying capital budgeting to land use planning in order to secure that joint venture that is the most desirable to both partners.

Supplying public infrastructure is a traditional domain of government. Various levels of government are called upon to provide streets, roads, lighting, sewer, water and the other improvements without which land is valueless. Historically, the process had been one whereby developers built freely and the government followed with the roads and the support facilities. Unfortunately, this led in the United States to suburban sprawl, to uneconomic provision of metropolitan public facilities and, by and large, to a waste of resources. By growth control, by guiding private development through the timed provision of public infrastructure, according to a comprehensive plan, a wiser use of land is made possible. Various growth control techniques have been upheld so long as they are means reasonably related to valid ends-- community, identity, preservation of agricultural land, aesthetics, environmental purposes. A reasonable budgetary plan that delays the furnishing of public facilities until there is a definite need and available public finances will be upheld as a part of a valid joint venture program.

The increasing tendency to finance infrastructure through development charges to the land developer is a direct example of coinciding public need with the developer's desire for profits.

G. Sharing The Values Created by The Joint Venture

Perhaps the key program wherein lies the greatest justification for the joint venture approach, one where the benefits to both sides is most apparent, is the recapture of values of land created by the construction of new highways and public transportation systems.

Government infusion of massive capital to better move people and goods always results in large profits to the informed, the speculative, and the lucky. Land abutting new roads or overlying public transportation stations, or air rights skyrocket in value as a result of public improvements. Recapture of this increase to compensate for public expenditures should be part of Ukrainian public policy. The potential for better public services through improved facilities, better design, and greater rate of return on both public and private investments needs to be recognized.

H. Government as Equity Partner

In addition to the traditional sovereign powers of police power and eminent domain, outright use of public funds can be an essential component of a joint venture. Seed money, planning money, covering front-end costs can induce and leverage private investment inland. As another example, in urban renewal, in many cases, in order to supply mortgage money and adequate capital, the city would take a lease, rather than convey title, and thereby remove the burden of land costs from the needs of the private financier.

But perhaps the greatest use of sovereign funds in the land joint venture came about in the program of urban development action grants which succeeded in attracting private capital to certain parts of the metropolitan area and to leverage the public capital so that it brought along with it more private investment. This program was especially successful in bringing jobs to the central city where business was otherwise not interested in investing or building. Where funds

are supplied, government is entitled to share in the profits.

I. Other Necessary Documents of Agreement

Traditionally, joint ventures are a form of business organization used to combine different groups: lenders, builders, developers, and packagers.

In a totally private sector real estate joint venture:

1. Parties demand the maximum from each other.
2. Each partner contribute what it is best at providing: money, management, skills
3. Each partner, in return, retains defined powers, rights, and remedies for breach.
4. No one participates unless potential profit is seen.

In a public/private joint venture on land development:

1. Private interests fill the role of general partner, responsible for actual construction, day-to-day management of completed structures, and business losses and liabilities incurred.

2. Public sector is a sort of limited partner or money person who may put up the land itself, costs of site clearance, and advance costs of foregone revenues. Like any other limited partners, the public retains two basic rights:

- a. The right to keep informed as to the progress on the project.
- b. The right to an accounting of the return which is due it.

Optimally, (although in many cases this is not done with enough thoroughness and thoughtfulness) the rights, responsibilities, and objectives of each party should be laid out beforehand, and the goals would be delineated. Thus, there are two key documents that should act as a sort of "constitution" for the exercise of power by both sectors for the duration of the land transaction:

- a. **An urban impact or public benefit statement**, describing the net benefits which will accrue to the public, and which forces all parties to consider the costs and benefits of the proposed development. It resembles the familiar environmental impact statement that has been so successful in probing and in mediating public-private conflicts.
- b. **A written contract**, defining with as much particularity as possible, each party's continuing rights and responsibilities for the life of the transaction.

J. Staffing

As one examines the potential and problems of the joint-venture society, much depends on the availability and quality of government staffing. In formulating the comprehensive metropolitan plan, there is a pressing need for physical planners, architects and engineers. With the recognition of the nature of the joint venture, the addition --perhaps predominance-- to the staff of experts in land finance, capital budgeting, and people knowledgeable of the business needs of land developers becomes imperative.

Conclusion

An extraordinary opportunity has presented itself in the creation of a private market land system in Ukraine. Major alternative policies need to be carefully scrutinized and adapted to the special circumstances of the nation, as they currently exist and as can best be foreseen.

Above all, in the recognized need to privatize land, a total reliance on laissez-faire seems a dubious approach. The rush to privatize should be done in phases, and in recognizing the need for open spaces, beaches, preservation of the natural environment, historic building and areas, and the provision of land resources for moderate and affordable housing and other socially desirable purposes that the profit seeking private sector cannot provide. A continuing and abiding interest of society in its basic resource must be recognized. Realism should prevail over the ideological extremes of Blackstone as well as over those of total state ownership of property.

What government has to offer to the land joint development venture are the traditional sovereign powers -- the power of eminent domain, the taking of land for public use upon the payment of just compensation, and the police power, the power to regulate land uses on behalf of the public health, safety, morals, and welfare. Above all, as the representative of the public, it can give the stamp of validity to projects pursued by private individuals. In addition to this crucial legitimizing function, it can seek to understand and to help muster community support and mollify opposition to proposed land-use projects that meet the ongoing goals of society. And possessing and disposing of that great and irreplaceable factor of production-- land-- Ukraine is in a unique position to guide and carry out wise metropolitan land policies.

The Role of Public Land Acquisition in Private Land Markets

By

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Introduction and Summary: This paper discusses land acquisition by the public in various countries where there is a tradition of private land ownership. The discussion is based on the premise that (1) the laws and policies governing the public acquisition of land have a significant impact on private land markets and the goals sought to be achieved by land privatization; and (2) for Ukraine, a broad comparative understanding of such laws and policies in countries having private land markets will facilitate the overall debate on land privatization. It is clear that no single precedent discussed below will fit the unique cultural and historical background in the Ukraine. Accordingly, the models discussed below are offered solely for providing comparisons and stimulating discussion.

The views expressed herein do not necessarily reflect the views of the United States Government.¹

¹ Much of the material for this paper is taken from Kitay, Michael, *Land Acquisition in Developing Countries: Public Sector Policies and Procedures*, Lincoln Institute of Land Policy, Cambridge, Massachusetts, 1985.

Discussion

Goal of Public Land Acquisition Laws, Procedures and Policies. Any decision made by the Ukraine to move toward land privatization will reflect a judgment that greater private land ownership will promote greater economic growth which, despite possible inequities, will better serve the needs of the people. The privatization decision, if made, presumes that private land ownership will unleash the energies of individual owners to improve their properties. These investments or improvements, in turn, will stimulate the economy to produce more goods and services, yielding employment and growth.

Private ownership of land alone, however, is not sufficient to produce the desired investment. Before making a substantial investment decision, a private land owner needs assurance that he or she will be able to hold the land over time and derive benefit from the investment. The greater the land owner's fears that government can and will seize the land, the less incentive he has to make investments. The converse is equally true: the greater the legal rights given to a private owner to prevent the government from taking his land (or in the event of a taking, to receive just compensation) the greater the incentive to improve the land. Investors in land are like all investors: they need to know the rules of the game before they make an investment decision. The greater the fairness and certainty of the rules, the greater the investments.

In the event of privatization, large stocks of land will move from public to private

control. Yet there is a paradox. If privatization and other economic reforms produce accelerated economic growth, it can be expected that there will be increasing needs of the public sector to reacquire land in order to provide essential public services to a growing economy. Even if the public sector holds land for its own future needs in some sort of "land bank", experience suggests that this will not be sufficient to avoid selected reacquisitions of land from the private market. The problem is that vigorous economic growth will produce needs that cannot be foreseen. The public sector, therefore, will need the resources and procedures to acquire land from private land markets in an expeditious and affordable manner.

The goal of public land acquisition in societies having private land markets is to strike an appropriate balance between the needs of both the public and private sectors. Ukraine, like all societies, will strike its own balance between competing interests. The balance will be the result of the laws and procedures that are enacted, the nature and competence of institutions and individuals enforcing the laws, and the social and historical traditions of Ukraine.

Land Acquisition Techniques.

The techniques available for a government to acquire land range from the most compulsory , i.e., outright nationalization or confiscation, to the least compulsory , i.e., voluntary purchase at an agreed-upon compensation level. In the middle of this spectrum are a variety of procedures involving compulsory expropriation carried out under laws that limit the purposes for which the government can forcibly acquire land and require some measure of fair

compensation to the land owner.

A. Nationalization or Confiscation

Nationalization is the right of a government to seize private property and convert it to public ownership. The term connotes a compulsory seizure or taking without compensation to the owner. While nationalization is permitted in some countries where the rights of individuals are subordinate to the rights of the state, it is generally inconsistent with principles that support the private ownership of land and private land markets. It is true that most nations have laws that provide for the outright seizure of private land as punishment for crimes including tax avoidance or the misuse or abandonment of land. Yet these laws should be distinguished from those that exist to permit the government to acquire land for public purposes such as schools and hospitals. In some instances, nationalization laws have been enacted to deprive noncitizens of land. Decisions to nationalize land are generally made in a highly political context without careful analysis of the costs or benefits of such decisions. For example, there have been trends toward nationalization of rural and urban lands in Africa, a region characterized by unstable political systems and tribal jealousies.

Laws favoring or permitting outright confiscation or nationalization of private land without just compensation have a chilling effect on the willingness of private owners to improve land and contradict the basic philosophy of land privatization.

B. Voluntary Purchase and Sale.

Most public land acquisition in Europe and North America is the result of outright purchases from private land owners at negotiated prices that approximate the free market value of the land. These voluntary transactions avoid the time and complexity of compulsory expropriation proceedings. Required are willing sellers, willing public buyers and operable land markets where title to land and fair prices are determinable.

In newly privatized markets, the requirement of willing sellers poses a special problem. Land in such societies may be the best or only investment vehicle. If the government buys land, the individual owner will be faced with a dilemma where to reinvest the income derived from the sale. Additionally, individuals may not want to conduct a commercial transaction with government where their financial profit becomes a matter of public record, taxes are unavoidable, and where there is a threat of "red tape" and uncertainty of payment.

As for the second component -- willing public buyers -- public agencies everywhere have few funds with which to make purchases and complicated procedures that tend to discourage voluntary transactions. If the government pays too much for land, it will be accused of favoritism or corruption. If it pays too little, no one will sell.

C. Expropriation

Expropriation refers to the right of a state to forcibly take private property that is needed for the public good with appropriate compensation paid to the owner. The restraints imposed on government under expropriation statutes (requiring public purpose and due compensation) are not solely or necessarily the result of concepts of fairness to individuals. Rather they can be traced to the same philosophical views on economic growth that produce privatization and private land markets in the first place. Laws of expropriation worldwide recognize the fragility of investor confidence and the chilling effect of unrestrained power of government to seize private land.

1. **Public-Purpose Doctrine.** In one manner or another, the expropriation laws in other countries permit the taking of land only for public purposes. Precisely how the "public purpose" is defined in the laws of a country will define the balance between the rights of private citizens and the needs of the public sector. Public-purpose doctrines can be written in statutes:

a. As general restrictions which state merely that expropriation may be used only to serve a "public purpose"

b. In the form of specifically listed purposes such as roads, schools, etc., or

(c) In a combination form which establishes a broad restraint expressed in general

terms (e.g., public benefit) with the addition of listed purposes which illustrate the general rule and are presumed to be in the public purpose.

When an expropriation law is written in general terms such as "public purpose", considerable initial discretion is left with the government to define the limits of its authority. In jurisdictions where the laws are written generally, the courts are often required to define the limits of governmental authority. On the other hand, statutes which list specific purposes for which the government may expropriate provide certainty but are relatively inflexible. As governments redefine their appropriate roles over time, new public purposes will arise that were not contemplated at the time the list statutes were enacted.

One approach used with success is to combine general statutes with list statutes, granting the executive branch broad powers to expropriate for public purposes and then following with an illustrative list of purposes which are presumed to be acceptable.² In these combined statutes, it is made clear that the lists are not all inclusive and that other public purposes not already on the list are expected to develop from time to time. This kind of statutory construction tends to provide the most flexibility and lessens the prospects for litigation in the courts.

² Examples of specific purposes appearing in statutes include canals, airports, piers, railways, bridges, ferries, orphanages, prisons, sports stadiums, factories, poor houses, mosques, pipelines, industrial parks, free trade zones. See Kitay, Michael, *Land Acquisition in Developing Countries*, pp 42 - 48.

2. Valuation and Compensation.

While concepts of just compensation vary greatly, the expropriation laws of countries having private land markets require compensation to be given to the private owners. The fundamental principle that guides valuation under most statutes is the payment of "fair market value" or "just value." Determining fair value is perhaps the most difficult practical aspect of expropriation procedures. Land owners and government will always disagree on the true value of a specific piece of land. Land is unique. A parcel of land is not fungible with another unit of the same size. There are emotional attachments to land. The goal of a valuation scheme should be (a) to provide for sufficient compensation to neither enrich or impoverish the expropriated party nor chill investor confidence, and (b) to establish an efficient, predictable, and fair procedure method of determining compensation that does not frustrate the needs of government or the expropriated party.

One procedure that deserves consideration is to base the compensation on the declared or accepted value of the land for tax purposes. Some countries (Mexico, Singapore, and Taiwan) use this system. It has an added benefit in that it tends to maximize tax revenue while giving certainty in an expropriation matter. In such a system, it is risky for a property owner to seek to avoid fair taxation by undervaluing his land. The risk, of course, is that upon expropriation, the actual compensation will be below the real value of the property. Statutes or regulations on establishing value will have to address a number of issues in addition to the standards for compensation. Assuming the standard chosen is "fair market value", when shall the value be

established? If, e.g., the government is taking the land because it has decided to build a major roadway across the land, should the value of the land be established before this government decision is made or after? Should the land owner be compensated only for the value of his land from his own investments and improvements or from the value of improvements made or to be made to adjacent land by the public sector? There seems to be no clear consensus on this point.

There are many issues to be settled regarding valuation. These include who determines value: each ministry, municipality, or other government entity with a need for land or a single specialized governmental unit having jurisdiction over land issues? Shall there be a right to appeal decisions and if so, will appeals be heard by the regular judicial system, by a specialized judicial court, or by an administrative agency?

Issues regarding the form and timing of payment are also of critical importance. Some countries make prompt payment; others do not. Prompt payment in cash may be as important to an owner as issues regarding valuation. Some countries compensate land owners with long term government bonds. Some offer non monetary compensation in the form of other "comparable" land, tax privileges, or special permits, licenses or franchises.

Conclusion: The laws and policies established to govern public land acquisition need to be carefully considered in jurisdictions having private land markets. The need for public sector restraint--to promote the maximum private investment by land owners-- must be balanced with the public's needs to acquire land for public purposes in an efficient manner. Once laws and

policies are established, there follows a need for institutions having trained personnel to implement the land acquisition functions.

In establishing the rights of government to acquire land in private land markets, the most effective laws give government a broad variety of compulsory and non-compulsory powers. It is always preferable for government to acquire land under a voluntary bargain and sale transaction where the land owner understands the government's needs and the government is willing to give fair compensation to the owner. These voluntary transactions tend to be most efficient and tend to do the least harm to the vitality of private land markets. As a practical matter a realistic capability to acquire land compulsorily is a vital component of any statute. Such capacity will tend to induce land owners to negotiate in good faith when the government seeks to purchase needed land. The reverse is equally true. If the government demonstrates the willingness and resources to generally acquire land in good faith voluntary bargain and sale negotiations with land owners, its ability on occasion to use force when required will not unduly discourage private investment in land or hinder the creation of vigorous land markets. Under the best of circumstances compulsory acquisition takes time, causes political resentment and creates hidden costs. Accordingly, countries in transition should invest time and resources to assure a workable system for land acquisition.