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LAND USE REGULATORY SYSTEM (ZONING)

**Interjurisdictional Land Holding
Issues**

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In addition to this Brochure, the Project published copies of the Zoning Ordinances for Kazan, Samara, and Vyborg and special studies on the following issues: *The Development Process on Leased Land, Subdivision, Servitudes, Reservation of Land for Future Public Needs, Historical and Cultural Preservation, and Environmental Protection and Land Use Regulation*. The Project also published an a periodic newsletter addressing land use issues.

Copies of these materials and additional information on zoning and land use may be obtained from the following organizations and individuals:

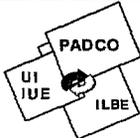
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HOUSING REFORM PROJECT
Land Use Regulatory System (Zoning)
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Executive Summary

This manual is devoted to the problems of division of authority between different executive and administrative agencies in the area of land use and development. These problems are analyzed in the context of creation of a modern legal system that regulates the processes of formation, use and construction alteration of real property.

This manual has been developed within the framework of the Land Use Regulatory System (Zoning) Project financed by USAID. The manual is based on

- a) analysis of the current legal documents of the Russian Federation, subjects of the Russian Federation and local governments,
- b) study of the specific problems relating to development of local regulatory documents - "Land Use and Development Regulations" (primarily, in the Cities of Novgorod and Kazan),
- c) cooperation with various city departments in discussions (testing) of different approaches to solving the corresponding problems.

The purpose of this manual is to develop (based on a parallel study of substantial and formal/legal aspects) the approaches to and recommendations on the transformation and improvement of the current procedures for land use and development through a rational division of authority between different agencies involved in this process.

The structure of this manual is determined by the specific features of the problem under consideration. The point is that the problem of division of authority between different agencies in the area of land use and development has a so-called "infrastructural" nature. In its essence, this problem comprises a wide range of various problems, the solution of which involves executive, administrative and supervisory agencies of different levels. Sometimes, the subjects of authority of these agencies are not clearly defined, they intersect, overlap and are linked with each other. Therefore, it is critically important, from the very beginning, to clearly define the main types of problems, which would make it possible to determine their place in the general context of transformation of the land use and development regulatory system. This principle predetermined the two-part structure of the manual.

In the first part of the manual ("Types of Problems Related to the Division of Authority between Different Agencies") we analyze the structure of the subjects of authority of local agencies in the area of land use and development. On this basis, a detailed system of types of problems is developed, the key problems are defined that have been chosen for study and description in this manual, and preliminary general characteristics of the methods of the division of authority between different agencies are provided.

It is worth noting that the proposed typology of problems comprises all seven subtasks (including this manual) that have been examined within the framework of the Land Use Project and for which separate manuals have been prepared (Development Process on Leased Land, Subdivision of Urban Land, Reservation of Land for Future

Public Use, Servitudes, Preservation and Development of Historic Buildings and Areas, Environmental Protection and Land Use Regulations)

In the second part of the manual (“Approaches to Solving the Problems Related to the Division of Authority between Different Agencies”), the five most important and key problems are analyzed. Basic methods for their solution are defined and appropriate recommendations are provided.

Detailed appendices are attached to the manual which contain materials illustrating specific aspects of the problems analyzed.

Some of the provisions of this manual were tested in the Cities of Novgorod and Kazan. This testing resulted in creation of several regulatory documents, such as the Draft Law of a Subject of the Russian Federation “On the Right of Local Agencies to Land”, Model Agreement “On Joint Regulation of Land and Urban Development Relations in Adjacent Areas”, the Draft Resolution of City Mayor “On Development of Legal Zoning Documents for the Area Adjacent to the City”, the Draft Program for Development of Legal Zoning Documents for the City Suburban Area”. All these draft documents are presented in this manual.

1 Types of Problems Related to Issues of Division of Authority between Different Agencies

The process of determining the main types of problems involves two steps. The first step (Section 1.1) we have to analyze the structure of the subjects of authority, i.e., the substantive logic of those issues that must be resolved in the process of urban land use and development regulation.

The second step (Section 1.2) after having determined the structure of the subjects of authority, we need to link the corresponding issues (the subjects of authority) with those agencies that are empowered to resolve them. In other words, the typology results from the connection of the subjects of authority with the agencies in authority. The activities of the latter are described by answers to three simple questions: 1) who is in authority, 2) what is the subject of authority, 3) how this authority is exercised. This approach resulted in a table describing the main problem types (see Section 1.2).

1.1 Structure of the Subjects of Authority of Local Agencies in Land Use and Development Regulation

The main source for analysis of this issue is the Federal Law "On General Principles for Organizing Local Self-Governance in Russian Federation", Article 6 titled "The Subjects of Authority of Local Agencies". Paragraph 2 of this Article contains a list of issues of local significance. We shall emphasize the issues that are most closely related to land use and development regulation (issues are numbered according to the Law):

- 2) possession, use and disposal of municipal property,
- 4) over-all social/economic development of a municipal establishment,
- 9) regulation of planning and development of land of municipalities,
- 10) creation of conditions for housing and social/cultural construction,
- 11) control over the use of land of a municipal establishment,
- 16) improvement and landscaping of land of a municipal establishment,
- 23) preservation of historic and cultural monuments in municipal ownership.

In order to merge all problem types into a unified system, we need to first divide all subjects of authority into large general groups, and then these groups will be consequently divided into relatively narrow issues. Actually, we are dealing with three major groups of subjects of authority of local agencies in the area of land use and development regulation:

1. Possession, use and disposal of municipal property. More precisely, this group of the subjects of authority can be defined as "issues relating to the right of local agencies to independently dispose of land (that is not in government or private ownership) within the boundaries of these municipalities (to allocate, alienate and reserve land, impose public servitudes, etc.)"

2a. Regulation by municipalities of land use and development within city boundaries.

2b Participation of municipalities in joint regulation of use and development of adjoining land (including land outside the city boundaries)

Each of these large groups is divided into smaller, differentiated groups. For instance, municipalities may not directly “regulate land use and development”. To do this, they need to establish purpose for the land. In order to establish the purpose for land, it is necessary to develop and approve the corresponding urban planning documents. After approval of the primary (basic) documents, a series of other documents must be developed. Having established the designation of land, one can exercise control over its use. This control is exercised in different forms and on different stages, and so on.

The resulting structure of the subjects of authority of local agencies in the area of land use and development is as follows (bold are the problem issues reviewed in the second part of this manual)

1 Possession, use and disposal of municipal property

1 1 primary allocation of land for development by the city administration

1 1 1 through tenders

1 1 2 through negotiations with applicants

1 2 “recording”, registration of newly provided rights, re-registration of former rights to land (including privatization of land of privatized enterprises),

1 3 restrictions on rights of other possessors through establishment of public servitudes,

1 4 reservation of land,

1 5 alienation of land parcels and other real property

2 A Regulation by municipalities of land use and development within city boundaries

2A 1 establishment of the purpose of land (formation of land parcels as real property units)

2A 1 1 through urban planning documents - the Master Plan (concept),

2A 1 1 1 the Master plan (concept)

2A 1 1 1 1 development

2A 1 1 1 2 coordination

2A 1 1 1 3 approval

2A 1 2 through a local regulatory document - Land Use and Development Regulations,

2A 1 3 through land subdivision plans

2A 1 3 1 detailed development plans (“PDP”)

2A 1 3 2 block development plans

2A 1 3 3 subdivision plans,

2A 1 4 through other documents establishing additional restrictions (included in Land Use and Development Regulations),

2A 1 4 1 plan of historic and cultural preservation zones,

2A 1 4 2 plans of ecological restrictions,

2A 1 5 through preliminary coordination of future construction sites,

2A 2 control over the established land designation and restrictions on its use,

2A 2 1 control in the form of coordination of architectural/ construction documentation and issuance of construction permits,

2A 2 2 control over the construction process,

2A 2 3 control upon completion of construction (acceptance of buildings),

2A 2 4 control in the process of use of buildings,

2A 2 5 establishment of penalties for violations and their enforcement

2B Participation of municipalities in joint regulation of use and development of adjoining land (including land outside the city boundaries - suburban area)

2B 1 establishment of designation of land,

2B 2 control over the established land designation and restrictions on land use,

The structure described above essentially covers the whole range of problems related to interjurisdictional land holding

1 2 Typological Characteristics of the Problems Methods of Dividing Authority

Authority is divided not for the sake of the division as such, but for the sake of organizing the actions of different agencies participating in common activity on the same land, in this particular case - on the land of a municipal establishment

In order to find the right solutions to problems, one should understand that "the division of authority" as such includes several components. In the context of a more general task of a rational organization of the process, we need to answer some "simple questions" starting with "who", "what", "where" and "how"

"By what means" can the process be put in order? Through (1) division, (2) delegation of power and (3) through combination of the two

We can say that the division of authority has four typological characteristics

a) division according to the agency in power ("who")

b) division according to the subject of authority ("what")

c) division according to the area ("where")

d) division according to the method of exercising authority (“how”)

The above mentioned typological characteristics can be explained in more detail

(a) division according to the agency in authority (“who”)

- one agency,
- several agencies at different levels,
- several local agencies,

(b) division according to the subject of authority (“what”)

- what issue or what part of a complex issue,
- what issue and applied to what real property, for instance, coordination of construction design documents (on a particular issue) applied to real property that is not in the list of historical and cultural monuments,

(c) division according to the area (“where”)

- where is the authority is exercised, for instance, coordination of construction design documents (on a particular issue) applied to real property that is not in the list of historic and cultural monuments and is located within the historic preservation zone,

(d) division according to the method of exercising authority (“how”)

- when a documented basis for decision-making is available,
- when a documented basis for decision-making is not available - “at someone’s discretion”,
- when a documented basis for decision-making is formally available - “at someone’s discretion” this means that the documents are formally available, but they are submitted in such a form that they do not pre-determine the decision itself, for instance, the situation with urban development documentation - see Section 2.2

The combination of the above mentioned typological characteristics and the structure of subjects of authority make it possible to create the following typological table. This table serves as the basis for description of main problems in the second part of this manual.

2 Approaches to Solving Problems Related to the Division of Authority between Different Agencies

2.1 Problem 1 Formal Lack of Rights of Local Agencies to Dispose of Land Located within Municipal Boundaries

Actual experience shows that this problem is not obvious. In order to explain its substance, we need to consider (1) the essence of government and municipal ownership of land, (2) procedures for division of government and municipal property, and (3) ways of solving the problem.

2.1.1 Government and Municipal Ownership of Land Specific Features and Differences

Federal Government Ownership

According to Article 214 of the Civil Code of the Russian Federation, the holders of the right of government ownership are the Russian Federation in general (Federal government ownership), or a subject of the Russian Federation - a republic in the Russian Federation, kray, oblast, autonomous oblast and the Cities of Moscow and St -Petersburg (government ownership of a subject of the Russian Federation).

Government land includes Federal land. This is the land of national significance, the legal condition of which is established by Federal laws and regulatory documents, and the disposal of which is implemented with the consent of the Government of the Russian Federation.

As a rule, Federal land includes

- land which is used for purposes of national security and defense, and protection of the state borders of the Russian Federation,
- land occupied by Federal power supply facilities and space systems, nuclear power enterprises, Federal communication systems, defense industry enterprises, meteorological service, mining industry, fuel-and-energy complex, railway, air, pipe, river and sea transport, Federal highways, offices of Federal executive agencies, land of "closed" administrative/territorial establishments and land of Federal forest and water resources,
- land of state nature reserves, including biosphere nature reserves, national parks, nature parks, natural monuments, Federal historic and cultural monuments, recreation areas and health resorts, other especially protected land of Federal significance and protected riparian zones,
- land of the Russian Academy of Sciences, branch affiliates of the Academy of Sciences, scientific and research institutes, higher, technical and primary educational institutions, general Federal educational institutions, Federal experimental farms, agricultural scientific, research, design and technology

institutions, Federal experimental and educational farms, bloodstock farms, high quality seed-growing farms and government land improvement systems, the list of which is approved by the Government of the Russian Federation

Government Ownership of Subjects of the Russian Federation

Governmental executive agencies of a subject of the Russian Federation independently manage and dispose of government land within the administrative boundaries of the subjects of the Russian Federation except for the land of Federal significance

Government land may be conveyed to municipalities, natural persons and legal entities for development, agricultural production and other purposes

In the process of land subdivision it is necessary to take into consideration the fact that all Federal land is located within the boundaries of subjects of the Russian Federation. No other location of Federal land is possible. Therefore, all land occupied by Federal real property (buildings, structures, enterprises, etc.) is in Federal ownership.

The Russian Federation is an independent party to civil and land legal relations, and it is represented by its executive agencies which act within the framework of their authority (Articles 124-127 of the Civil Code of the Russian Federation). They have the right to dispose of Federal land only and do not have the right to dispose of the land of subjects of the Russian Federation, municipal and private land.

Subjects of the Russian Federation are also parties to civil and land legal relations. They are owners of land and other natural resources within their boundaries.

That is why there is a need for laws on the division of property, including land, into federal property and property of subjects of the Russian Federation. Subjects of the Russian Federation are represented by their executive agencies which act within the scope of their authority. They implement their rights of possession, use and disposal of land within their boundaries and have no right to dispose of Federal, municipal or private land.

The government, represented by its executive agencies, may take land from owners for governmental needs.

Municipal Ownership of Land

Municipal ownership is not a form of government ownership. It is an independent form of ownership. But, due to its public character, the structure of this ownership is very similar to that of government ownership.

Municipal ownership of land is the ownership of municipalities. Municipal property includes land within boundaries of settlements except land in government or

private ownership Municipal property also includes land located outside boundaries of settlements, that was conveyed in municipal ownership by the executive agencies of a subject of the Russian Federation

Government land may be conveyed to municipalities for its development Municipal property may also include land that is purchased by the decision of local agencies from owners in the prescribed manner, as well as the land that is conveyed from Federal land or the land of subjects of the Russian Federation

Merger, annexation, exchange or re-distribution of municipal land between municipalities is implemented in accordance with the legislation of subjects of the Russian Federation

Procedures for conveying land to municipal ownership are established by laws of the Russian Federation

Local agencies have the right to possess, use and dispose of the municipal land only and have no right to dispose of Federal land, land of subjects of the Russian Federation and private land

2 1 2 Legal Documents Regulating Allocation of Government Land to Municipalities

Procedures for formation of municipal property are determined by Federal Law 154 "On General Principles of Organization of Local Self-Governance in the Russian Federation" dated 28 08 95, Article 61 of which states that "subjects of the RF convey to municipalities the real property owned by these subjects of the RF, that is required for solution of local problems, in accordance with the division of authority between subjects of the Russian Federation and municipalities or between municipalities "

Procedures for conveyance of real property from government ownership to municipal ownership and the list of this real property are established in Resolution 3020-1 of the Supreme Council of the RSFSR "On Division of Government Property in the RF into Federal Property, Government Property of Subjects of the RF and Municipal Property" dated 27 12 91 and in "Provisions on Determination of the List of Federal, Government and Municipal Property and Procedures for Registration of Ownership Rights" approved by the Resolution 114 of the RF President dated 18 03 92 All the above mentioned documents contain a list of government property that is subject to conveyance to municipal ownership **Land located within the boundaries of a municipal establishment is not included in this list** Moreover, p 1 of Part 3 of Resolution 3020-1 states that types of ownership of land and other natural resources will be determined by legal documents of the Russian Federation

According to the Provisions approved by Order 114 of the RF President, the **document confirming the right of Federal, government (of a subject of the RF) or municipal ownership of real property is the corresponding Register of Federal, Government (of a Subject of the RF) and Municipal Property** Issues of creating,

keeping and making changes and amendments to this Register are regulated by p 10-15 of these Provisions

As we have noted before, types of ownership of land are not the subject of division of government property regulated by Resolution 3020-1, then it would be logical to propose that this category of real property - **land parcels - is not included in the Register of Government Property of a Subject of the RF or the Register of Municipal Property and, therefore, until the adoption of the appropriate law, land is considered Federal property** This supposition is also confirmed by p 3 of Part 2 of Resolution 3020-1 which states that until the appropriate owner is determined for real property not included in the Appendix to this Resolution, this property is considered Federal property

Based on the above, the text of Part 2 of Article 214 of the Civil Code of the RF should be interpreted in the following way **land and other natural resources that are not in the ownership of natural persons or legal entities confirmed by a title of ownership, or are not the property of subjects of the RF and municipalities confirmed by records in the corresponding Registers of Property, are considered Federal property** This means that **at present, formally, the land within boundaries of municipalities is not their property and municipalities may not independently dispose of it, including allocation of land to natural persons and legal entities for development** At present, it is possible only when the government delegates its authority to municipalities, i e , municipalities may allocate land, but not on their behalf - only on behalf of the government represented by federal agencies

2 1 3 Ways to Solve the Problem

To complete the analysis of this issue, it is necessary to formulate the grounds for and ways of conveyance of Federal land to the ownership of subjects of the Russian Federation and municipalities

Federal land may be conveyed to the ownership of a subject of the RF and the corresponding amendments may be made to the Register of Property of this subject of the RF based on the following

1) adoption of the appropriate Federal regulatory document (a law of the RF or a Presidential Decree analogous to Resolution 3020-1) regulating the division of government ownership of land in the RF into Federal, government (of subjects of the RF) and municipal,

2) conclusion (between the Russian Federation and subjects of the RF) of agreements on the division of authority, containing provisions on issues of division of ownership rights to land and other natural resources between the Russian Federation and a subject of the RF within the borders of this subject of the RF,

3) development (by an authorized agency of a subject of the Russian Federation) of a list of land parcels proposed for conveyance to government ownership of a subject of the RF, and submission of this list to the authorized Federal agency for approval in the manner prescribed by Order 114 of the RF President

Besides, land parcels may be conveyed to the ownership of a subject of the RF based on the following

- 4) civil/legal transactions (purchase, gift, bequest, etc),
- 5) court decision - in case of forced conveyance of land to the ownership of a subject of the RF in accordance with current legislation

Thus, **to convey land to the ownership of municipalities** and to make the corresponding amendments to the Register of Municipal Property, the above mentioned grounds 1,4 and 5 are applicable

- adoption of the corresponding Federal Document (a law of the Russian Federation, a Presidential Decree analogous to Resolution 3020-1) regulating the division of government ownership of land in the RF into Federal, government (of subjects of the RF) and municipal ownership,
- conduct of civil legal transactions (purchase, gift, bequest, etc),
- court decision (in the case of forced conveyance of land to municipalities according to current legislation)

Land in the ownership of a subject of the Russian Federation (when this land was conveyed to this subject based on the above procedures) **may be conveyed to municipalities** under Article 61 of Federal Law 154 through

- adoption of the appropriate legal document by the authorized agency of the RF, or
- development (by the authorized local agency) of a list of land parcels proposed for conveyance to municipalities and submission of this list to the authorized agency of a subject of the RF for approval in the manner prescribed by Order 114 of the RF President

We believe that the most efficient way to solve the problem of the lack of the formal right of municipalities to dispose of their land, is to adopt the appropriate regulatory documents. The efficiency of this way can be seen through comparison. Under the current procedures, it is required to confirm that this or that particular parcel belongs to municipalities. But we propose that the opposite way is preferable first, to confirm that a particular parcel belongs to the state, and, then, all the remaining land within the borders of municipalities shall be owned by them (except for privatized land). This efficient method is proposed in the following Draft Law developed within the framework of this manual.

Draft Oblast Law

On Implementation of the Constitutional Right of Local Governments to Land”

Article 1

1 1 In order to provide a legal foundation for formation of municipal ownership of land and create conditions for implementation of authority of local governments, pursuant to Point 3 of Article 5, Articles 28, 29, 55,57,61,62 of the Federal Law “On General Principles of Organization of Local Self-Governance in the Russian Federation”, the Agreement “On Division of Authority and Subjects of Authority between the Executive Agencies of the Russian Federation and _____ Oblast“ and other appropriate agreements between the Government of the Russian Federation and the Administration of _____ Oblast (if available), the City Assembly (or another legal agency) of ___ oblast has adopted this Law “On Implementation of the Constitutional Right of Local Governments to Land”

Article 2

2 1 All land within the borders of municipalities is the property of these municipalities, except for

- land that is owned by natural persons and legal entities,
- land occupied by enterprises, buildings, structures and other real estate that is owned by the Russian Federation or subjects of the Russian Federation,
- land included in special areas considered, under the current legal documents of the Russian Federation, to be the exclusive property of the Russian Federation or subjects of the Russian Federation (national parks, nature reserves, etc)

Article 3

3 1 Local agencies have the right to acquire land located both within and outside the borders of municipalities, in the manner established by the current law, including purchase

3 2 Land in government ownership that is no longer required for governmental needs, is conveyed to municipalities within whose borders it is located, for municipal needs

3 3 Government land is conveyed to municipalities free of charge

Article 4

4 1 The conveyance of land to municipalities shall be registered in the manner prescribed for registration of land ownership right of legal entities, in accordance with current law

Article 5

5 1 Local agencies, in accordance with the law, have the right to convey municipal property to natural persons and legal entities for temporary or permanent use or lease, to alienate in the prescribed manner, as well as conduct other transactions with municipal property, establish, in agreements and covenants, the terms of use of the real property that is privatized or conveyed for use

5 2 Local agencies, in accordance the law, have the right to establish, in the public interest, the terms of use of land located within the borders of municipal establishments

Article 6

6 1 The procedures for and terms of privatization of municipal property are determined directly by citizens or independently by local agencies

6 2 The revenues from privatization of municipal property are fully contributed to the local budget

Article 7

7 1 Municipal property is recognized and protected by the government on a par with government, private and other forms of property

Article 8

8 1 This Law shall apply equally to cities, villages and other municipalities created within the borders of ____ oblast (a subject of the Russian Federation)

Article 9

9 1 This Law shall enter into effect upon its publication in ____

**Table Types of Problems of Division of Authority between Different Agencies Participating in Land Use and Development Regulation Process
(According to the Current Law)**

The list of the subjects of authority of local agencies in land use and development regulation		Legal documents (see the list in Appendix 1)			Typological features of the division of authority and subjects of authority (marked with "+" only with respect to the five problems that were analyzed in Section 2 of the manual)									Problems described in the manual	
Subjects of authority of local agencies	What are the components of the subjects of authority according to the current law (how and by what means this authority is exercised)	RF	subjects of the RF	local	Specific features of A type "who is in authority" (what agencies)			Specific features of B type "what is regulated"			Specific features of C type "how" the authority is exercised			The basic problems of division of authority between different agencies in land use and development regulation	Other problems
					A 1 one agency	A 2 several agencies at different levels	A 3 several local agencies	B 1 what issue	B 2 what issue and applied to what real property	B 3 applied to what real property and in what areas	C 1 when documentary grounds for decision making are available	C 2 at somebody's discretion (no documentary grounds are available)	C 3 at somebody's discretion (formal availability of documentary grounds)		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1 Possession use and disposal of municipal property	1 1 Primary allocation of land for development				1 2 3 4				+	+	+	+	+	Problem 1 Formal lack of rights of local agencies to dispose of land within municipal boundaries	
		1 1 1 Through tenders				20 29									
	1 1 2 Through negotiations with applicants				30 31										I
	1 2 Registration of newly provided rights re registration of former rights to land (including privatization of land occupied by privatized enterprises)				2 8 21 23										

The list of the subjects of authority of local agencies in land use and development regulation			Legal documents (see the list in Appendix 1)		Typological features of the division of authority and subjects of authority (marked with "+" only with respect to the five problems that were analyzed in Section 2 of the manual)										Problems described in the manual I - improvement of the procedures for allocation of land II - subdivision of urban land III - reservation of land IV - servitudes				
	1 3 Restriction of other rights through establishment of public servitudes		21															IV	
	1 4 Reservation		21															II, III	
	1 5 Alienation		2 4															III	
2A Regulation of land use and development within city boundaries by municipalities	2A 1 Establishment of designation of land (formation of land parcels as real property units)	2A 1 1 Through planning and development documents Master Plan (concept)	3																
			4 14 15																I, II
			2A 1 1 1 Master Plan (concept) development coordination approval	6 32 43															I
			2A 1 1 1 Master Plan (concept) development coordination approval	6 32 43															I
			2A 1 1 1 Master Plan (concept) development coordination approval	6 32 43															I
			2A 1 1 1 Master Plan (concept) development coordination approval	6 32 43															I
	2A 1 2 Through a local legal document Land Use and Development Regulations		6 41																
		2A 1 2 1 Land Use and Development Regulations development coordination approval	6 41																
	2A 1 3 Through land subdivision plans		6 41																
		2A 1 3 1 Detailed Project Plans (PDP)	6 41															I, II	
		2A 1 3 2 Planned Unit Development	6 41															I, II	

The list of the subjects of authority of local agencies in land use and development regulation			Legal documents (see the list in Appendix 1)	Typological features of the division of authority and subjects of authority (marked with "+" only with respect to the five problems that were analyzed in Section 2 of the manual)										Problems described in the manual I - improvement of the procedures for allocation of land II - subdivision of urban land III - reservation of land IV - servitudes					
		2A 1 3 3 Subdivision Plans	6																
	2 A 1 4 Through other documents establishing additional restrictions (that are included in Land Use and Development Regulations)	2A 1 4 1 Draft Historic Preservation Zones	19 25 28 37 45 46														Problem 3 Division of authority between different agencies in land use and development regulation in cities that have historic and cultural monuments	V	
		2A 1 4 2 Draft documents on ecological restrictions	11 13 18														Problem 3	VI	
		2A 1 5 Through primary coordination of the location of construction sites	4																I
2A 2 Control over fulfillment of the established land designation and land use restrictions		2A 2 1 Control through coordination of construction and design documentation and issuance of construction permits	7 32 34 39 44 44a														Problem 4 Division of authority between different agencies participating in coordination of construction design documentation	I	
		2A 2 2 Control in the process of construction	38																
		2A 2 3 Control upon completion of construction (acceptance of the objects constructed)	35																I
		2A 2 4 Control in the process of use of real property	34																

The list of the subjects of authority of local agencies in land use and development regulation			Legal documents (see the list in Appendix 1)			Typological features of the division of authority and subjects of authority (marked with "+" only with respect to the five problems that were analyzed in Section 2 of the manual)										Problems described in the manual I - improvement of the procedures for allocation of land II - subdivision of urban land III - reservation of land IV - servitudes	
		2A 2 5 Establishment of penalties for violations and control over fulfillment		5 10 24 34													
2A Participation of municipalities in joint regulation of land use and development regulation in the adjacent areas (including those located outside city boundaries)								+		+	+	+		+	+	Problem 5 Division of authority between different agencies that implement joint regulation of land use and development of the suburban areas	
	2A 1 Establishment of the targeted use of land			3				+		+	+	+		+	+	Problem 5	
	2A 2 Control over the fulfillment of the established land designation and land use restrictions			34				+		+	+	+		+	+	Problem 5	

2.2 Problem 2 Division of Authority between Different Agencies in the Coordination and Approval of Urban Development Documentation

This problem should be considered from two positions a broader one (relating to the substance of the matter) and a relatively narrow one (relating to the very issue of division of authority between different agencies) That is why the materials of this part of the manual are divided into two sections

2.2.1 The place of the City Master Plan in the general system of land use and development regulation and establishment of the purpose for land

2.2.2 Procedures for development, coordination and approval of Master Plans

2.2.1 Place of the Master Plan in the General System of Land Use and Development Regulation and Establishment of the Purpose for Land

Analysis of this issue is the basic prerequisite for understanding the process of division of authority with respect to development, coordination and approval of urban development documentation In this section we need to find out (1) what is a designation of land and what are the procedures for its establishment according to the land law, (2) what provisions of the land law are incorporated in the urban development law and, last, (3) what provisions of the law are incorporated in specific local urban development documents

What is a designation of land and what are the procedures for its establishment according to the land law?

To answer this question, we need to consider the concept of “targeted use of land” This concept “still remains the corner-stone of the Russian land law” according to the position of the leading legal experts of Russia (“Land and Law”, Manual for Russian Land Owners, Institute of Law and Comparative Science of Law with the Government of the Russian Federation, M., 1997, p. VIII) It is critically important to clearly and unambiguously understand the substance of a “targeted use of land” both for professionals who establish it for land parcels and for their owners because failure to observe this established targeted use may cause serious consequences, including expropriation of land

Using the text of the current Land Code, we will try to understand how the targeted land use is defined and what its purpose and substance are The targeted land use is directly mentioned in eighteen articles of the Land Code (Articles 4, 5, 18, 19, 20, 21, 39, 40, 41, 44, 45, 46, 53, 60, 73, 93, 110, 125) and indirectly in many other articles But none of them contains a definition of this concept Thus, a need arises to “restore” its substance by analyzing the text of the law This analysis was applied to the category of “land of populated areas” and was conducted in the form of a table (see Appendix 2) that contains all provisions of the law related to the targeted land use The analysis is aimed at answering a question of critical importance is it possible to establish (using and developing provisions of the law), in a definite and non-

contradictory manner, the targeted use of land that is included in the category of “land of populated areas”?

The main conclusion of this analysis is as follows: the classification of urban land established by the law (through establishment of the basic categories and their further division into more detailed sub-categories completed with a list of specific types of activity and real property) does not make it possible to determine, in a definite and non-contradictory manner, the designation of land included in each particular category (sub-category). This is due to three main reasons:

First, it happens because the types of real property included in each particular sub-category shall not necessarily be concentrated only in this category and not in another one. On the contrary, they can be naturally found in other sub-categories. For instance, streets, squares, passages and so on are included in the sub-category of “land of common use”, but these types of real property can naturally and necessarily be found in all other sub-categories (see the table in Appendix 2).

Second, these lists of real property are incomplete: almost all of them contain some other types of real property, but no definition of these “other” types is given.

Third, some definitions are rather vague. For instance, land occupied by industrial, transport and communications facilities is defined as “land provided to enterprises, institutions and organizations for implementation of the objectives”. We can propose with good reason that enterprises, institutions and organizations of this type may be located anywhere, regardless of their category, because each of them performs a particular objective (“set” or “not set” by anyone).

The law does not provide an answer to another critically important question: what can be considered the targeted land use of a particular land parcel - all types of real property permitted for this category or the real property that is now located on the land parcel or being planned? As no definite answer to this question is given in the law, we can consider the first interpretation as legally reasonable. And this can be used as legal grounds for development of “Land Use and Development Regulations” in Russian cities, based on the principles of legal zoning. In the corresponding sections of these regulations, lists of land uses permitted in each particular zone of a city are established. It is critically important under the conditions of a developing market, because it makes it possible for both land owners and the city to use land in the most efficient and profitable way.

As a result of this analysis, another question arises: for what purpose does the law establish categories and sub-categories of urban land? It would be natural to propose the following answer: in order to

- (a) form a basic legal system of land use,
- (b) provide the basis for development of the main law-based principles in the legal documents of subjects of the RF and local governments and in urban development documents.

The analysis showed that, with respect to land of populated areas, the current Land Code did not resolve this issue. The Draft Land Code does not contain any fundamental changes regarding this issue either.

What provisions of the land law are “transferred” to the urban development law?

Article 73 of the Land Code states that all urban land is used according to Master Plans and development plans, and all Master Plans (or development plans) establish the main areas of land use. It is worth noting that the law does not say that Master Plans establish the targeted use of land - they only establish the main areas of its use. The conclusion is (1) the law does not directly name the main document that originally establishes the targeted use of land, (2) the law “re-addresses” this issue of designation (use) of urban land to the urban development law.

What provisions of the law are incorporated in local urban development documents?

The list and substance of all local urban development documents are determined in the “Instruction on the substance and procedures for development, coordination and approval of urban development documentation” (approved by the Resolution of the Ministry of Construction of Russia No 18-58 of 22 12 93).

If we analyze the table in Appendix 3 (where the substance of this Instruction is presented), we shall find that in none of the stages of urban planning are the rights to use of real property “fixed” in a clear and definite manner, i.e., no lists of permitted uses or parameters of construction alteration of real property are established for each particular zone (for instance, Master Plans do not contain that). The succeeding document (detailed development plan) brings the previous one to more detail, but at the same time eliminates it (the Master Plan) because it has more power with respect to the area under planning. But this detailed document, in turn, defines the succeeding one - a more detailed “block development plan” or “parcel development plan” that again legally eliminates the preceding document (detailed development plan). All this results in the establishment of a targeted use for each land parcel, which contradicts the conditions of free market competition for the most efficient use of land.

Here, it is worth noting that if the Land Code does not give a definite answer as to what should be considered the targeted use of each particular land parcel (the whole list of real property uses or only one of them), then the urban development law (without the Draft Urban Development Code that has not been adopted yet) actually establishes only one permitted use for each particular parcel.

The existing system of urban development documentation does not originally establish what can and what can not be done on particular parcels (without going through a complicated and unguaranteed procedure of making a specific design plan for a specific parcel). Therefore, no basis is created for a productive dialogue between the city administration and potential investors.

This analysis illustrates the importance of coordination of different laws regulating the process of formation of real property market. The concept of "targeted use of land", though quite clear, is fraught with the danger of inadequate and controversial interpretations. The adoption of "Land Use and Development Regulations" based on principles of legal zoning, makes it possible to consistently overcome contradictions pointed out in this short analysis.

Having analyzed the situation with the established designation of land, we need to clearly understand the place of the Master Plan in the current and transformed system of land use and development. The best way to do this is to compare the old and new types of Development Regulations of the old and new types.

Brief comparative analysis of "Land Use and Development Regulations" - local legal documents developed for different Russian cities

Within the framework of a Legal Zoning Project implemented under the auspices of the USAID, a number of draft legal documents were developed - Land Use and Development Regulations for the Cities of Novgorod (adopted by the City Assembly and effective as of on January 1, 1997), Tver, Irkutsk, Pushkin, Kazan, Samara and Vyborg.

A comparison of these documents makes it possible to solve one more task (apart from determination of the role and place of the Master Plan in urban development regulation) - provide administrative officials and professionals with a clear understanding of the major differences between the regulations based on legal zoning principles and the regulations based on principles of socialist urban planning that have been used for the last several decades in Russia and are still developed and proposed by city administrations regardless of the changes in the market.

The scope of this comparison is defined by the form in which the bases for decision-making are presented in the regulations. That means the availability or lack of a published zoning map and lists of permitted real property uses in these regulations. This criterion makes it possible to clearly distinguish between two types of regulations that are based or are not based on principles of legal zoning.

Two types of regulations

The documents titled "Development Regulations" are not new to Russian practice. Such documents existed for many decades. Therefore, the original question to be set at the very beginning of our comparison, is **what is the difference between the former regulations and those prepared within the framework of the Legal Zoning Project for use in Russian cities?**

More precisely, the question is: what is there in the regulations based on legal zoning that makes them different from other regulations that are not based on legal zoning principles?

The answer is very simple (it is illustrated by the Chart in Appendix 4) The regulations based on legal zoning principles always contain a description of the bases for decision-making by city administrations and citizens on land use and development These bases are open to the public in the form of a zoning map and a description of the permitted real property uses for all zones

The situation is different with the regulations that were developed and effective during the socialist period of Russian history, as well as with the documents that are still developed from force of inertia and are of an administrative but not legal nature Such documents never contained bases for decision-making These bases could be found in urban development documentation

To understand the consequences of this, we need to answer a number of additional questions relating to the former urban development regulatory system

1 Why did the text of the Development Regulations exist separately from the urban development documents containing bases for decision-making?

2 In what way were the bases for decision-making on land use and development presented in the urban development documentation?

3 How did the form of presenting the bases for decision-making affect the procedures for decision-making?

Question 1 Why did the text of the Development Regulations exist separately from the urban development documentation containing bases for decision-making?

The Development Regulations by their legal status have always been “legal regulatory acts (documents)” Any “legal regulatory act” must always be approved by the appropriate executive agency and be officially published Both requirements were always observed for the Development Regulations The regulations were approved by the executive agencies represented by either the Council of People’s Deputies, or the Executive Committee, or the Head of Administration (as it used to be with the Development Regulations of the City of Samara approved in 1995) The regulations were officially published They contained procedures for allocation of land for development, coordination of project design documentation, issuance of construction permits and project acceptance

But these Development Regulations never contained and could not contain urban development documentation On the contrary, the Regulations were included in urban development documentation (see the Chart in Appendix 4) Two possible schemes for developing the Regulations existed as part of the Master Plan or as a separate document prepared after approval and on the basis of the Master Plan The fact that the Development Regulations as a “legal regulatory act” could not include urban development documentation, is easily explained the latter (especially maps of the Master Plan) were never published due to considerations of “secrecy” The situation is still the same In other words, the Regulations describing the procedures for urban development regulation could not include the bases for making the decisions which these procedures were based on

This situation results in evident contradiction with the constitutional norms. It so happened that the legal status of the Master Plan is not clearly defined. Pursuant to the RF Law "On the Fundamentals of Urban Development in the Russian Federation", the Master Plan is considered the "basic legal document" in the area of urban development. It is worth noting that the Master Plan is called a legal document, but not a "legal regulatory act". The term "legal document" is broader and comprises the concept of a "legal regulatory act". It is clear that as the Master Plan can not be published, it, therefore, can not be a "legal regulatory act", i.e. it can not be a local law, but it can be a legal document (because there is no requirement for legal documents to be published). This is proved by p. 3 of Article 15 of the RF Constitution of the Russian Federation: **"Laws are subject to official publication. Laws that are not published, shall not be applicable. Any "legal regulatory acts" concerning personal rights, freedoms and responsibilities shall not be applicable if not officially published."** That is why, while the Master Plan remains a secret document, it can only be a legal document with uncertain status but not a "legal regulatory act", i.e. a local law. But being a "legal regulatory act", it can not be "the basic legal document" either, because it is simply not clear what it means in the legal sense.

This legal collision must be overcome. There are two basic ways of doing that: (1) to eliminate the "secret" character of the Master Plan, (2) while preserving the "secret" character of the Master Plan, to legalize its decisions (with respect to maps, for instance) in a regulatory legal document, i.e. by including the corresponding bases for decision-making (in the form of a zoning map and explanations) in the Land Use and Development Regulations. The second way is logical and the most efficient, and it was implemented within the framework of the Legal Zoning Project.

Question 2 In what way were the bases for decision-making on land use and development presented in the urban development documentation?

The answer to this question was given above. We shall remind you again of the fact that urban development documentation (in its present form) does not have any definite legal status required under conditions of the existing real property market.

Failure to understand this obvious fact together with failure to understand the essence of legal zoning sometimes results in strange proposals similar to those prepared for the City of Tver (by experts who were invited by the city outside the framework of the Legal Zoning Project and who did not fully understand the essence of legal zoning). It is interesting that in their proposals the above given "chain" of urban development documents was supplemented by a "legal zoning plan" that was "inserted" between the plan of the functional zone and the detailed development plan (see the Scheme in Appendix 4). It so happened that the legal "uncertainty" of urban development documentation remained at the same level, but the new zoning document that was supposed to introduce "legal certainty", was brought down to an ordinary urban development document and, thus, lost its legal essence (despite its formal definition as a "legal" document). This approach is not only false but also "harmful" because it discredits the very idea of legal zoning and leaves practically unchangeable

the system created under socialist conditions which is ineffective in the new market environment

In analyzing the Development Regulations of the socialist type, we are dealing with a paradox. The regulations describe procedures for decision-making. But the bases for decisions are supposed to be in other documents. But when we address these documents, we do not find these bases either, though formally they must be there. This paradox can not help but affect the procedures themselves and the style of decision-making.

Question 3 How did the form of presenting the bases for decision-making affect the procedures for decision-making procedures?

The lack of official and legally effective bases for decision-making (in the form of the appropriate maps and restrictions on the permitted uses) has serious consequences.

There are presently two methods of decision-making. The first one - "at someone's discretion". This way is frequently used due to the lack of definite legal bases for decision-making on land use and development. Under these conditions, it is not clear from the very beginning, what the answer to a particular initiative relating to land development will be. Any answer ("yes", "no" or "yes" under certain terms) is developed over a long period of time in "creative" process with participation of administrative officials. The formal availability of urban development documentation is used as the opportunity for a "subjective" interpretation of its provisions that do not have any legal status. But at the same time, the opportunity to go to court does not exist, because "the bases for decision-making", i.e. the urban development documentation is made up in the form that proposes the decisions to be made "at discretion" of the corresponding administrative officials.

The second way is to make decisions by comparing the two documents (in this case - comparing applications and the Regulations). It is evident that in this situation it is clear from the very beginning which actions are lawful and which are not. The freedom for arbitrary interpretation is considerably restricted, but the freedom of investors within the framework of the Regulations is extended, which makes cities more attractive for investment.

To conclude the analysis of the main differences between the two types of Regulations, we need to emphasize two facts. First, the specific features of the Regulations of the socialist type are quite logical for the system that recognizes only governmental ownership of land and does not accept the possibility of land sales, i.e. conveyance of land parcels as real property from one person to another. Second, the illogical character of the former system arises only in the situation of a transition to principally new foundations of urban development regulation in a developing real property market. And it does not mean that the system is illogical as such (because "inside" it remains quite logical). It is an inevitable result of its non-conformity to the principally new context of economic and legal relations.

After we have examined the substance of the matter, we can move to its formal side related to “who develops and coordinates urban development documentation and how” This issue will be considered in the next section

2 2 2 Procedures for Development, Coordination and Approval of Master Plans

Using the typological system provided in the first section of this manual, we shall consider this problem in the light of three questions who, what and how To answer them, we shall analyze the following regulatory legal documents (extracts from them are included in Appendix 5)

1 Law “On Fundamentals of Urban Development in the Russian Federation (in the edition of the Federal Law 112 of 19 07 95),

2 Instruction on the Substance, Procedures for Development, Coordination and Approval of Urban Development Documentation Approved by the Ministry of Construction of Russia (Resolution No 18-58 of 22 12 93),

3 Resolution of the Ministry of Construction of the RF 18-41 “On Procedures for Conducting Expert Examination of Urban Development Documentation and Construction Plans in the RF” (of 29 10 93),

4 Procedures for Conducting Expert Examination of Urban Development Documentation and Construction Plans in the RF Approved by the Resolution of the Ministry of Construction of Russia 18-41 of 29 10 93,

Who establishes the procedures? According to the law (1), Paragraph 3 of Article 6, the procedures are established by the Government of the RF and Governments of the Republics in the RF However, the Instruction (2) (p 13 12) provides a broader list “procedures for consideration, coordination and approval of urban development documentation developed for the area of subjects of the RF, are established by the law of the republics, and by laws, charters and other legal documents of krais, oblasts, cities of Federal significance, autonomous oblasts and autonomous districts ”

Here we find a formal discrepancy, that results in the following consequences

1 Does a legal regulatory document (instruction) have the force to give a broader interpretation to the law? We suppose that it does not Then the provisions of the law are applicable (and not of the instruction)

2 If the provisions of the law are applicable, then the right to establish these procedures does not belong to the executive agencies of subjects of the RF that are not republics (oblasts), i e oblasts and republics do not have equal rights in this issue We consider it worthwhile to correct this position in the Draft Urban Development Code

3 At present, the corresponding documents of the RF Government shall be applied to oblasts and their cities

4 At present, no governmental documents are available with direct respect to this issue. There exists only the Instruction approved by the Ministry of Construction (2). But a question arises: can this Instruction be considered a document of the Government of the RF (according to the requirements of the law)?

Who orders the development of Master Plans? According to the Instruction (2) (p 16) a local administrative agency or a local Architecture and Urban Development Committee authorized by it, can be the customer ordering the development of a Master Plan.

Paragraph 13.8 of the Instruction (2) states: "The procedures for project design work shall be coordinated with the appropriate architecture and urban development agencies that are not customers of urban development documentation for the area that they are in charge of." This means that this coordination is implemented by architectural agencies of a subject of the RF. The law does not contain any regulations as to (1) what the subject of coordination is (which issues shall be coordinated and which shall be not), (2) what the procedures and the terms for this coordination are, (3) if any disputes arise, how they are settled.

Who coordinates Master Plans? According to Paragraph 13.5 of the Instruction (2), this coordination is implemented by governmental supervising agencies and "other interested organizations." Paragraph 13.8 states: "**The list of coordinating organizations is determined by the project design task order.** The urban planning documentation shall be coordinated with architecture and urban development agencies, environmental protection committees, fire protection and hygiene and disease control agencies, land management committees, historical preservation committees and other governmental supervising agencies and interested organizations in accordance with the law." Paragraph 13.11 states: "The urban development documentation is considered by architecture and urban development agencies of subjects of the RF together with local architecture and urban development agencies after the appropriate governmental expert examinations are conducted and public hearings are held."

The conclusions are:

1. No established list of coordinating agencies exists (because "the list of coordinating agencies is determined by the project design task order" and this list is not complete - "and by other agencies").

2. The list of appropriate agencies can be established in the corresponding regulatory legal documents on procedures for consideration, coordination and approval of urban development documentation. These documents (according to the Instruction, p 13.12) "are adopted according to the law of republics of the RF, by laws, charters and other legal documents of krais, oblasts, cities of Federal significance, autonomous oblasts and autonomous districts."

What is the subject of coordination? This should be understood in the following way: what specific issues are coordinated by what specific agencies (and, accordingly, what issues are not subject to coordination by these agencies). In other

words, we speak about division of authority between different agencies in the issue of coordination of Master Plans

No direct answer to this question is given in the current legal documents Paragraph 7 19 of the Instruction (2) contains an indirect answer to this question “The approved part of the Master Plan includes

functional zoning of the city area,
construction zoning of the city area (scale and density of development),
boundaries of land government (of the Russian Federation and its subjects),
municipal, private and other forms of ownership,
development regulations of a city or another settlement ”

With respect to the issue of coordination (but not approval), this position is interpreted in the following way

1 No doubt that the approved part shall be coordinated first Therefore, naturally, the above mentioned list is subject to coordination

2 It is not clear whether other issues (not presented in the approved list) are subject to coordination According to the substantial aspect of the matter, they can or can not be coordinated According to the formal and legal aspect, it is not clear why it is necessary to coordinate the issues that are not subject to approval From this point of view, a question arises if we speak about a legal document, will it be logical to divide it into approved and non-approved parts? Because the part that is not subject to approval may not be included in a legal document

Who approves the Master Plan According to Paragraph 13 5 of the Instruction (2) “City Master Plans are approved by government executive agencies and local agencies within the framework of their authority and in coordination with government supervising agencies, as well as with other interested organizations in accordance with the law ”

The conclusions are

1 According to the literal interpretation of the text, three options are possible
a) Master Plans are approved by local agencies,
b) Master Plans are approved by government executive agencies,
c) Master Plans are approved by government executive agencies and local agencies

2 Options (a) and (b) contradict the law - first of all, the Federal Law “On General Principles of Organization of Local Self-Governance in the Russian Federation” Paragraph 2 of Article 6 of the Law (“Subjects of Authority of Local Agencies”) states “Issues of local significance include
(4) overall social/economic development of municipalities,
(9) planning and development regulation of the municipal areas,
(10) creation of conditions for housing and social development ”

This statement, though not stating directly that Master Plans are approved by local agencies, does not make it possible to interpret this issue in any other way

If we come across contradictions in the law on this issue, we must take into consideration the following provisions of Articles 7 and 55 of the above mentioned Law Article 7 (Paragraph 3) is the legal basis of local self-governance "Federal laws and laws of subjects of the RF that establish norms of municipal law, shall not contradict the Constitution of the RF and this Federal Law or shall not restrict the rights of local agencies guaranteed by them

If the norms of the municipal law contradict the Constitution of the RF or this Federal Law, the provisions of the Constitution of the RF or this Federal Law are applicable "

Article 55, Paragraph 2 "Before the regulatory legal documents in the RF are brought in line with this Federal Law, they shall be applicable in the part that does not contradict this Federal Law "

What is approved The Instruction (2) (Paragraph 7 19) states "The approved part of the Master Plan includes
functional zoning of the city area,
construction zoning of the city area (scale and density of development),
boundaries of land government (of the Russian Federation and its subjects),
municipal, private and other forms of ownership,
development regulations of a city or another settlement "

With respect to boundaries, the following must be noted

- 1 The Master Plan shall only be approved by local agencies and not by any other agencies (see the above)
- 2 Boundaries of government land may not be approved by local agencies
- 3 That is why the boundaries of government land may not be the subject of approval in the Master Plan We recommend to resolve this issue by using the procedures described in Section 2 1

The subject of approval procedures and the substance of the approved provisions bring us again to the issue of the status of the Master Plan, i e the issue of who the Master Plan is addressed to, who shall follow and implement its decisions This is the range of issues that were described in the beginning of this section and are illustrated by the Chart in Appendix 4

To complete the analysis of this problem, we have to note that the current law is rather contradictory and incomplete with respect to this issue and does not contain clear provisions devoted to the division of authority between different agencies in the process of coordination of the corresponding sections of the Master Plan The most efficient way to resolve this problem is development of the appropriate detailed legal documents by subjects of the Russian Federation

It is also important that the formal issues of the division of authority should be closely linked with the content of the Master Plan, more precisely - with the transformation of its content and status. The scheme in Appendix 4 illustrates an example of such transformation.

2 3 Problem 3 Division of Authority between Different Agencies in Land Use and Development Regulation with Respect to Historic Preservation and Environmental Protection

In the context of the division of authority, this problem is interesting in two respects. First, it proves the need to adopt an approach where the issues of content - land use regulation - are considered in parallel and close connection with the issues of a formal division of authority between different agencies. Second, this problem is important because it is necessary to understand how the legal zoning system that is relatively new for the Russian practice, will be linked with other components of land use regulation related to the establishment of special historic preservation and environmental protection restrictions.

The experience of development of the Land Use and Development Regulations in different Russian cities showed the necessity to clearly understand how different regulatory requirements are correlated in the system based on legal zoning. To understand this issue, we propose to analyze the experience of development of the Draft Regulations for the Cities of Novgorod and Kazan. We need to answer the following five questions:

- 1) what are the main requirements for the formation (creation) of real property (units),
- 2) which sections of the Regulations contain these requirements,
- 3) what areas and real property are these requirements established for,
- 4) what agencies supervise the fulfillment of these requirements and in what areas,
- 5) what agencies participate in the development of requirements and what are these requirements.

The answers to these questions are given in the attached Table 2, and Figure 1 illustrates how a set of requirements for particular real property is determined depending on its location in the city. We shall provide short commentaries to the Table and the Figure.

The formation or creation of real property units is connected with establishment of specific restrictions or requirements. There are four types of requirements:

- functional/spatial requirements (requirements for development based on zoning conditions - functional-spatial development of the city),
- aesthetic requirements (requirements for development based on historic and cultural preservation conditions, preservation of the historic image of the city),
- ecological requirements (requirements for development based on conditions of the environment and health protection),
- structural reliability and building safety requirements.

All these four types of requirements have a common characteristic feature: they can (and ideally must) be established (in the corresponding regulatory legal

documents) before the beginning of any activity on creation or alteration of real property. In a legal system, this requirement is explained by two reasons. First, the activity on alteration of real property is considered legal only if it is implemented by its owner. This can be the owner of a newly created (in the legal respect) real property unit. A real property unit is not considered "created" or "formed" in the legal respect if no requirements or restrictions for its alteration are established. In other words, first, the requirements should be established, then the real property unit is "legally" formed and only after that can it be conveyed for use. After that the owner has the right to make any alterations to this real property. Second, in order to make alterations or build something, one should know in advance what is permitted by the law.

Another type of requirements is not necessarily established in advance. The requirements of this type are connected with the convenience of use of adjoining real property and establishment of restrictions for the use of this real property for the sake of this convenience. Such restrictions/requirements are established based on servitude agreements between the parties involved. But we shall not consider them in this manual.

We shall try to answer the above set of questions by analyzing the above mentioned requirements.

Functional/spatial requirements (requirements to the development based on zoning conditions - functional/spatial development of the city) are presented by two components:

- lists of permitted land uses,
- parameters of permitted construction alteration of real property (minimum parcel size, minimum building setbacks, maximum building height, maximum development percentage, etc.)

Which documents (sections of the Regulations) contain these requirements?

They are given in the second part of the Land Use and Development Regulations ("Maps and Development Requirements") in a special section 2.1 "Zoning Map and Zoning Requirements to Development".

What areas and real property are these requirements established for?

They are established for the whole city area and are linked with each particular zone shown on the zoning map and, correspondingly, with all real property located in each zone. Exception from this rule are real property units included in the list of historic or cultural monuments for which individual requirements are established.

What agencies supervise the fulfillment of these requirements and within which areas (supervising by means of coordination of plans for alteration of real property, including coordination of architectural and construction documentation)?

The fulfillment of these requirements (after they are established in the Regulations) is supervised by architectural and urban development agencies. Sometimes historic preservation agencies can participate in this process with respect to real property located in historic preservation zones (shown on maps in Section 2.2 of the

Regulations) In order to avoid duplication of action, the historic preservation agencies may delegate the corresponding authority to the architectural agencies

What agencies participate in the development of these requirements when the Regulations are prepared? These requirements are developed by the architectural and urban development agencies, but all other administrative agencies participate in their coordination (before the adoption of the Regulations)

Aesthetic requirements (requirements for development based on the historic preservation conditions, preservation of the historic image of the city) are presented by two components

- requirements on the conformity of newly built or renovated structures and buildings to the existing architectural environment,
- requirements on the design of facades

These requirements can be presented in the form of texts, parameters and schemes of standard architectural decisions

Which documents contain these requirements? They are included in the second part of the Regulations (“Maps and Development Requirements”) in a special section 2.2 “Map of Historic Preservation Restrictions and the Corresponding Requirements for Development”

What areas and real property are these requirements established for? They are established for the real property that is not included in the list of historic monuments and is located within historic preservation zones. Individual requirements are established for each monument.

What agencies supervise the fulfillment of these requirements and within which areas (supervision by means of coordination of plans for real property alteration including coordination of construction design documentation)? The historic preservation agencies supervise the fulfillment of these requirements.

What agencies participate in the development of these requirements when the Regulations are prepared? These requirements are developed by the historic preservation agencies and are coordinated (before the appropriate provisions are included in the Regulations) by the architectural and urban development agencies.

Ecological requirements (requirements for development based on environmental and health protection conditions) can include requirements for protection of riparian zones and other requirements.

Which documents (sections of the Regulations) contain these requirements? They are presented in the second part of the Regulations (“Maps and Development Requirements”) in a special section 2.3 “Map of Ecological Restrictions and the Corresponding Requirements for Development”

What areas and real property are these requirements established for? They are established for zones (and, correspondingly, the real property located in these zones), that are shown on the map of ecological restrictions

What agencies supervise the fulfillment of these requirements and within which areas (supervision by means of coordination of plans for construction alteration of real property, including coordination of architectural and construction documentation)? The fulfillment of these requirements is supervised by the authorized environmental protection agencies

What agencies participate in the development of these requirements when the Regulations are prepared? The environmental protection agencies develop ecological requirements that (before they are included in the Regulations) are coordinated with the architectural and urban development agencies

Structural reliability and building safety requirements are presented in the Construction Standards and Regulations (“SNIPs”) that are developed by the authorized agencies for all types of construction. The fulfillment of these requirements is supervised by the architectural and urban development agencies and other authorized agencies during the stages of coordination of architectural and construction documentation, construction itself, acceptance of the objects built and further use of these objects

It is important to note that all these four types of requirements considerably differ from each other and are not “intersected”. In other words, they all must be observed. The corresponding scheme illustrates how only two types of these requirements “overlay” (functional/spatial and aesthetic requirements) in the system of the City of Novgorod

Cases when different requirements are applicable to formation (creation) of real property units. In analyzing the following cases, we should take into account two circumstances. First, the structural reliability and building safety requirements must be observed in the following and all other cases. Second, we analyze cases when real property is located outside the zones that are shown on the map of ecological restrictions. In cases where real property is located within the “ecological” zones, the ecological requirements must be observed as well (they are presented in the corresponding section of the Regulations)

Case 1 A real property unit is located outside the historic preservation zone and the general protection zone (development regulation zone). This area is regulated only by functional/spatial requirements (lists of permitted uses and parameters of permitted construction). The plans of developers are coordinated only by the architectural and urban development agency

Case 2 A real property unit is located in the general protection zone (development regulation zone), but outside the boundaries of the historic preservation zone. This area is regulated only by the functional/spatial requirements. With respect to coordination of construction plans of developers, two options are possible: 1)

coordination is implemented by two agencies - the architectural committee and the historic preservation committee 2) coordination is implemented by one agency - the architectural committee The second option is more rational because it makes it possible to avoid duplication of the same function by different agencies But this option involves the delegation of authority to and from the corresponding agencies

Case 3 A real property unit is located within the historic preservation zone This area is regulated by requirements of two types - functional/spatial (lists of permitted uses and parameters of permitted construction) and aesthetic (conformity of building facades to the architectural environment and specific features of facade design) requirements Here, two options for coordination of developers' plans are possible 1) Coordination with respect to the functional/spatial requirements is implemented by the architectural committee, coordination with respect to aesthetic requirements is implemented by the historic preservation committee But in addition to that, the developers' plans are also coordinated with respect to parameters of permitted construction (i.e. one of the components of the functional/spatial requirements) 2) The architectural committee supervises the fulfillment of the functional/spatial requirements, the historic preservation committee takes care of the aesthetic requirements It is clear which option is more rational But in this case the most rational approach involves political and administrative agreement between the two agencies

This interpretation of the issue of establishing the requirements for formation (creation) of real property units makes it possible to

- 1) clarify the problem,
- 2) divide the corresponding authority, areas and subjects of authority between different administrative agencies of the city In this case, each administrative agency will be responsible for a definite component of regulatory and supervisory activities (and for the corresponding section in the Regulations that they will develop) the architectural committees - for the functional/spatial requirements, the historic preservation committees - for the aesthetic requirements, the environment protection agencies - for the ecological requirements,
- 3) show "gaps" - an actual lack of the established requirements to formation of real property units and to make the city authorities fill in the "gaps" through development and introduction of the Land Use and Development Regulations based on the legal zoning principles

Types of requirements	Where, in what documents are these requirements established?	Where, in what documents are these requirements established?			What areas and real property units are these requirements established for? (for units not included in the lists of historic monuments)			What agencies supervise fulfillment of the requirements and in what areas (supervision through coordination of construction design documentation)					What agencies participate in development of particular requirements when the Regulations are prepared?		
	maximum height, maximum percentage of development														
II Aesthetic requirements (historic and cultural preservation requirements)	Conformity of newly constructed or reconstructed buildings to the existing architectural environment		+				+							+	+
	Design features of building facades		+				+							+	+
II Ecological requirements (environment and health protection requirements)	Riparian area protection requirements			+				+					+		+
	Other ecological requirements			+				+					+		+
IV Structure reliability and building safety requirements					+		+						+		

Fig 1 Combination of different requirements for formation of real property units depending on their location (experience of Novgorod, based on Draft Amendments to the current Land Use and Development Regulations)

Part II, section 2 1 of the Regulations zoning map and zoning requirements for development

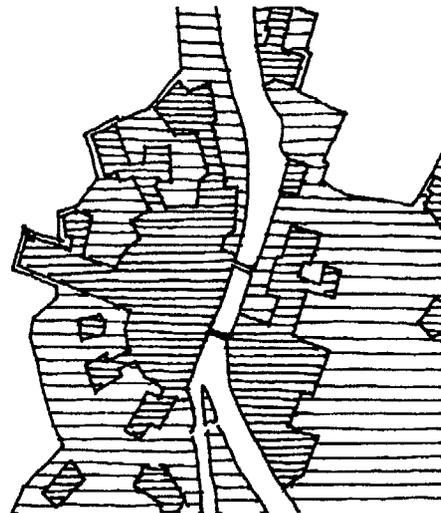


Functional/spatial requirements

(are established for each zone of the city shown on the zoning map)

- a) the list of permitted real property uses,
- b) parameters of permitted alteration of real property (minimum parcel size minimum building setbacks maximum building height, maximum percentage of development, etc)

Part II, section 2 2 of the Regulations map of restrictions and historic preservation requirements for development



Aesthetic requirements

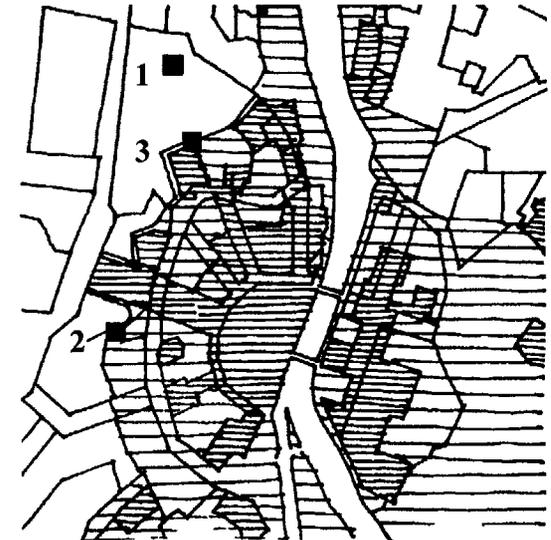
(established for real property that is not included in the list of historic monuments and is located within the historic preservation zones)

- c) conformity of building facades to the architectural environment,
- d) design features of the building facades

historic preservation zone area regulated by the historic preservation agencies that coordinate construction plans and the construction design documentation on issues c) and (d) (section 2 2 of Regulations and (b) (section 2 1 of Regulations)

land located within the general preservation zone but outside the historic preservation zone (regulation zone) area regulated by the historic preservation agencies that coordinate plans for real property alteration and construction design documentation on issues (b) (section 2 1 of Regulations)

Cases of application of different requirements for format of real property units



Cases of application of different requirements

Case 1 real property is located outside the historic preservation zone and outside the general preservation zone (development regulation zone)

Requirements "a" and "b" (established by Section 2 1 of Regulations)

Coordination on issues a and b architectural agencies

Case 2 real property is located in the general preservation zone (development regulation zone) but outside the historic preservation zone

Requirements "a" and "b" (established by section 2 1 of Regulations)

Coordination on issues a and b architectural agencies on issue b historic preservation agencies

Case 3 real property is located in the historic preservation zone

Requirements a and b (established by section 2 1 of Regulations)

'c' and 'd' (established by section 2 2 of Regulations)

Coordination on issues "a" and "b" the architectural agencies issues "b", "c" and "d" the historic preservation agencies

2.4 Problem 4 Division of Authority between Different Agencies Participating in Coordination of Construction Design Documentation

This problem should be considered in the context of formation of such a system in which the following issues will be very clear to all participants of the investment/construction process

1) the list and content of all materials (sections) of the construction design documentation applied to different types of projects, taking into account their location in city zones (shown on the zoning map),

2) the complete list of agencies participating in coordination of the construction design documentation,

3) clear instructions as to what agencies will coordinate each particular section of this documentation,

4) the essence of the coordination as such (it shall be conducted in order to check the conformity of the submitted documentation to the established parameters and standards but not for the sake of implementing the personal will of the administrative officials,

5) the deadlines for coordination (applied to different cases) and the established rates of payment for this service provided by the administrative agencies,

6) possibility of appealing to court in the case of illegal actions of the administrative officials (because the appropriate regulatory documents should contain the definition of "illegal actions") or a violation of the deadlines by the administrative agencies,

7) the status of coordination (its final aim shall be issuance of a legal document the construction permit)

The above mentioned issues can be considered as the criteria for assessment of the current legal documents. The basic documents are

(1) Instruction on Procedures for Development, Coordination, Approval and the Content of Design Documentation for Construction of Enterprises, Buildings and Structures SNIP 11-01-95 Approved by Resolution No 18-64 of the Ministry of Construction of the RF of 30.06.95

(2) Instruction on Procedures for Conduct of Government Expert Examination of Construction Projects 11-201-95 Approved by Resolution No 18-39 of the Ministry of Construction of the RF of 24.04.95

An analysis of these documents shows a rather difficult and contradictory (in the legal respect) situation. We shall start with an analysis of Instruction (1). We shall ask simple questions and try to answer them using the text of the Instruction.

What type of documents is the Instruction addressed to? Design and planning documentation for construction of enterprises, buildings and structures (p. 1.1). Procedures for development of urban development documentation are established in separate regulatory documents (p. 1.2), i.e. another Instruction (the "Instruction on the Content and the Procedures for Development, Coordination and Approval of the Urban Development Documentation" approved by the Resolution No

18-58 of the Ministry of Construction of the RF of 22 12 93) that we have already partially analyzed in Section 2 2 This division of the two types of documentation was established by Paragraph 1 of Article 6 of the RF Law 3295-1 "On Fundamentals of Urban Development in the Russian Federation" of 14 07 92 Thus, there exist urban development documentation (developed with respect to huge areas) and different documentation - "construction design " (developed with respect to separate land parcels) - "project design documentation for construction of enterprises, buildings and structures" Within the framework of this section, we shall deal with the construction design documentation

Who is empowered to adopt the documents regulating the content and the procedures for development and coordination of the construction design documentation? Paragraph 2 3 of the Instruction (1) states "If required, subjects of the RF, Ministries and Governmental Departments of the RF may develop and approve the regulatory documents, based on the provisions of this Instruction and taking into account local (regional) conditions and the specific features of the planned projects "

The issue is quite clear with respect to subjects of the RF For instance, in Moscow, the "Regulation on Unified Procedures for Preparation of Construction Projects in Moscow" was adopted and it also establishes the procedures for coordination of the construction design documentation However, the phrase "if required" is still not clear what are those cases and who determines that it is required? However, this phrase can not be addressed to subjects of the RF they have this right anyway, regardless of whether it is required or not

The phrase "if required" may be addressed to Ministries and Governmental Departments of the RF Then it means that, if required, Ministries and Governmental Departments may develop regulatory documents based on local (regional) conditions and specifics of the planned projects In other words, this right has been "reserved" for Ministries and Governmental Departments But at present, this right either has not been implemented or has not been officially announced yet (or both) Its implementation (in the concrete legal form) would mean (a) existence of the list of Ministries having this right, (b) existence of the appropriate types of real property for which it is applied, (c) special procedures for coordination of the construction design documentation As at present we do not have all this, this issue remains unclear and it is resolved in the most frequent way - "at somebody's discretion"

Pursuant to paragraph 2 3 of Instruction (1), local agencies do not have the right to independently establish procedures for coordination of construction design documentation It is fair in the sense that such procedures shall be unified for the whole country (and for its regions) However, this does not prevent a situation when the procedures for coordination of such documentation prepared at the city's initiative and based on local conditions (for instance, based on the adopted Land Use and Development Regulations) will be approved by the corresponding subject of the RF

On what basis is the construction design documentation developed? Paragraph 3 1 of the Instruction (1) states "The project design documentation is

developed after (1) a decision has been made on preliminary coordination of the construction site, (2) bases for future construction investment have been approved, (3) the corresponding agreement exists, (4) the planning and design task order exists, (5) engineering research materials exist

According to this statement, all the above documents are considered the necessary bases for development of the construction design documentation. However, it contradicts the law with respect to the need to provide documents (1) and (2)

The Land Code (in its effective part) does not state that these documents shall be available in all cases. There are cases where no preliminary coordination of the location of a construction site is required. Article 28 of the Land Code ("Procedures for Preliminary Coordination of a Construction Site") states "Preliminary coordination of the location of a construction site is not required if land is allocated for construction of real property units in cities in accordance with their Master Plans and development plans."

Besides, there exists a Presidential Decree 1263 of 26.11.97 "On the Sale of Land Designated for Development and Located in Cities and Villages or the Right to Lease of Land to Natural Persons and Legal Entities" and a Presidential Decree "Procedures for Conduct of Tenders (Auctions) for the Sale of Land located in Cities and Villages or the Right to Lease This Land to Natural Persons and Legal Entities" approved by the Resolution No 2 of 05.01.98 of the Government of the RF. These documents do not establish the need for "preliminary coordination of the location of a construction site", or "the approved bases for construction investments".

The practice of development of the Land Use and Development Regulations in the cities of Novgorod and Kazan showed that it is quite possible to create procedures that make it possible for investors/developers to acquire long-term rights to land before the project design process is started, i.e., before the construction design documentation is coordinated (see Part I of this manual devoted to procedures for allocation of land for construction). And this means that both documents mentioned in the Instruction can not be considered the necessary grounds for development of the construction design documentation.

What is coordination? This question may seem strange, especially with respect to the Instruction that regulates coordination procedures. Nevertheless, this issue quite logically arises when we read Paragraph 3.4 of the Instruction (1) "The project design documentation for construction of enterprises, buildings and structures that was developed in accordance with all governmental regulations and standards (which is confirmed by the corresponding signature of the authorized person - the chief project engineer, the chief project architect, the project manager) is not subject to coordination with government supervisory agencies or other interested organizations, except for cases stipulated by the RF Law."

Instruction (1) does not contain any definition of "coordination". That is why, first of all, we need to explain at least the substance of this process. Coordination is the action implemented by the authorized administrative agencies, the purpose of

which is to check the conformity of the submitted documentation with the government standards and regulations. Coordination is not conducted for its own sake, it should result in the issuance of a construction permit.

Taking into account the above, we shall try to draw a few conclusions.

1. It turns out that Instruction (1) formally eliminates the process of coordination: "project design documentation is not subject to coordination with government supervisory agencies and other interested organizations." The additional conditions (in the place of dots) are actually meaningless: any project design documentation, with no exceptions, must be developed in accordance with government regulations and standards and any project design documentation must be confirmed by the signature of the authorized person.

Another phrase "except for the cases stipulated by the RF law" means that coordination is not eliminated, but is applied in the cases stipulated by the law. But it is not clear whether these cases (a) have been already established, or (b) will be established by the law or both, i.e. something has been established and something - not.

As a result, the interpretation of this issue is not clear: is the coordination required or not? As usual, these logical difficulties can be easily resolved by a well-tested rule - "coordination was always required and there is no need for its abolishment." It turns out that the existing procedures can not be simplified because of the contradictory nature of their formal description in Paragraph 3.4.

There are even more contradictions in Paragraph 3.6: "Project design documentation, developed in accordance with the original data, technical specifications and requirements issued by government supervisory agencies and interested organizations where the site location is coordinated, is not subject to additional coordination except for the cases especially established by the RF law." In other words, additional coordination of project design documentation, although it is not abolished, but may be required, regardless of the text of Paragraph 3.4 that seems to abolish it.

2. New contradictions are found in Paragraph 3.7 of the Instruction (1). Paragraph 3.7 states: "Project plans, construction plans, regardless of the source of their financing, forms of ownership and their owners, are subject to government expert examination in accordance with the procedures established in the RF."

The conclusions from the two statements of the Instruction are:

Statement 1 (Paragraph 3.4): project plans are not subject to coordination.

Statement 2 (Paragraph 3.7): project plans are subject to government expert examination.

Conclusion: expert examination is not a form of coordination.

The last statement is logically drawn from two different paragraphs of the Instruction. But it itself is very contradictory. If we recall that the aim of coordination is to check the conformity of project documentation to the regulations and standards, then it is quite obvious that the expert examination can not be considered other than a form of coordination. Taking into account these considerations, we can return to Paragraph 3.4 of the Instruction and try to "reconstruct" the essence of the whole document based on new positions.

- 1) coordination as such is not eliminated,
- 2) only the coordination that was conducted by "government supervisory agencies and other interested organizations" is abolished,
- 3) coordination is preserved in the form of an expert examination conducted by government expert examination agencies.

However, due to the unclear nature of the Instruction (1) we can believe that this is only one of its possible interpretations.

What are the coordination procedures? Instruction (1) says nothing about it, though it is devoted to the issue of coordination of project documentation as well. Perhaps, it is explained by the fact that Paragraph 3.4 abolished the process of coordination as such (though, as we found out, it is not quite clear whether it is abolished or not).

That is why, at present, Federal legal documents do not contain a clear and complete answer as to what agencies must coordinate documentation (what sections and what issues), what the order of coordination actions is and what the deadlines are, what the grounds for project approval or disapproval are, etc. **It turns out that regardless of the formal availability of the document that shall regulate procedures for coordination of the construction design documentation, the actual procedures are not legally established. Only separate and contradictory fragments of these procedures are available.**

Since Instruction (1) links the coordination process with the expert examination, and the procedures for the latter are established in Instruction (2), we have to "reconstruct" the essence of this document as well, and we shall use the same method - answering simple questions that arise when reading its text.

Who establishes procedures for conduct of the expert examination? The very existence of Instruction (2) proves that this right belongs to the Government of the RF that can delegate its authority in this respect to a department - the corresponding Ministry, in this particular case - the Ministry of Construction of Russia.

Here we must also take into consideration Paragraph 2.5 of Instruction (2) that states "If required, subjects of the RF and Federal administrative agencies, based on provisions of this document, may develop and approve regional legal documents taking into account local conditions and specific features of construction projects". This means that expert examination of project plans is an exclusively governmental

action Local agencies that are not government agencies, have no right to conduct such expert examination of construction plans

What projects are subject to this expert examination? According to Paragraph 2 3 of Instruction (2) - all construction plans “Construction plans are subject to government expert examination prior to their approval, regardless of the sources of their financing, forms of ownership and their owners”

What types of expert examination are applied to particular projects? Instruction (2) states that there are three types of such expert examination a) general, independent expert examination, b) ecological expert examination and b) expert examination by the expert organizations of Ministries and Government Departments

The Instruction gives no direct answer to this question To answer it, we need to take into account and “reconstruct” the content of two documents - the Federal Law “On Ecological Expert Examination” and Instruction (2) Article 12 of the Law “Objects that are Subject to Federal Expert Examination” states “Mandatory Government expert examination conducted at the Federal level is applied to

feasibility studies, and plans of construction, renovation, expansion, technical reconstruction, conservation and liquidation of organizations and other objects of economic activity regardless of their estimated cost, owners and forms of ownership ” As the objects of housing construction can not be included in the “objects of economic activity” (except for those that contain workshops providing public service, shops), then the construction design documentation of residential objects shall not be subject of ecological expert examination

Taking this into account, we can say that there are three types of construction objects (projects) with respect to which the following combinations of mandatory expert examination are applied

1) the construction design documentation of residential projects shall be subject to only one general independent expert examination,

2) the construction design documentation of “projects of economic activity” shall be subject to two expert examinations - first the ecological one, then the general independent expert examination,

3) the construction design documentation of “special projects of economic activity” shall be subject to three expert examinations - the ecological one, the expert examination of Ministries and Government Departments and the general independent expert examination The law and regulatory documents give no answer as to how to distinguish between the second and the third types of “projects”

Here we need to make two comments First, the proposed types are not directly recorded in regulatory documents, these types are the result of a logical interpretation of two different documents Second, these types are far from being logical, but we shall explain that later

What issues are subject to expert examination? Paragraph 3 4 of Instruction (2) states

“Independent government expert organizations of republics in the RF, krays, oblasts conduct expert examination of construction plans of projects implemented in the corresponding area, regardless of the sources of their financing, forms of ownership and their owners, **with respect to issues** (1) that are within the jurisdiction of republic and local administrative agencies, (2) control over fulfillment of standards for building reliability and safety, taking into account long-term consequences of the proposed construction ”

The second group of issues conforms to the logic and the governmental status of expert examination. But the first group of issues obviously contradicts the law. This results in the following “Independent government expert organizations conduct expert examination of project plans with respect to issues relating to the competence of local administrative agencies “ It is an explicit contradiction to the Constitution of the RF and the Federal Law “On Basic Principles of Organization of Local Self-Governance” But this initial contradiction is extended in Paragraph 5 of Instruction (2) - “Basic Issues that are Subject to Verification by Expert Examination” Actually, two principally different situations are “mixed” in this Paragraph. The first situation is connected with project plans of projects financed from the government budget where an expert examination represents the interests of government agencies, i.e. the customer (this is a typical situation from the socialist period of Russian history). Here we do not see an explicit contradiction. Quite a different situation is connected with the project plans of projects financed from other, non-governmental sources. Here we come across a long list of attempts to restrict the authority of local agencies and the rights of private investors. Below are some of the most typical examples

“The expert examination of construction plans is aimed at checking the following

- economic necessity and economic efficiency of the proposed construction based on social needs, competitiveness of the future products (services) on the local and foreign markets, availability of natural and other resources,

- location of the construction site based on urban development, engineering/geological, ecological and other factors and approvals of local administrative agencies with respect to land use, development of social and industrial infrastructure, results of the comparative analysis of site location options,

- the grounds for the capacity of the proposed projects based on project conditions, availability of raw materials, fuel and other resources, demand for the proposed products or services,

- reasonableness of the decisions according to the Master Plan, their linkage with the approved urban development documentation, rationality of the decisions on development density and length of engineering lines,

- efficient use of areas and building space,

- architectural harmony and a high level of architectural design of buildings and structures, their conformity to the urban development requirements linked with the existing development,

- assessment of the efficiency of investments in the project construction and conditions of its implementation ”

Among other factors, the expert evaluation is aimed at checking “the availability of all required approvals of the interested organizations and government supervisory agencies” This brings out at least three conclusions

1) there are formal and substantial contradictions between the two instructions which results in confusion among the readers,

2) the process of coordination is preserved regardless of the statement of Paragraph 3 4 of Instruction (1) expert examination can not be conducted “without project approval by the interested organizations” but a construction permit can not be issued without this expert examination”,

3) expert examination is formally excluded from the project coordination process which causes additional problems (that will be discussed later)

What is the legal meaning of the “expert examination as a form of sample control”? This type of expert examination is discussed in Paragraph 3 6 of Instruction (2) “Independent government expert organizations conduct sample control of the approved construction projects in the corresponding areas regardless of the sources of their financing , forms of property and owners of the construction objects, and participate in consideration of construction plans by government administrative agencies”, Paragraph 4 3 “The scope of construction documentation that is subject to consideration in the process of sample control, is established by the expert agency The documents on project approval, conclusions of the expert agency that examined the project before and the documents on the present status of construction are attached to the submitted documentation

The initial meaning of the Instruction (2) project plans can not be approved without expert examination But at the same time “a sample control of the approved projects” is mentioned This means that, according to the Instruction, additional expert examination can be conducted after the project is approved So the expert agencies have the right to control themselves and can even profit from that the developer pays the cost of expert examination But Instruction (2) does not contain a word about the responsibility of these agencies for improper expert examination (otherwise it would not be necessary to conduct additional “expert examination as a form of sample control”), and, of course, according to the Instruction, the following possible consequences are absolutely ignored after having passed the expert examination of the project and having obtained the construction permit, a developer begins construction but suddenly is stopped by the agency that had coordinated this project before This situation is absolutely absurd in legally, financially and ethically!

What are the deadlines for expert examination? Instruction (2) provides the following answer to this question

“7 1 The deadlines for general government expert examination are established depending on the scope of work and, as a rule, shall not exceed 45 days

In some cases, for major and complicated construction projects these deadlines may be extended by the decision of the chief of the expert agency

7 2 The deadlines for consideration of documentation that was adjusted according to the conclusions of the expert agency, shall not exceed 30 days

7.3 The deadlines for expert examination of construction projects financed from private financial sources and internal reserves or funds of investors are established by agreements

7.5 The beginning of expert examination is the date of the approval of its plan by the chief of the expert agency (or the date of signing the agreement for expert examination), the end of expert examination is the date of sending the conclusions to the customer or to the agency that approves the project ”

With respect to these positions, we need to note the following. First, one should understand that, for a developer, this expert examination is only a part of the general process of coordination of the construction design documentation. We found out before that Federal regulatory legal documents do not establish the deadlines for coordination. Expert examination can take two or three months. It should be noted that some time will be needed for development of “the expert evaluation plan”. The ecological expert examination will take no less time. So we may propose that the average period of coordination of the construction design documentation will be at least 6 or even more months (in favorable circumstances which is a rare case). This exceeds the average European and American standards by at least 4 times. Naturally, this fact (together with many other difficulties) can not help but have an adverse effect on the process of attracting investments in real property.

Second, attention should be paid to the availability of the so-called “expert examination plan”. Such plans must be developed with respect to each project plan that is subject to expert examination. If the aim of such expert examination were only to check the conformity of the project to the established reliability and safety standards, there would be no need for such a plan. This plan is needed because this expert examination includes a long list of issues that have already been resolved by other agencies (see the above). The nature of these issues is such that it does not restrict the “creative activities” of bureaucrats from expert agencies.

What is the conclusion of expert examination completed? - By the expert conclusion with respect to which Instruction (2) states “6.2 The expert conclusion shall contain

concrete comments and proposals on the project plan, changes and amendments introduced in the process of the expert examination and the anticipated effect of their implementation (with quantitative estimates),

general conclusions on the efficiency of investments in construction based on economic efficiency, ecological safety, reliability of use, competitiveness of the proposed products and social significance of the project,

recommendations on further detailed development of some project solutions in the future design process,

recommendations on approval (if no serious comments to change the project solutions are made) or disapproval of the project”

This resulting document is really strange. It seems that it should contain, in a clear and simple form, the conclusions on the project’s conformity to the regulatory standards. Instead, this document is written in “free” form and contains, above all, unnecessary “general conclusions on the efficiency of investments”. The customer

applies for one thing (in fact asks for a construction permit), but gets quite a different thing (advice concerning the efficiency of his investment intentions)

What are the final problems of coordination of the construction design documentation and the division of authority between agencies participating in this process? Summarizing the analysis and leaving out many minor details, it is worth noting the main things

1 Actually, at present the existing Federal legal documents do not establish unified clear procedures for coordination of the construction design documentation and issuance of construction permits. The existing fragments of such procedures do not conform (in many respects) to the logic of transformation of the urban development regulatory system in the developing real property market.

2 Fragments of these procedures are made up to support interests of government departments but not interests of investors/developers. This is results (apart from the contradictory nature of some provisions) in multiple duplication of some functions and abuse of authority by some agencies (see, for instance the list of issues that are subject to mandatory expert examination).

3 No single chain of the whole process exists. Now this process is divided into three relatively autonomous parts: (1) coordination, (2) expert examination, (3) issuance of construction permit based on the results of coordination and expert examination.

Above, we showed that coordination and expert examination should not be separated as they are phases of a single process of project coordination. Apart from this, a paradoxical situation exists when the construction permit (that completes the whole coordination process) is issued by an agency that did not participate in the coordination process. Formally, the Inspection for Construction Design Control shall perform (in addition to) the functions of checking the conformity of the documentation to the established standards before the construction permit is issued. But in reality, due to the fact that these functions have already been performed by other agencies (architectural, expert examination agencies, etc.), the Inspection receives the so-called "list of approvals" based on which the construction permit is issued. As a result, the document that should have a significant legal status (in developed countries the construction permit is issued, as a rule, on behalf of the Head of the City Administration) is reduced to the level of an ordinary technical document.

This analysis shows another serious problem - that of creating a coordinated system of construction and design control agencies through transformation of a "triangle" architectural agencies - expert agencies - inspection for construction control.

What are the possible ways of problem solving? The practice showed low efficiency of regulatory actions in one direction - starting at the Federal level. While many positive actions can be implemented on the regional and local levels.

The substance and efficiency of these actions are determined by the understanding of their place in the general context of transformation of the urban development regulatory system on the local level, connected with the introduction of

the legal zoning system, development and adoption of the "Land Use and Development Regulations" This local legal document establishes (in a clear legal form) restrictions on land use and development and makes it possible to considerably simplify and rationally organize the existing chaotic procedures for coordination of the construction design documentation The availability of the Regulations eliminates the need for many coordination and expert examination procedures that duplicate each other Most ordinary projects that were developed in compliance with the Regulations, will originally conform to all requirements of an expert examination because the expert agencies have already approved these Regulations This will help reduce the number of coordinating and expert agencies that could delegate part of their authority to a few coordinating agencies The latter could organize the coordination of documentation in such a way that they would check project conformity to the standards and requirements established by the Regulations and other documents

Detailed procedures for coordination of construction design documentation can become a part of these Regulations for each city The main actions in this direction

1) preparation of a detailed list of sections making part of the construction design documentation with respect to certain types of projected objects, taking into account their location in the corresponding city zone (shown on the zoning map) and with a detailed description of the content of each section of the documentation,

2) preparation of a complete list of administrative agencies (both local and regional) participating in coordination of the construction design documentation, specifying the subjects of coordination (what sections shall be checked with respect to their conformity to particular documents - SNIPS, instructions)

Such a system will show all existing duplications of coordination issues and the existence of issues that can not be considered as the subject of coordination Having such material, the city administrations can act in two possible ways

1) to "fix" this situation in the textual form and to adopt it as a local legal document This will be a positive action because at the moment there are very few people who know where to go in order to get project approvals,

2) to continue work on organization of a clear coordination process, here they will have to think about possible solutions of the problems, to reconsider the authority and subjects of authority of different agencies in order to eliminate unnecessary duplication, if required, to develop and adopt the corresponding documents on mutual delegation of authority, to develop application forms for project coordination and issuance of construction permits, etc Regional agencies that are involved in the coordination process, will also participate in this work

It is obvious that the problem of the division of authority between different agencies in the process of coordination of construction design documentation is only formally revealed in the existing legal documents The substantial part of the problem - filling in the "legal gaps" should be implemented step-by-step using the proposed recommendations

2.5 Problem 5 Division of Authority between Different Agencies Implementing Joint Regulation of Land Use and Development in Suburban Areas

Cities can not function efficiently staying within their boundaries. There always exist a number of vitally important objects that should not be located within the city: health and recreation institutions, water intakes, cemeteries, airports, military grounds, etc. Besides, as the city grows, it needs new areas for housing and other types of construction. That is why a legal mechanism is required to efficiently regulate relations between different municipalities in land use and development issues. Unfortunately, this mechanism has not been formed yet. There exist only legal prerequisites for its creation. This section contains general approaches to this problem.

There are two basic approaches: (a) changing the city boundaries, (b) establishment of a regime of joint regulation of land use by several municipalities in the areas of mutual interest.

The first approach is connected with the solution of difficult administrative, political and economic tasks. At the present stage, there is a strong contraction of the "outside" municipalities that consider their legal interests to be violated when the city wants to change its boundaries.

At the current stage, the second way is considered more realistic and efficient. The efforts of both parties should be concentrated on creation of mutually profitable agreements. We believe that this approach will prevail in the future. It is also important in the sense that in the process of implementing it, new legal mechanisms will be developed that have not been used in the former land use and development regulation.

Pursuant to Article 12 of Federal Law 154, in the process of creation, merger, transformation or abolition of municipalities, municipal boundaries shall be established or changed at the initiative of citizens, local agencies and government executive agencies of a subject of the RF, taking into consideration the historical and other local traditions. According to the law, municipal boundaries may not be changed without taking into consideration the opinion of local citizens.

Procedures for creation, merger, transformation or abolition of municipalities, establishment or alteration of their boundaries, are established by the law of a subject of the Russian Federation.

In order to resolve issues of land use and urban development regulation in suburban areas, we propose to conclude three-party agreements that make it possible to take into account mutual interests of adjoining municipalities. The parties to such agreements will be municipalities that have common boundaries and the administration of a subject of the RF within whose area these municipalities are located. Below is a draft agreement of this type.

Draft Agreement

On Joint Regulation of Land Use and Urban Development in the Area Adjacent to the City of _____

In order to preserve a unique historic landscape, improve the ecological situation, organize land and urban development relationships and take into consideration the interests of different administrative agencies in the area adjacent to the City of _____, and for the purpose of more efficient economic and construction activities, the Administration of _____ oblast, represented by _____, the Head of the Oblast Administration, the Administration of the City of _____, represented by _____, the City Mayor, and the Administration of _____ Rayon, represented by _____, the Head of the Rayon Administration, conclude this Agreement on the following

- 1 To recognize the area adjacent to the City of _____ as an area of mutual interest of _____ oblast, _____ city, and _____ rayon, in which land, urban development and other relations shall be subject to joint regulation
- 2 Each of the Parties to this Agreement shall be obligated not to take any actions which would encroach upon the interests of the other Parties. Any actions affecting interests of the Parties are subject to mutual coordination
- 3 For implementation of this Agreement, to recognize the necessity of development of legal and other regulatory documents on joint regulation of land, urban development and other relations and the boundaries of this regulation
- 4 Procedures for development of the above mentioned regulatory documents shall be established by Order of the Head of the Administration of _____ Oblast

Head of the Administration of _____ Oblast

Mayor of the City of _____

Head of the Administration of _____ Rayon

For the purpose of cooperation and implementation of coordinated activities aimed at development of legal zoning documents, it is proposed to issue the Order of the Head of the Administration of a subject of the Russian Federation (attached) directing the creation of a three-party commission for preparation of zoning documents for the suburban area, that shall include representatives of the administrations of this subject of the Russian Federation and the corresponding municipalities. This will make it possible to take into account interests of all the parties and avoid a time-consuming procedure of coordinating legal zoning documentation for the area of mutual interest. We also propose a Draft Program of Development of Legal Zoning Documentation for the Suburban Area (attached).

The following Draft Agreement, Order and Program were developed within the framework of this project and were used by the Administrations of Novgorodski region for development of their own documentation (see Appendix 6 and 7) and implementation of the corresponding work.

Draft

**The Administration of _____ Oblast
of the Russian Federation**

ORDER No ___ of _____

**On Development of Legal Zoning Documents for the Area of _____ Rayon
Adjacent to the City of _____**

Based on and in accordance with the Agreement No ___ of ___ between the Administrations of _____ Oblast, the City of ___ and _____ Rayon I hereby resolve

1 To organize a three-party Commission for preparation of legal zoning documents for the suburban area of the City of _____ (hereinafter "the Commission"), including representatives of the Administrations of _____ Oblast, the City of ___ and _____ Rayon, according to the Appendix

2 The Commission shall organize the following work

2.1 create a working group for development of legal zoning documents for the suburban area of the City of _____,

2.2 develop and submit for approval before _____ (date) the program of implementation of the above mentioned work,

2.3 organize the required coordination of the documents with the authorized agencies and submit them for approval of the Head of the Administration of _____ Oblast

3 The Heads of the Administrations of ___ oblast, the City of ___ and ___ rayon shall jointly determine the percentage of their share in financing this work and shall provide for allocation of the required funds from the City, Oblast and Rayon budgets

4 The implementation of this Order shall be supervised by the Administration of ___ Oblast

**DRAFT PROGRAM
FOR DEVELOPMENT OF LEGAL ZONING DOCUMENTATION FOR THE
SUBURBAN AREA OF THE CITY OF _____**

1 To analyze the current situation and the existing problems in the area adjacent to the City of ____

1 1 To create maps that show the current situation with respect to different aspects and restrictions

- map of current land use (according to categories and types of land use, forms of ownership and participants of land use relations),
- ecological map,
- map of historical and cultural landscape,
- map of transport and engineering infrastructure,
- other maps characterizing the current situation and land use restrictions

1 2 To analyze the current urban development and other documentation

1 3 To analyze the procedures for regulation of land, urban development and other relations in the area adjacent to the City of _____

1 4 To correlate (link) the interests of different administrative agencies in the suburban area

- interests of _____ Oblast
- interests of the City of _____
- interests of _____ Rayon
- interests of other parties

1 5 To provide general characteristics of the existing problems, restrictions and potential opportunities of development of the area

- types of problems and their description,
- maps showing the basic problem regions and zones of potential development,

2 To develop the concept of creating a mechanism for coordinated regulation of land, urban development and other relations in the area adjacent to the City of _____

2 1 Strategy of the area development

- basic scheme of land use and development for the mid-term period,
- map of zones with different regulation regimes,

2 2 The conceptual procedures (basic provisions) for the coordinated regulation of land use and development in the suburban area of the City of _____

3 Draft Law of _____ Oblast "On Regulation of Land Use and Development in the Suburban Area of the City of _____"

Part one text of the procedures,

Part two zoning map and land use standards for the suburban area

Conclusions

The proposed typology of the problems of the division of authority between different local agencies in issues of land use and development makes it possible to orient the whole complex of problem solving activities toward development and coordination of the corresponding legal and regulatory documents

The proposed approaches to solving the problems and the proposed model legal documents can be used by regional and local executive agencies

The work implemented also showed the availability of a considerable and not fully used potential of initiatives on the part of subjects of the Russian Federation and local agencies. In the context of coordinated activities aimed at creation of a modern land use and development system based on legal zoning principles and the Land Use and Development Regulations, these initiatives may produce a positive impact on the social and economic development of Russian cities

APPENDICES

Appendix 1

List of Basic Legal Documents Relating to the Issues of Division of Authority between Different Agencies in the Area of Land Use and Development

Laws of the Russian Federation

- 1 The Constitution of the Russian Federation of 12 12 93
- 2 The Civil Code of the Russian Federation, Part I No 51 of 30 11 94 and Part II No 14 of 26 01 96
- 3 The Law of the RF No 154 of 28 08 95 "On General Principles of Organization of Local Self-Governance in the RF" (in the edition of the RF Law No 38 of 22 04 96)
- 4 The Land Code of the RSFSR No 1103-1 of 25 04 91 (in the edition of the RF Law No 4888-1 of 28 04 93, the Decrees of the RF President No 2162 of 16 12 93 and No 2287 of 24 12 93)
- 5 The Code of the RSFSR on the Administrative Violations (approved by the Supreme Council of the RSFSR on 20 06 84 in the edition of 06 08 96)
- 6 The Law of the RF No 3295-1 of 14 07 92 "On Fundamentals of Urban Development in the Russian Federation" (in the edition of the Federal Law No 112 of 19 07 95)
- 7 The Law of the RF No 169 of 17 11 95 "On Architectural Activity in the Russian Federation"
- 8 The Law of the RF No 122 of 21 07 97 "On the Government Registration of Real Property Rights and Real Property Transactions"
- 9 The Law of the RF No 72 of 15 06 96 "On Condominiums"
- 10 The Law of the RF No 4121-1 of 17 12 92 "On the Administrative Responsibility of Enterprises, Institutions, Organizations and Associations for Violations of the Construction Law"

Laws of the Russian Federation that regulate ecological and historic preservation issues

- 11 The Law of the RSFSR of 14 07 82 "On Protection of the Atmospheric Air"
- 12 The Law of the RF No 1034-1 of 19 04 91 "On Hygiene and Disease Condition of the Population "
- 13 The Law of the RF No 2060-1 of 19 12 91 "On Environment Protection"
- 14 The Forest Code of the RF No 22 of 29 01 97
- 15 The Water Code of the RF No 167 of 16 11 95
- 16 The Law of the RF No 33 of 14 03 95 "On Especially Protected Nature Areas"
- 17 The Law of the RF No 52 of 24 04 95 "On Fauna"
- 18 The Law of the RF No 174 of 23 11 95 "On Ecological Expert Examination"
- 19 The Law of the RSFSR "On Use and Preservation of Historic and Cultural Monuments" (the Resolution of the Supreme Council of the RSFSR of 15 12 78 with amendments made by the Presidential Decree of 18 01 85)

Decrees of the President of the Russian Federation

- 20 Presidential Decree No 1263 of 26 11 97 "On Sale of Land Located in Cities and Villages and the Right of Its Lease to Natural Persons and Legal Entities"
- 21 Presidential Decree No 1535 of 22 07 94 "On Basic Provisions of the Government Program of Privatization of Government and Municipal Enterprises in the Russian Federation after July 1, 1994" in the edition of the Presidential Decree No 277 of 02 04 97
- 22 Presidential Decree No 293 of 28 02 96 "On Additional Measures for Development of Mortgage"
- 23 Presidential Decree No 1767 of 27 10 93 "On Regulation of Land Relations and Development of Agricultural Reform in Russia"
- 24 Presidential Decree No 2162 of 16 12 93 "On Strengthening Governmental Control over Land Use and Preservation in the Process of Implementation of Land Reform"

Decrees of the President of the Russian Federation that regulate ecological and historic preservation issues

- 25 Presidential Decree No 1487 of 30 11 92 "On Especially Valuable Cultural Monuments of the Nations of the Russian Federation"
- 26 Presidential Decree No 2121 of 26 11 94 "On Privatization of Local Historic and Cultural Monuments in the Russian Federation"
- 27 Presidential Decree No 176 of 20 02 95 "On Approval of the List of the Historic and Cultural Monuments of Federal Significance"
- 28 Presidential Decree No 452 of 05 05 97 "On Making a More Detailed List of Historic and Cultural Monuments of Federal Significance"

Resolutions of the Government of the Russian Federation

- 29 "Procedures for Organization of Tenders (Auctions) for Sale of Land Located in Cities and Villages or the Right of Its Lease to Natural Persons and Legal Entities" Approved by the Resolution of the RF Government No 2 of 05 01 98
- 30 Resolution of the RF Government No 172 of 23 07 93 (in the edition of 27 12 94) "On Approval of the Regulation on Lease of Land of the Forest Stock in the Russian Federation"
- 31 Resolution of the RF Government No 926 of 03 08 96 "On Approval of the Procedures for Allocation of Land and Real Property Located in National Reserve Areas for Lease to Conduct Tourist and Recreation Activities"
- 32 Resolution of the RF Government No 585 of 20 06 93 "On Government Expert Examination of Urban Development and Project Design Documentation and Approval of Construction Plans"
- 33 Resolution of the RF Government No 105 of 02 02 96 "On Approval of the Regulation "On Procedures for Establishment of Land Use Boundaries in Cities and Other Settlements"
- 34 Resolution of the RF Government No 1362 of 23 12 93 "On Approval of the Regulation "On Procedures for Exercising Governmental Control over Land Use

and Protection in the Russian Federation” (in the edition of the Resolution of the RF Government No 271 of 12 03 96

- 35 Resolution of the Council of Ministers of the USSR No 105 of 23 01 81 (in the edition of 29 05 85) “On Acceptance and Commissioning of Objects of Construction”

Resolutions of the Government of the Russian Federation that regulate historic preservation issues

- 36 Resolution of the RF Government No 1143 of 06 10 94 “On Approval of the Regulation on Government Register of Valuable Cultural Monuments of the Nations of the Russian Federation”
- 37 Regulation “On Use and Preservation of Historic and Cultural Monuments (approved by the Resolution of the Council of Ministers of the UUSR No 865 of 16 08 82)

Other legal and regulatory documents (including the documents of the Ministry of Construction of the Russian Federation)

- 38 The Letter of the Ministry of Construction of the RF No 19-11/13 of 09 07 93 “On Temporary Regulation of Acceptance and Commissioning of Objects of Construction”
- 39 Resolution of the Ministry of Construction of the RF No 18-41 of 29 10 93 “On Procedures for Expert Examination of Urban Development Documentation and Construction Plans in the Russian Federation”
- 40 The Order of the Ministry of Construction of the RF No 131 of 03 06 92 “On Procedures for Issuance of Construction Permits”
- 41 “Instruction on the Content, Procedures for Development, Coordination and Approval of Urban Development Documentation” (approved by the Resolution of the Ministry of Construction No 18-58 of 22 12 93)
- 42 Resolution of the Ministry of Construction of the RF No 18-64 of 30 06 95 “On Adoption of Construction Standards and Regulations” (together with the Instruction on the Content and Procedures for Development, Coordination and Approval of Project Design Documentation for Construction of Enterprises, Buildings and Structures)
- 43 Temporary Instruction on the Content and Procedures for Development, Coordination and Approval of Draft Boundaries of Cities, Villages and Other Settlements in the Russian Federation” (approved by the Resolution of the Ministry of Construction No 18-14 of 21 01 93 and the Order of the Russian Land Committee No 26 of 09 06 93
- 44 “Provisions on the Council for Independent Government Expert Examination at the RF Government Committee for Architecture and Construction” (approved by the Order of the Ministry of Construction No 17-55 of 19 07 93)
- 44 b Instruction on Procedures for Government Expert Examination of Construction Plans No 11-201-95 Approved by the Resolution of the Ministry of Construction of the RF No 18-39 of 24 04 95

Other legal documents that regulate historic preservation issues

- 45 Instruction on Organization of Historic and Cultural Preservation Zones (approved by the Order of the Ministry of Culture of the USSR No 33 of 24 01 86)
- 46 Instruction on Procedures for Registration, Preservation, Use and Restoration of Historic and Cultural Monuments (approved by the Order of the Ministry of Culture of the USSR No 203 of 13 05 86)

Appendix 2

Analysis of the substance of "targeted land use" with respect to land of populated areas (according to the current Land Code)

positions described in the text of the Code x positions that are not described in the Code but actually existing

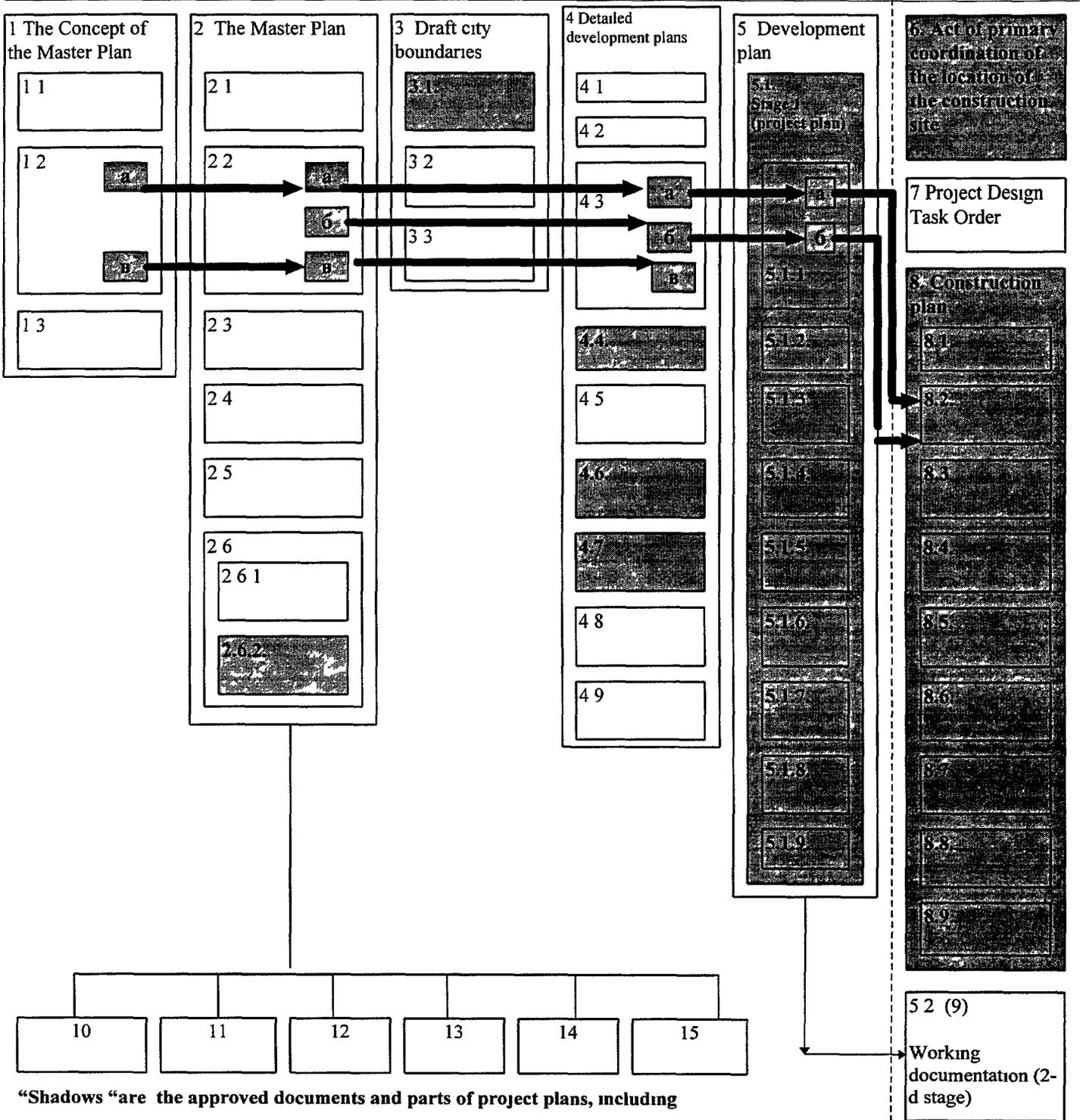
Description of land designation			List of land (categories of land)							
Categories of land according to the targeted use (1 st level)	Next level of land according to the targeted use (2 d level)	Lowest level of land according to the targeted use (3 d level)	2 Land of populated areas							
			(other categories 1) land of economic designation 3) land occupied by industrial transport communication radio television information and space facilities defens enterprises and other 4)land of nature reserves land of recreation health histor and cultural significance 5) land of the forest and water stock and reserved land have not been considered)							
			2 1 Land of cities workers settlements resort and dacha villages					2 2		
			2 1 1	2 1 2	2 1 3	2 1 4	2 1 5	2 1 6	Land for housing garage dacha constructio and entre preneurial activity	
			Land of urban village and rural developmen	Land of common use	Agri cultural land	Land of environ ment protection recreation and historic significanc	Land occupied by urban forests	Land occupied by industrial transport communica tion information and space facilities defense etc		
land of populated areas	2 1 1 developed land and land subject to development and construction of	housing							X	
		social and cultural objects		X		X			X	
		industrial						X		
		places of worship				X				
		other		?	?	?	?	?	?	
	for individual housing construction								X	
	2 1 2 land used for means of communication	squares	X			X			X	X
		streets	X		X	X			X	X
		small streets	X		X	X			X	X
		passages	X		X	X	X		X	X
		roads	X		X	X	X		X	X
		embankments	X		X	X	X		X	X
	land used for cultural and social needs	parks	X			X	X		X	X
		forest parks	X			X	X			X
		small parks	X			X	X		X	X
		gardens	X			X	X		X	X
		boulevards	X			X	X		X	X
		reservoirs	X			X	X		X	X
		beaches	X			X	X			X
		special grounds							X	
	other land used for the city needs	garbage storage grounds							X	
		garbage processing enterprises							X	
	construction of permanent buildings according to the targeted land use		?		?	?	?	?	?	?
	construction of temporary buildings		X		X	X	X	X	X	X
	2 1 3 used for agricultural and other purposes	plowed fields								
		gardens	X	X		X			X	X
		vineyards								
		kitchen gardens								X
		hay fields						X		
		pastures								
shrubs							X		X	
peatbogs							X			
ravines							X			
quarries								X		
other		?	?		?	?	?	?		
2 1 4 procedures of use are determined by articles 89 93 of the Code	nature reserve land (except for land used for hunting)						X			
	protected land									
	protective forest land						X			

Land of nature protection significance	natural monuments		X	X		X		
	restricted economic activity under a special regime		X	X		X		
	riparian protection areas	X	X	X		X	X	X
	nature reserves					X		
	natural monuments			X		X		
	national parks					X		
	dendrariums		X	X		X		
	botanical gardens							
	restricted economic activity under the established regime		X	X		X		
	protection zones		X	X		X		
Health protection and resort land	mineral water springs		X	X		X		
	deposits of therapeutic mud		X	X		X		
	preservation zones		X	X		X		
	sanitary zones		X	X		X		
	other zones	?	?	?		?	?	?
Recreation land	restricted or forbidden activities	X	X	X		X	X	X
	resorts	X	X	X		X		
	recreation institutions	X	X	X		X		
	sanatoriums	X	X	X		X		
	camping	X						
	sport complexes	X	X	X		X		
	tourist bases	X	X	X		X		
	tourist camps	X	X	X		X		
	houses of hunters and fishing men		X	X		X		
	children tourist stations	X	X	X		X		
	parks	X	X	X		X	X	X
	forest parks		X	X		X		
	educational tourist paths		X	X		X		
	marked routs		X	X		X		
	sport and children camps	X	X	X		X		X
Land of historic and cultural significance	suburban green zones							
	land allocated to enterprises for implementation of their tasks	X	X	X		X	X	X
	land under historic monuments	X	X	X		X	X	X
	sights of interest	X	X	X		X	X	X
	reserve parks		X	X		X		
	national parks		X	X		X		
2 1 6 Industrial transport land	reserves museums		X	X		X		
	national cultural handicraft enterprise	X	X	X		X	X	X
	land allocated to enterprises for implementation of their tasks	X	X	X	X	X		X
	individual housing construction	X						
	dacha construction							
2 2 land for housing dacha and other construction	construction of accessory buildings agricultural purposes	X		X				
	garage construction	X	X				X	
	land allocated for entrepreneurial activity	X			X		X	

The existing system of urban development documentation*)

Urban development documentation (is developed for large city areas)

Construction design documentation (developed for separate construction objects)



“Shadows “are the approved documents and parts of project plans, including

- a - functional zoning,
- b - construction zoning,
- c - parcel boundaries according to the forms of ownership,

The documents are enumerated according to the list on the next page

*) The scheme and the list of documents are made based on

- Instruction on the Content of and the Procedures for Development, Coordination and Approval of Urban Development Documentation” approved by the Ministry of Construction of Russia, Resolution No 18 58 of 22 12 93
- Instruction on the Procedures for Development, Approval and the Content of Project Design Documentation for Construction of Enterprises Buildings and Structures approved by the Resolution of the Ministry of Construction of the RF No 18-64 of 30 -6 95

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The list of documents

1 Concept of the Master Plan

- 1 1 Scheme of the existing land uses and general assessment of the area,
- 1 2 Schemes of area development (options)
- 1 3 Explanatory note

2 The Master Plan

- 2 1 Plan of the existing land uses (basic plan)
- 2 2 Master Plan (basic drawings)
- 2 3 Scheme of general assessment of the area
- 2 4 Transport scheme
- 2 5 Scheme of engineering equipment and engineering infrastructure of the area
- 2 6 Explanatory note
 - 2 6 1 Basic provisions of the Master Plan
 - 2 6 2 Development Regulations of the city

3 Draft city boundaries

- 3 1 Design plan
- 3 2 Scheme of administrative/territorial structure of the adjacent areas
- 3 3 Explanatory note

4 Detailed Plans

- 4 1 Scheme of location of the district under planning
- 4 2 Basic plan (plan of the existing use of land)
- 4 3 Plan of red lines with the draft scheme of development (basic drawings)
- 4 4 Detailed drawing of red lines
- 4 5 Transport and social infrastructure location scheme
- 4 6 Scheme of location of major engineering network and the use of subsurface space
- 4 7 Scheme of vertical planning and engineering preparation of the area
- 4 8 Planning and development models
- 4 9 Explanatory note

5 Development plan

5 1 Plan (1-st stage)

- 5 1 1 Master Plan of development
- 5 1 2 Plan of improvements
- 5 1 3 Scheme of organization of the landscape
- 5 1 4 Plan of the land surface
- 5 1 5 Schemes of engineering networks and electric lines
- 5 1 6 Schemes of buildings and structures
- 5 1 7 Plan of organization of construction
- 5 1 8 Estimate documents
- 5 1 9 Explanatory note to the project plan

5 2 Working documentation (2-d stage)

- 5 2 1 Working drawings for all types of work
- 5 2 2 Estimates
- 5 2 3 General list of needs (for materials for each object or type of work)
- 5 2 4 Specifications for equipment, size drawings

6 Act of primary coordination of location of the construction site,

7 Project design task order,

8 Project construction plan (examples of housing construction plans)

- 8 1 General explanatory note
- 8 2 Construction design solution
- 8 3 Oáchnological solution
- 8 4 Engineering equipment solution
- 8 5 Environment protection
- 8 6 Engineering and technical actions on civil defense
- 8 7 Organization of construction
- 8 8 Estimate documents
- 8 9 Efficiency of investments

9 Working documentation,

The city Master Plan is the basis for development of next documents

10 Complex scheme of development of passage transport and road construction 11 General scheme of water supply, 12 General scheme of sewage system, 13 General scheme of power supply, 14 Other special schemes, 15 Special project plans

Appendix 4 Two types of Development Regulations Two types of urban development documentation
Two ways of formation of land parcels as real property units

The existing procedures
(in accordance with the Instruction on the Content and Procedures for Development, Coordination and Approval of Urban Development)

Transformed procedures
(through introduction of legal zoning documents)

STAGE 1 URBAN DEVELOPMENT PLANNING

MASTER PLAN

Plan of the current land uses

Master Plan (basic drawing)

Scheme of general assessment of the area

Transport scheme

Scheme of engineering equipment of the area

Explanatory note (basic provisions of Master Plan)

MASTER PLAN (or the Concept of the Master Plan)

Strategic plan

Assessment and forecasts of resource development

Scenarios of development and program concepts

Spatial plan

Zoning scheme (Concept of a zoning map)

Scheme of development of major engineering infrastructure

Stage 2 Preparation of a legal document on land use and development

Development Regulations

Provisions that establish the procedures for land use and development rights and responsibilities of developers

procedures for land allocation and use

priorities of urban development and the development and improvement requirements

location of housing cultural and social construction for the next 5 years

sanitary protection requirements

LAND USE AND DEVELOPMENT REGULATIONS

Procedures for Land Use and Development Regulation

a) zoning map; b) list of permitted uses of land and standards of alteration of real property

STAGE 3 PLANNING OF PARTS OF THE CITY AREA

1 Master Plans of functional areas	2 Detailed plans	3 Planned Unit Development
1 1	2 1	3 1
1 2	2 2	3 2
1 3	2 3	3 3
1 4	2 4	3 4
1 5	2 5	3 5
1 6	2 6	3 6
	2 7	3 7
	2 8	3 8
	2 9	3 9

SUBDIVISION PLANS

Basic plan of the current use

Plan of red lines and parcel boundaries (basic drawing)

Detailed drawing of red lines and parcel boundaries

Transport and engineering network scheme

Scheme of vertical planning and engineering equipment of the area

Explanatory note

Completion of the formation of land parcels as real property units prepared for registration and circulation A formed parcel has

- a) fixed boundaries
- b) types of permitted uses that can be changed within the framework of requirements established by Land Use and Development Regulations
- c) parameters of permitted development

STAGE 4 Construction design documentation for separate real property units

Project estimate documentation that establish

- a) parcel boundaries,
- b) targeted use of land (as a rule one permitted use)
- c) individual construction/design parameters

Construction design documentation establishing

individual design and construction parameters of a separate object (within the framework of restrictions established by Land Use and Development Regulations for this zone)

Process of formation of land parcels as real property units is completed only after coordination of the project estimate documentation or after acceptance of the object. A formed parcel has

- a) *fixed boundaries,*
- b) *single targeted use*
- c) *parameters established by the project plan*

Signs used in the scheme in Appendix 4 - "Two Types of Development Regulations"

Types of actions on formation of land parcels as real property units

1 Establishment of the permitted land uses through



- a) project proposals for functional and construction zoning,



- b) legal provisions established by the Regulations (as the list of permitted land uses and parameters of permitted construction (with respect to real property located in this zone),

2 Establishment of parcel boundaries through



- a) urban development documentation - urban land subdivision plans

б) urban development documentation - Master Plans for functional areas, detailed plans, development plans,



в) project estimate documentation for construction of specific objects

Content of urban development documentation

1 Master Plans of functional areas

- 1.1 Plan of the current land use (basic plan)
- 1.2 Master Plan (basic drawing)
- 1.3 Scheme of general assessment of the area
- 1.4 Transport scheme
- 1.5 Scheme of engineering equipment of the area
- 1.6 Explanatory note (basic provisions of the Master Plan)

2 Detailed plans

- 4.1 Scheme of location of the district under planning
- 4.2 Basic plan (plan of the current land use)
- 4.3 Plan of red lines with the draft development drawing (basic drawing)
- 4.4 Detailed drawing of red lines,
- 4.5 Transport scheme scheme of location of social infrastructure
- 4.6 Scheme of major engineering networks and the use of subsurface space
- 4.7 Scheme of vertical planning and engineering preparation of the area
- 4.8 Planning and development models
- 4.9 Explanatory note,

5 Development plan (1 st stage - design plan)

- 5.1 Master Plan of the development
- 5.2 Plan of improvements
- 5.3 Landscape scheme
- 5.4 Land bulk plan
- 5.5 Schemes of engineering networks and electric lines
- 5.6 Schemes of buildings and structures
- 5.7 Plan of organization of construction
- 5.8 Project estimate documentation
- 5.9 Explanatory note to the project plan,

Appendix 5

Extracts from Legal Documents On Issues of Coordination and Approval of Urban Development Documentation

“The Law on Fundamentals of Urban Development in the Russian Federation” (in the edition of the Federal Law No 112 of 19 07 95)

Article 6 Urban Development Documentation

P 1 Urban development documentation is a unified system of interconnected project design documents based on the requirement to bring the documents under development in line with the already approved documents, a system that serves as the basis for development of project plans for housing, industrial and communal construction that are developed based on the forecast of potential resources of areas and that are coordinated with government supervising agencies

P 3 Each type of the urban development documentation has its own designation and content and the procedures for its expert examination, approval and coordination established by the Government of the Russian Federation and governments of republics in the Russian Federation, in accordance with the urban development law

P 4 The City Master Plan is the basic legal document that determines trends and borders of the area development, functional zoning, development and improvement of the urban area and preservation of historical, cultural and natural monuments

Article 5 Urban Development Standards

P 1 Urban development standards are the means of government regulation of urban development activity, they contain the required complex of qualitative and quantitative parameters of the development and implementation of urban development documentation, and are based on detailed characteristics of demographic, climate, geological, hydrological and ecological condition, needs of disabled and elderly people, children and young people, as well as hygiene and disease control, fire protection and other requirements

P 2 Urban development standards are developed for a definite term by government executive and administrative agencies of the Russian Federation and are the basis for government expert examination (independent or departmental), urban development control and settlement of disputes in the area of urban development (including the disputes settled in court)

Based on regional specific features, the urban development standards are developed by republics in the Russian Federation in accordance with this Law, the Urban Development Code of the Russian Federation and other legal documents

P 3 The Development Regulations of cities and other settlements are the means of local regulation of urban development activity, based on local conditions, they provide more details to the provisions of the urban development law and other regulations

**The Instruction on the Content and the Procedures for Development,
Coordination and Approval of Urban Development Documentation Approved by
the Ministry of Construction of Russia No 18-58 of 22 12 93**

1 General Provisions

P 1 6 The customers of urban development documentation financed from the Federal or local budgets, budgets of subjects of the Russian Federation, are the corresponding administrative agencies or the architecture and urban development agencies authorized by them, as well as other organizations, institutions, enterprises and other legal entities that have funds for financing the development of urban development documentation (if it is required and approved by the administrative agencies)

Legal entities and natural persons are customers of development documentation of the projects that are financed from their own budget

7 The Master Plan

P 7 17 The explanatory note to the Master Plan must contain the information enumerated in PP 7 10-7 14 and Appendix 2 to this Instruction. The explanatory note contains the basic provisions of the Master Plan and the city development regulations

Note The customer, together with the developer of the urban development documentation, can work out the development regulations after approval of the city Master Plan (if permitted by the authorized agency)

P 7 19 The approved part of the Master Plan includes functional zoning of the area (scale and development density), boundaries of land government (of the Russian Federation and its subjects), municipal, private and other forms of ownership, development regulations of a city or another settlement

13 Coordination, expert examination and approval of the urban development documentation

13 5 The Master Plans of cities and other settlements, the Master Plans of functional areas and detailed development plans are approved by government executive agencies, local agencies within the framework of their authority and in coordination with government supervising agencies, and other interested organizations in accordance with the law

13 8 The project task order must be coordinated with the corresponding architecture and urban development agencies that are not the customers of the urban development documents for the area that they are in charge of

Coordination of the urban development documentation with the interested organizations is implemented by the customer with participation of the design organization **The list of coordinating agencies is established in the project design task order** The urban development documentation is subject to mandatory coordination with the architecture and urban development agencies, environment protection agencies, hygiene and disease control and fire protection agencies, land management committees, historic and cultural preservation committees and other government supervising agencies and interested organizations in accordance with the law

13 9 The organizations and institutions to which the urban development documentation was submitted for approval, must (within one month from the date of submission of the materials) approve them or send their commentaries to the developers and designers If no conclusion is provided by the established deadline, the urban development is considered approved

13 11 The urban development documentation is considered by the architecture and urban development agencies of subjects of the Russian Federation together with local architecture and urban development agencies according to the conclusions of the corresponding government expert examination and the results of public hearings

12 12 Procedures for consideration, coordination and approval of the urban development documentation developed for the area of subjects of the Russian Federation, are established by the law of republics, or by the laws, charters and other legal documents of krays, oblasts, cities of Federal significance, autonomous oblasts and autonomous districts

**The Resolution of the Ministry of Construction of the RF No 18-41 of
29 10 93 "On Procedures for Government Expert Examination of Urban
Development Documentation and Construction Plans in the Russian Federation**

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3

Government Architecture and Construction Control Agencies may not issue construction permits without a positive conclusion of (1) government ecological expert examination, (2) independent government expert examination or (3) conclusion of a special departmental expert examination in the cases established by the provisions on the division of functions of expert examination between the Ministries and Departments of the RF and the Ministry of Construction of Russia

**“Procedures for Government Expert Examination of Urban Development
Documentation and Construction Plans in the RF ” Approved by the Resolution
of the Ministry of Construction of Russia No 18-41 of October 29, 1993**

2 The Government Expert Commission of Russia conducts expert evaluation of

2 1 the following urban development documentation

- district plans in the administrative/territorial entities where issues of Federal significance are solved,

- Master Plans of cities with population of 500, 000 and more, historic and resort cities and newly built cities

The Government Expert Commission of Russia conducts a complex expert examination and prepares the general expert conclusions based on the conclusions (or with participation) of local architecture agencies, government ecological expert agencies, interested ministries, organizations and departments and the results of public hearings

This documentation is considered by the Government Expert Commission of Russia with respect to issues regulated by the Ministry of Construction of Russia

3 Independent Government Expert Agencies of republics in the RF, krais, oblasts, autonomous entities and the cities of Moscow and St -Petersburg conduct expert examination of

3 1 the urban development documentation, except for that described in p 2 1

II Urban development documentation and construction plans are approved by the following procedures

1 Urban development documentation is approved by government executive and administrative agencies in accordance with their authority established by the Law of the RF

Appendix 6

AGREEMENT On Joint Regulation of Land and Urban Development Relations in the Area Adjacent to the City of Novgorod

November 12, 1997

In order to preserve a unique historic natural landscape, improve ecological situation, organize land and urban development relations and take into consideration the interests of different administrative agencies in the area adjacent to the City of Novgorod, and for the purpose of efficient economic and construction activities, the Administration of Novgorodskaya oblast, represented by M M Prusak, the Head of the Oblast Administration, the Administration of the City of Novgorod, represented by A V Korsunov, the City Mayor, and the Administration of Novgorodski Rayon, represented by A N Filipov, the Head of the Rayon Administration, conclude this Agreement on the following

- 1 To recognize the area adjacent to the city on both sides as a zone of mutual interests of Novgorodskaya oblast, the City of Novgorod and Novgorodski rayon, in which the land, urban development and other relations are subject to joint regulation
- 2 Each of the Parties to this Agreement shall be obliged not to take any actions which would encroach upon interests of the other Parties Any actions affecting interests of the Parties are subject to mutual coordination
- 3 For implementation of this Agreement, to recognize the necessity of development of legal, administrative and other documents on joint regulation of the land, urban development and other relations, establishing the boundaries of the area under this regulation
- 4 The procedure for development of the above mentioned documents shall be established by the Order of the Head of the Administration of Novgorodskaya oblast

M M Prusak
Head of the Administration of Novgorodskaya oblast

A V Korsunov
Mayor of the City of Novgorod

A N Filipov
Head of the Administration of Novgorodski rayon

Appendix 7

Administration of Novgorodskaya oblast

ORDER No 905

**On Creation of a Commission for Land Use Regulation and Development of
Legal Zoning Documents for the Area Adjacent to the City of Novgorod**

November 20, 1997

Pursuant to the "Agreement on Joint Regulation of Land Use and Development Relations in the Area Adjacent to the City of Novgorod" of November 12, 1997, concluded between the administrations of Novgorodskaya oblast, the City of Novgorod and Novgorodskiy rayon, I hereby resolve

1 To approve the attached list of members of the Commission for Land Use Regulation and Development of Legal Zoning Documents for the Area Adjacent to the City of Novgorod

2 The Commission shall

2.1 before February 1, 1998 - prepare the program for development of legal zoning documents for the area adjacent to the City of Novgorod and the cost estimate for development of legal zoning documents,

2.2 organize the development of documents in accordance with the above mentioned program,

2.3 organize the required coordination of these legal zoning documents with the authorized agencies and submit them for approval of the Oblast Administration,

2.4 before December 31 1999 report to the Oblast Administration on the fulfillment of this Order

3 Implementation of this Order shall be supervised by Mr Ivankov N S , Deputy Head of the Oblast Administration

M M Prusak
Governor of Novgorodskaya oblast

**List of the Members of the Commission for Land Use Regulation and
Development of Legal Zoning Documents for the Area Adjacent to the City of
Novgorod**

Approved by the Order No 905
of the Oblast Administration of November 20 1997

- Deputy Head of the Administration of Novgorodskaya oblast, Chairman of the Commission,
- Chairman of Land Resources and Land Management Committee of Novgorodskiy rayon,
- Chairman of Land Resources and Land Management Committee of Novgorodskaya oblast,
- Deputy Head of the Administration of the City of Novgorod, Chairman of Municipal Property Management Committee,
- Chief Architect of the City of Novgorod,
- Deputy Head of the Administration of Novgorodskaya oblast, Mayor of the City of Novgorod,
- Chairman of Land Resources and Land Management Committee of the City of Novgorod,
- Chairman of the State Committee for Environment Protection of Novgorodskaya oblast,
- Architect of Novgorodskiy rayon,
- Chief of Architecture and Urban Development Board of Novgorodskaya oblast,
- Head of Administration of Novgorodskiy rayon