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LEGAL ZONING IN TAJIKISTAN FEASIBILITY STUDY

LAND REFORM AND MARKET DEVELOPMENT PROJECT



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EXECUTIVE SUMMARY

The feasibility study on introducing legal zoning to Tajikistan through the Land Reform and Market Development Project consisted of the following elements:

- analysis of legislation concerning land relations and urban planning;
- institutional analysis, meeting state and other organizations, and analysis of implementation of legal norms and procedures;
- assessment of technical capabilities of elaboration of the Rules of land use and development;
- analysis of situation in 4 cities (Dushanbe, Khujand, Qurghon-Teppa, and Istaravshan).

This assessment was carried out from 18 to 31 May, 2006. The consultant compiled his findings in June 2006. A Russian language draft was presented to USAID in July 2006.

Legal zoning is a technique providing for an open, public establishment of urban planning regulations of using land plots and other immovable property in various places in a city (in zones), as well as the procedures for using these regulations to receive land use rights approvals for construction. Zoning aims to balance private and state interests.

Introduction of legal zoning in Tajikistan will rationalize use of land in cities and stimulate market reform in real estate and construction, develop of a modern system of registration, improve access to land plots and reduce corruption in the construction permitting process.

Despite the unavailability of private ownership for land, the legislation of Tajikistan does not hamper the introduction of the system of urban planning regulation on the basis of legal zoning. The state provides private entities with the right of land use with the elements of the right of disposal, which determines the availability of some kind of a market activity.

The authorities of the assessed cities are ready to cooperate to introduce zoning, as they realize this is the only practical way to modernize the system of urban planning management.

Until now, due to the lack of financing, the bodies of land management, architecture and construction in the cities have been working ineffectively. General plans of cities are either out of date or do not exist, there is lack of professionally prepared specialists, and no cadastre maps. No inventory is conducted nor is any registration of developed and provided land plots.

In these conditions, creating of maps of existing land use in the territories of the cities requires much time, as well as human and financial resources compared with Kyrgyzstan, where zoning activities have been going on for several years. The basic technical problem is connected with the lack of new topographical maps of 1:2000 scale and their secrecy. Cartography organizations are ready to work if they have financial support.

The state bodies of land management and urban planning are more reserved regarding development of the system of legal zoning, although, on the whole their representatives do agree with its necessity. Therefore, a governmental decree establishing a pilot project in the cities with tasks given to the State Land Committee and the State Committee of Architecture and Construction will be required to implement the project.

1. INTRODUCTION

1.1. General information

Tajikistan is a Central Asian country contiguous with China, Afghanistan, Kyrgyzstan and Uzbekistan. The boundary of Tajikistan with China is 430 km, Afghanistan 1,030 km, Uzbekistan 950 km and Kyrgyzstan 580 km. South-east Tajikistan is separated from Pakistan by land under the control of Afghanistan. The country stretches 700 km from east to west and 380 km from north to south.

Tajikistan consists of three regions (Sughd, Khatlon and Gorno-Badakhshan Autonomous Oblast), and also 4 cities and 10 districts under republican subordination.

City/Regions	Population (thousands)	Capital	Pop. of capital (thousands)
Dushanbe city	630.6		
Sughd	1,992.5	Khujand	160.4
Khatlon	2,344.6	Qurghon-Teppa	68.6
Gorno-Badakhshan Autonomous Oblast	215.7	Khorog	28

There are 23 cities, 49 settlements classified as towns and more than 3,800 rural settlements in Tajikistan. Besides the administrative centers, there are several large cities including Kulyab (86,900 people) and Istaravshan (60,200 people), which has significant place among the historical cities of Tajikistan. In 2002 Istaravshan celebrated its 2500th anniversary.

1.2. Main problem of the cities of Tajikistan: lack of land for development

Rational use of land is one of the key problems for Tajikistan along with the problems of poverty, water and power supply.

1. Tajikistan is a mountainous country with few flat territories. The territory of the country makes up 14,310 ha. Mountain ranges with altitudes from 300 up to 7,495 meters above sea level occupy 93% of Tajikistan's territory. Of the remaining 1 million ha. of flat territory, cities and settlements occupy 69,969 ha. (1.01.2004), out of which less than one-third (20,264 ha) are irrigated lands. That is, for a city development, including housing, production and roads there remains only 5% of favorable plain territories. Moreover, the cities and villages are mainly located in high seismic zones, with earthquakes of 7-9 points on the Richter scale. Thus, the lack of territory for city and village development is laid primarily by the country's topographical features.

2. Tajikistan is traditionally a rural country and its people are mainly involved in agricultural production. The distribution of the population between city and village is unequal: the urban population makes up 27%, while rural population is 73%. 68% of the population is engaged in agricultural production, of whom the overwhelming majority (80%) is involved in cotton growing. The share of people working in agricultural sector is increasing (in 1999 it was 64%). This indicator exceeds the average indicators of the Central Asian countries (51%), not to mention other countries in the post-Soviet area (for instance, in Russia only 12% of the population is engaged in agricultural production)*

In contrast, only 25% of Tajikistan's population is engaged in services, and 8% in production. Unlike the agricultural sector, these sectors continue to decline year after year.

The problem is, production and service are much more productive in terms of economic output than the agricultural sector. The service sector is the largest in Tajikistan in terms of the value of output of products and services*. Its share in GDP of the country made up 41% in 2000 and increased to 48% in 2004. The share of production sector, which is on the second place in GDP of the country makes up 28%, although this sector is not growing but contracting, and is made up primarily of aluminum production. In total, the service and production make 76% of GDP. The contribution of agricultural sector to Tajik GDP is 24%, and is contracting.

Thus, the two-thirds of the population of the country engaged in agricultural production produce only 24% of the national domestic product, while the third of the population involved in production and service—who live mainly in cities—produce 76% of GDP.

The disproportion between the main part of population living in the rural areas, with low economic potential and relatively small share of GDP, and the population living in the territories with high economic potential create the main economic problem of the country, which affects administrative decision-making. All political decisions are first of all made taking into account the interests of population, which is engaged primarily in agricultural production, whereas the cities, which produce the majority of the national product are under the constant attention of government.

In particular, this affects at the level urban planning, informational, cartographic and cadastre provision of the cities management. All these are very important, for effective development, but instruments of state management are either in an embryonic condition or in total disrepair.

3. There is not enough housing in urban parts of Tajikistan. On one hand, the cities of Tajikistan lack territory for individual house construction, and on the other hand the market economy is so weak that there is almost no private investment in multi-story house construction. As a result, new housing in Tajikistan is quite low and makes up only 365,000 m² per year. New housing starts are unequally allocated over the cities. In Dushanbe the volume of introducing dwelling houses makes up 65,000 m² per year, in Khujand, about 9,000 m², and in Qurghon-Teppa, 1,500 m². In small towns, there is practically no construction of houses either by the state and or by private investors.

The average housing per citizen in the cities is less than 50% of the “normative” level, as the following figures show: 10.0 m² in Sughd region, 9.6 m² in GBAO, 7.1 m² in Khatlon region and 7.4 m² in the districts under republican subordination.

4. The housing deficiency is growing. The acuteness of the housing problem, which is related to the lack of land plots for individual construction in cities, will grow, since the population of the country is growing at a quite noticeable pace.

For the period of 2000-2004 the population of Tajikistan grew at an average rate of 1.9% annually and reached 6.7 million people in 2004. This obviously contrasts with most of the countries of Eastern Europe and former Soviet Union, where the population is either staying

level or is decreasing (examples are Russia and Ukraine). It is expected that by 2030 the population of the country will be 9.2 million people, that is, 37% more than in 2004*.

Due to the population growth, the number of people wanting to build individual houses in cities is growing rapidly, as the state does not provide the population with state-built houses, and the private sector does not provide dwelling space by building tenement-houses. As a result, planned land use is frequently violated, unwarranted occupation takes place by urban population, construction breaches the “red lines” of the lands of general use. At the same time, urban territories are limited by the boundaries of agricultural lands, which are allowed to be developed, or by the territories with a complicated topography, which are very difficult practically to develop.

In these conditions, the introduction of the modern system of urban planning and regulation based on market mechanisms could be one of the most effective instruments to influence the situation, increasing the effectiveness of the land use in the city and its neighboring districts. As experience shows the system of legal zoning allows initiating positive processes in the use of territories and construction, although, certainly it will not be the only and decisive panacea against all troubles.

1.3. Goal and objectives of activity

The goal of this activity is to assess the feasibility of introducing legal zoning in Tajikistan and to elaborate the Rules of land use and development in the cities of Dushanbe, Khujand, Kurgan-tube, Istaravshan. The proposed assessment includes:

- Analysis of legislation concerning land relationships and urban planning;
- Institutional analysis, acquaintance with governmental and other organizations, as well as finding ways to implement legal norms and procedures;
- Assessment of technical feasibility of elaborating the Rules of land use and development, including the availability and preparedness of specialists in 4 cities - Dushanbe, Khujand, Kurgan-tube, Istaravshan;
- Analysis of situation and readiness of authorities at all levels to cooperate with organizations providing international technical assistant for the purpose of introducing principally new market oriented system of urban planning regulation.

This assessment was carried out from 18 to 31 May, 2006. The consultant compiled his findings in June 2006. A draft in Russian language was presented to USAID in July 2006.

1.4. Method used for situation assessment and activity participants

Situation assessment is based on information received from official resources derived from talks with the heads of organizations and subdivisions, as well as from our own surveys in the cities.

At this stage the tasks of collecting statistical data and quantitative deep analysis of situation in the cities were not pursued. This is the activity of another stage of work, after the principal decision about its necessity.

* United Nations, World Population Prospects database.

Information collection and analysis were carried out by the employees of the Tajik office of the Land Reform and Market Development Project headed by COP Kathrine Kelm. She proposed the structure of assessment and reporting, which the implementers followed as closely as possible.

The method of analysis and report was prepared by the consultant of Project Alexander Visokovskiy. On-site surveys and meetings were conducted by Alexander Visokovskiy and the Project's Head attorney Elena Ishankulova, who was also engaged in organizing meetings. She also prepared materials connected with explanation of the basic regulations of Tajik legislation. Consultant Akram Akbarov from the Project's Kyrgyzstan office, who has been implementing legal zoning in that country for several years, was also involved in this activity.

Organizational support in conduction of assessment and organization of meetings was provided by the Project's partners in Khujand and Qurghon-Teppa.

2. THE ADVANTAGES OF LEGAL ZONING

2.1. Main problems of the current system of urban regulation from the point of view of a market economy

Current urban planning in Tajikistan mainly follows the principals and methods of the Soviet system of urban planning and management. It hinders the development of market reform, of the private economic sector, and of the market for immovable property and land plots. The present urban planning system, from the point of view of market economy, violates the rights of owners and investors on the use of plots they possess, does not protect investment and promotes corruption. It is especially dangerous in Tajikistan, where state ownership of land is enshrined in the country's Constitution and there exists substantial slowdown of reforms by the bureaucratic apparatus.

Today a fundamental reorganization of urban planning system is required, directed toward improving access to land plots, increasing the freedom of real estate owners and entrepreneurs in running a business, protecting the rights of the owners of buildings, constructions and land users, and ultimately for developing the market sector of the country's economy. The main point of such reorganization is related to introducing a system of legal zoning.

Urban planning activity consists of two main components: territorial planning and urban planning regulation. Both parts are related to each other technologically and organizationally, yet they differ according to aims, instruments, subjects and the contents of activity.

Territorial planning, in its traditional Soviet sense, is an activity of elaboration of the projects of district planning and general plans of cities. These documents determine the future status of a city, showing how the city should look in 15-20 years. The general plan contains cartographical materials and plans for achieving a perspective status with taking into account numerous factors.

Urban planning regulation is the continuing, everyday activity of management bodies concerning review of applications and making decisions about provision of land plots, project assessment, licensing for construction, putting into operation completed buildings, as well as review of various proposals and the organization of activities on the ongoing functioning and development of a populated area. Urban regulation is a law enforcement practice based on the general plan and other documents of planning but dealing with ongoing problems and decisions.

In contrast to general plans, which were considered as the cornerstone of the whole system of Soviet urban planning, urban regulation was very undeveloped in methodical and legal relations. It was formed as a subordinate and accorded little significance, as an "administrative-team" planning economics and management. Such urban regulation is connected with a high level of subjectivity, authoritarianism, and lack of detailed and concrete legal norms regulating decision-making in the sphere of construction and immovable management. From the market perspective this has some significant shortcomings.

First, rights to land plots (for example, perpetual use rights) accrue only upon the completion of designing, and sometimes construction. Such rights to land in a legal sense do not have an independence, that is, for the most part they are “attached” to the rights to the buildings and constructions located on the land plot.

Second, property registration is conducted limitedly and separately for different components of ownership. Only buildings and constructions are registered, but the plot is added to the buildings and constructions as one of the characteristics of the right to the building.

Third, the basis of determining the possibility of land and building use, including construction development, was urban planning documentation. In fact, it is impossible to precisely and clearly determine the parameters of using land, real estate and construction on the basis of a general plan. Therefore, “determination” and concretization of possible land uses are accompanied in the process of designing and construction by the support of officials, which creates a huge base for corruption and bribe-taking.

Fourth, land and building use is possible only at the so-called “end use,” established by urban planning documentation. For example, if a project’s documentation establishes that in a given place there should be a building with a store for manufactured goods, then the owner or user will not be able to trade foodstuffs or create a restaurant. In order to find out whether he is allowed to do so and to get permission for it, he should apply to the local bodies of architecture and construction, prepare approval documentation, implement project activities, confirm them, conform with many official channels and only after all that process receive the corresponding authorization. In other words, all the changes of activities are possible only through a project-permitting procedure. This is a very long, expensive and complicated way, which is totally unfit for the conditions of market economy, where the opportunity for the rapid change of activity, depending on market opportunities, is considered a cornerstone of private economic activity and entrepreneurship.

On the other hand, upon elaborating a design and receiving “end” use permission, the owner of building and land user could be engaged in any kind of activities, including those which contradict the interests of the community or neighbors using a vagueness of the notion of “end use”. For example, the availability of end use “house with a homestead land” in fact does not prohibit breeding livestock or creating a car repair garage on the territory. Neighbors suffer, since they must listen to the clanking of automobile tools or suffer the smell from a hen house or cattle farms. Conflicts are unavoidable, as one never knows what is hidden under “end use.”

Fifth, the determination of type and parameters of plot and building use is always decided on an individual basis for each owner, customer and investors separately. What is permitted for one citizen, might not be permitted for another, even under the same conditions of disposition and investment-constructional purposes. The individuality of the application is applied to all conditions, and requirements and regulations ascribed for each case of construction and for all decisions. This serves as the second main base for corruption.

Sixth, irrespective of allocation, size and importance of a building in the regulation system, architecture (composition and exterior appearance of a building or an ensemble, spatial decision, facades) takes too much significance, to the detriment of all other economic, social, ecological and other criteria. It is mainly under the control of the city’s architectural bureaucracy that the most undefined requirements, without uniform interpretation, are

concealed. This, too, leaves a wide area for subjective treatment, administrative pressure, and corruption.

These are only the main negative characteristics of an administrative-command system of urban regulation, yet the description of various details could go on and on. For example, employees of the territorial bodies of land management had managed and continue to manage land, construction and reconstruction on behalf of the state. This results in almost total control over the use and various parameters of construction, where private entrepreneurship and business could hardly exist.

Today all the general plans of the cities of Tajikistan are out of date and absolutely do not correspond to the requirements of a market economy. They were designed for the conditions of a planned socialist economy, centralized financing of construction and management from a single center. Urban planning activity can no longer be based on a single document (the general plan of city), and the real economic process can not be regulated without full legal provision. Despite the fact that planning remains an important and necessary element of management system, today more important in Tajikistan becomes the formation of a completely new legal basis of regulation, which corresponds to the realities of market, not just the renewal of general plans

2.2. Description of legal zoning technology

Legal zoning is a term that refers to a democratic type of regulation system of urban planning activity directed towards establishing, regulating and controlling rights of owners and investors for the use of land plots and immovable property, or their development through construction or reconstruction. Legal zoning is an ideology and technology of urban planning regulation assigned for the market economy aimed at the process of achieving a balance of interests of various groups, including presuming direct participation of owners (registered and potential ones) in making decisions on urban planning touching upon their interests. One could say that legal zoning initially reacts to the maximum possibility of interests, accounting for those of owners, entrepreneurs, and the population of a city—the main subjects of market economy. This contrasts with the Soviet system, which defended the interests of the state and its officials.

Legal zoning works as follows: after analysis, the city's territory is divided into zones with different sets of rights for the use of plots and immovable property. The rights are determined with support from urban planning regulations, including the list of the types of authorized uses of plots, buildings, premises and parameters for their use, including the height of buildings, distance from "red lines," (which determine areas of common use), and the sizes and compactness of land improvement. Urban planning regulations for one zone are simultaneously determined for all land plots within this zone.

With the support of local normative acts (regulations), legal zoning implements the rules of land use and development. The rights of owners are determined with the support of the Rules, not on individual basis, but for the entire city population and potential investors. All information is open and available for all who are interested. We should note that the remaining two components of ownership to immovable property—disposal (conveyance) and possession—are regulated by other sectors of legislation, first of all Civil, Land, Forest and other codes and as a rule, are not regulated by this local normative act.

The rules of land use and development contain three groups of materials:

1. Zoning maps, including the main map dividing the city's territory into zones with different legal regulations of the use of immovable property, and additional maps of restrictions, for example, on the requirements of the protection of historical and cultural monuments, or on sanitary, water protection and other ecological requirements;
2. Urban planning regulations, including the list of the types of authorized use with some of use parameters for all categories of zones;
3. Procedures, including legal norms and procedures connected with preparation and implementation of constructional changes of immovable objects, amending the Rules, and provision of long-term rights for land plots.

The rules of land use and development are adopted by local representative body after a city administration's approval. Before adoption, the rules pass through a cycle of approvals, public hearings and deputies' discussions. After the Rules are adopted by the representative body, they are registered in the institutions of the Ministry of Justice, and broadly publicized to the city's inhabitants through newspapers and brochures.

2.3. Legal zoning in other countries

The experience of countries with market economies demonstrates the effectiveness of zoning system of urban regulations, which bring legal and urban planning methods under a unified management. These systems have been used since the 1920's in USA and since the 1950's everywhere in Europe.

Starting in the mid-1990's some Russian cities started to introduce a similar system, where it received the name of legal zoning, unlike a term functional zoning, which had been used up to this time in the general plans of the Soviet period. The western system was fundamentally modified according to the conditions of the development of our cities and adopted according to local legislation. At present, more than 20 cities in Russia have introduced this system. More importantly, in 2004 the Urban Planning Code of the Russian Federation was adopted, which was totally founded on the basis of the technologies and ideology of legal zoning. This law prescribes the introduction of legal zoning all over the country.

Since 2000, within the framework of technical assistance of USAID, similar activities have started in Kyrgyzstan. At present, 11 cities of Kyrgyzstan have already introduced legal zoning, and legal documents at the governmental level have been prepared and submitted. In the beginning of 2006, new amendments were adopted to the Land Code of Kyrgyzstan, which have secured the legal basis of legal zoning.

2.4. Impact of legal zoning on the economy

1. The level of corruption decreases, and competitive foundations become stronger. As mentioned above, the rules of land use and development is a public document, it is published in newspapers, issued in a brochure, placed on the internet, and hung on desks in the offices of the main architecture and land committee. Anyone wanting to build or reconstruct anything could find out which regulations on immovable property use are ascribed to any plot of interest, which kind of rights one possesses and according to which procedures one should act. At the same time the procedure in the rules is itemized according to the time of

passing stages, criteria of making decisions, names and addresses of instances. After adoption of such normative acts, there is the possibility to appeal the actions of negligent officials, especially because the legal normative acts serve as a basis for trial and actions of the Public Prosecutor.

The procedure becomes more transparent and the whole set of decisions is made collectively, reducing the possibility of a subjective pressure. The responsibility of the officials of administrations increases as compared to investors, owners, developers, as now the former must adhere to (and are held accountable for adhering to) the specific steps to move through the procedure established in the Rules of land use and development.

Similarly, even minimum publicity that appears as a result of introducing the Rules of land use and development improves the situation for entrepreneurs and owners of immovable property, and protects them from unbridled encroachment of officials.

2. Investment security increases. First, an investor or developer has all the information beforehand about what he can build (types and parameters of permitted use), which approvals need to be received and which procedures should be used. The investor can better cost out the project, even roughly, before dedicating resources and capital, and thus can avoid loss due to incorrect actions.

For example, at the first stage an investor should spend much money to receive initial documentations for designing, in order to know what and in which parameters he could build or reconstruct. Currently, he does not know, for example, whether it is possible to build on a plot a nine-floor dwelling house or only six-floor house, and therefore he can not assess the investment. Thus, assessing a project's projected success or failure comes too late. In particular, risks and expenditures increase when investor or developer must work over some variations of allocations or changes to the original, in order to find a suitable place for developing one's business. Consider also the expenditures for overcoming bureaucratic obstacles. As experience shows, 60-70% of failures in the developing countries are caused by projects mistakes and lack of the simplest assessments of a project effectiveness in view of the absence of open and legally reliable information about the regulations of possible construction.

Second, investment risk is reduced because an investor or developer can put money in an object to which he has firm rights. Currently, investors do not receive long-term rights to the land plot until a significant investment is made in elaboration of projects and additionally in construction.

For example, an investor puts money in preparation stage (selection of land plot, preparation of the act of selection and conforming the place of the disposition of object). After that, a resolution about permission for designing is issued. Per se this is not a rights-establishing document, but only a basis for further investment. That is, an investor has not received any rights at this stage, he has been given only some guarantees, which, as an experience shows, are worth very little. If there are any unfortunate incidents, or the investor faces financial problems to continue the project, he will not be able to protect his rights on the basis of a resolution permitting him to conduct design work. Further, the investor spends money for building or construction designing, which in Tajikistan is quite expensive. In many instances, only after the completion and confirmation of the project does he receive a resolution on permission for construction and the (temporary or perpetual) land use right. Until this

moment, from a legal point of view, the investor has made all expenditures for the land, which he did not have any rights to, but which was promised to him for use. That is why the risk of losing invested money and efforts is very high, and this frequently happens in reality.

Legal zoning, as it is accepted also in western systems, is formed by the principal of transferring rights to land plots at the earliest stages, before any serious expenditures, so that all expenditures go to the land plot, which is protected by rights. If something happens, then developer or investor may sell what he owns (rights, projects, incomplete construction, etc.) and get back invested money.

3. Simplification of the procedure for changing the type of activity and receiving permission for construction. The owner of building, premises or land user can independently choose the types of use from the proposed list, simplifying the procedure of changing the type of activity and making it less risky.

Currently, changing of the targeted use of premises, building, or land plot requires the implementation of an entire procedure of preparation and approval of permits. Market requirements dictate the necessity of a fast response to an existing request. Under legal zoning, the rules of land use and development allow owners and investors to choose independently the type of use (from an approved list), which substantially simplifies the procedure. It is important that changing an activity does not require approval, if it takes place within the provided Rules. An owner knows beforehand, which uses are permitted, and after that he can get permission for construction, as a technical procedure on realization of the use rights, which he already possesses.

Legal zoning also simplifies the process of getting construction permits. In cases of re-equipping buildings and premises, mentioned above, and also erection of temporary objects, simplified construction permit procedures are introduced.

The procedures become clearer and more convenient, since in each concrete case the relationships between owners of immovable property, administrative bodies, various organizations and services are regulated by the norms adapted to the local conditions of conducting economic activities and, on balance, lean toward the interests of the owners and city dwellers.

The time required to process documents and make decisions decreases 25% – 30% on average. With simplified procedures, the process takes less than a month on average.

4. Facilitation of receiving mortgage credit for construction. The receipt of land use rights at the earliest stages of the investment-construction process, provided by the system of legal zoning, is already allowed within existing Tajik legislation, thereby facilitating receiving credit for designing and construction under the pledge of the right of perpetual use for a land plot.

5. Benefits to the public sector. The benefits to the public authorities are important for introducing legal zoning.

First, the quality of documentation is improved. Land management issues, architectural-construction requirements, and land plots allocation all become more qualitative and

correspond to standards and norms. This is extremely important for Tajikistan, as the process seems awful today; temporary plan of construction and cadastral schemes of provided land plots are not kept, determination of boundaries of land plots is made in such a way that one plot crosses another or collides with public lands, plots under capital permanent objects are situated on the lands of general use, and between plots there appear useless emptiness and gaps.

These mistakes require immediate correction, while the system does not become totally out of control, and use of land in cities, as the most valuable and limited resource irrevocably ineffective.

Second, legal zoning abolishes contradictions between different controlling and decision-making organizations, which leads to duplicating of procedures and functions, and irrational expenditures and loss of time.

Third, control over rogue businessmen and entrepreneurs increases. As the Rules are taken for consideration in courts, additional levers of control and influence appear for administration in cases of construction without permission, breaching of norm of disposition of objects, non-fulfillment of contractual and other obligations.

6. On the whole, the project in Kyrgyz Republic confirmed that legal zoning stimulates the development of market sector of city's economy and market activation. Entrepreneurs in Kyrgyzstan confirm anecdotally that the introduction of legal zoning the situation has resulted in changes for the better, but beside that there are also some quantitative results.

Investment activity has increased. At the minimum, \$3.1 million in investment throughout the pilot cities were used for one analyzable year, which is 1.2 times more than the previous year. This money was involved in the economy much faster, more flexible and simpler, in accordance with the introduced norms of legal zoning.

The effectiveness of licensing was increased by 1.5 times, since out of 706 licenses given for the period of less than one year, 475 (that is, two-thirds) went through simplified procedure of re-profiling and placing of temporary objects.

For the same period in 11 cities of Kyrgyzstan, 445 completely restructured land plots along with a package of documents have been prepared and given as property (land plots plans with a list specifying the types of authorized use and fixed regulations). Consequently, entrepreneurs and investors have been granted land tenure rights in the already restructured land plot, where they can make subsequently financial investment, and commit to designing the construction of an object.

2.5. The influence of legal zoning on the environment and preservation of historical heritage

Ecological control and preservation of historical and cultural monuments are very important Tajikistan's cities. Until now this information was not available for the city population and community, even if it had existed. Nevertheless, it is very important for all participants of the real estate market and entrepreneurs to know where places of interest are located.

For these reasons materials for restricting use of territory according to ecological legislation and the necessity of protecting historical and cultural monuments are included in the rules of land use and development. These materials consist of the maps of restrictions and a description of prohibited and authorized types of use.

Map of ecological restrictions contains sanitary-protection zones of enterprises and boundaries of water-protection zones of rivers and reservoirs. Normative regulations, in accordance with ecological legislation, describe the ways of using land plots singled out on the map, including what may be built there.

Map of restrictions under the conditions of protection historical and cultural monuments shows the disposition of the monuments, as well as the boundaries of the zones of development regulation in the view of the tasks of protection and maintenance of monuments. As a rule, a text to this map contains parameters putting limitation on development in protection zones and the zones of regulation, and also description of the jurisdiction of various offices during the conformation of new construction and reconstruction projects.

Owners and purchasers of immovable property and other land plots planning transactions or construction, with the support of these materials, could know beforehand all the positive and negative aspects of a chosen place, allowing them save money and plan a project's activities precisely. Moreover, the availability of such information in a legal document reduces negative affects on ecology and increases the level of heritage safety.

3. ANALYSIS OF LEGISLATION REGARDING REGULATION OF LAND AND URBAN PLANNING

3.1. Legal norms determining the regulation of land relations and land use in cities

Land relations in Tajikistan are regulated by the Constitution and by the Land Code, the Civil Code, the Law of Tajikistan “On land management” and other acts of the land legislation of Tajikistan.

According to Article 13 of the Constitution, land in Tajikistan is the exclusive property of the state, and the state guarantees its effective use in the interests of people

Land users and their rights

In accordance with articles 11-13 of the Land Code, land in Tajikistan is given only for use or lifelong inheritable use.

Land users in Tajikistan can be physical and legal entities. Physical and legal entities may be primary and secondary land users.

Primary land users are legal and physical entities that use land plots on perpetual, fixed-term and lifelong inherited use (articles 10,19 of The Land Code).

Primary land users have the following rights:

- to manage the land independently;
- to ownership of agricultural production and income from its sale;
- to use, in the established order, commonly found minerals, peat, forests, and water objects for the needs of farmers in a land plot, and also to exploit the other useful properties of land;
- to construct a house, productive, cultural and other buildings and constructions with taking into account the requirements of the present Code;
- of property for sowing and planting crops and plantings;
- to lease a land plot;
- to payment of damages, in cases provided by the Land Code;
- to voluntarily resign from the land plot.

Secondary land users are physical and legal entities that use land plots under the conditions of lease agreement (art. 10,20 of the Land Code).

Secondary land users have the following rights:

- to use land in accordance with the conditions of its provision;
- to use, in an established order, commonly found minerals, peat, forests, water objects for the needs of farmers in a land plot, and also to exploit the other useful properties of land;

- to receive compensation for expenditure on land improvement made at one's own expenses due to pre-term termination of lease agreement.

Types of use

Land use is recognized as perpetual when the terms of tenure have not been previously fixed (art. 11 of the Land Code).

Perpetual use of land shall be given to:

- a) state and cooperative agricultural enterprises;
- b) public and religious organizations (associations);
- c) charity funds and other foundations;
- d) industrial, transport and other non-agricultural, cooperative, public enterprises, institutions, and organizations;
- e) for defense purposes;
- f) joint ventures, international associations and organizations with the participation of foreign legal entities;
- g) additional land plots for citizens to create personal subsidiary farms.

In accordance with art. 12 of the Land Code, the plots of land for life-long inheritable use are assigned to physical entities or collectives and citizens for organizing dekhkan (individual) farms or other traditional crafts as well as small. Land plots assigned on the right of life-long inheritable use are subject to obligatory re-registration in case of inheritance.

Land plots may be assigned for fixed-term use to legal and physical entities for a certain period (art.13 of the Land Code). Fixed-term land use can be short-term (up to three years) and long-term (from three to ten years).

Land lease

Primary land users can lease out land plots through a contract (articles 14 and 687 of the Land Code).

A lease contract is concluded without making any changes in the use purpose of the plot. Land plots may be assigned for lease for a period of up to 20 years. Land use relations on land plot lease shall be implemented in accordance with legislation.

The right of land plots leasing is determined by a lease contract (art.17 of the Land Code). Information contained in the documents on land tenure should correspond to information entered in the land use register book.

Lease contracts are subject only to State registration in the Land Use Register.

Immovable Property State Registration

In accordance with art. 143 of the Civil Code, the right of ownership and other real rights to immovable property, limitations of these rights, their origin, transfer and termination are subject to state registration in the unified state register by the institutions of justice. The following are subject to registration:

- the right of ownership, the right of economic management, the right of operative administration,
- the right of lifetime inheritable possession, the right of permanent use, mortgage, servitudes, and
- also other rights in cases provided by the present Code or other statutes.

In cases provided by a statute, special registration or recording of individual types of immovable property may be conducted along with the state registration.

An agency conducting state registration of rights to immovable property and transactions thereof must, on request of right holder, certify a registration that has been made by an issuance of a document on the registered right or transaction, or by making a notation on the document presented for registration.

An agency conducting the state registration of rights to immovable property and transactions thereof is obliged to provide information about made registration and registered rights to any person. The information shall be provided in any agency conducting registration of immovable property regardless of the place of making registration.

Any refusal for state registration of a right to immovable property or for transaction with it, or any refusal of the respective agency to register may be appealed to court.

The procedure for state registration and the bases of refusal of registration shall be established in accordance with the Civil Code and the Law on registration of rights to immovable property and transactions thereof.

Problems: The problem of the legislation mentioned above is that, first, the Civil Code (article 142 of the Land Code) does not consider land as immovable property, hence the right of land use is registered with a different procedure (mentioned below). Second, the Law on registration of rights to immovable and transaction thereof has not been adopted yet, consequently there is the lack of a uniform system of immovable property registration (that is a unified Inventory of immovable property does not exist). Finally, there is no unified body of registration, which could established a single procedure of record keeping.

The state registration of land use rights

The state registration of land use rights is implemented by the state body of land surveying of Tajikistan and its local bodies (art. 17 of the Land Code).

Land use right by physical and legal entities accrues from the moment of receiving documents passed through state registration, which certify land use rights.

The following rights of land use are certified:

- the right of perpetual use of land, limited use of land and lifelong inheritable land plot use by State certificate on land use right;
- the size of land share shall be determined in the Certificate of land share;
- citizens having small holdings shall have the right to receive land use certificate through the state body of Tajikistan on land surveying and its local bodies.

It is forbidden to start using a land plot prior to determination of the borders of the land plot and issuing of a document that certifies land use right by appropriate land management bodies.

Land provision

According to art. 22-24 of the Land Code land provision to legal and physical entities is implemented on the basis of the resolutions of the relevant executive bodies at no charge.

Lands suitable for agricultural needs in the first line are assigned to agricultural enterprises, dehqan farms and industrial organizations and institutions for agricultural production.

Lands unfit for agricultural production or lower quality lands with corresponding cadastral evaluation and which do not exceed the average district level are provided for construction of industrial enterprises, housing objects, railway, automobile, water and air transport, electric transmission lines, communications and main pipe lines and for other non-agricultural needs.

Lands with mineral resources deposits beddings are assigned for construction purposes according to the authorities in charge of mountain supervision.

Foreign citizens and foreign legal entities can be given land plots for temporary use for a period to 50 years.

Transfer of land use right and security of land user's right

When the property right to buildings, constructions and structures is transferred, the right to use land plots on which they are located is transferred to another person (art. 27 of the Land Code).

At the same time, land plot assigned earlier in the established order is not subject to assignment and the State Body on Land Surveying and its local bodies assign the land plot to a person, who received the land use right.

In case the right of the property on housing is passed to another person the right to use small holding also simultaneously passes to him.

In case of changes in land use purposes, the land use certificates shall be reissued and registered in the order established by the State Body on Land Surveying and its local agencies/branches.

In case of incomplete use of land plots, where these constructions and installations are located, the right to use the unused plot shall be cancelled.

The procedure of land use right's transfer to another person and its securing

Provision of land plots, privatized objects and lands for servicing these objects is carried out in an order of assignment in accordance with the Regulations on allocation of land plots for physical and legal entities approved by the resolution of the government of September 1st, 2005, #342.

Land plots where objects and other constructions are privatized are assigned by the local bodies on land management to the use of person who has privatized an object.

In case of changing the land user of a privatized object in an existent land use file, the act of securing land and determination of the boundaries of land plot are processed again.

Potential of the pledge of land use right

Article 359 of the Civil Code provides that the pledge of right of land use, enterprises, buildings, constructions, apartments and other immovable property (mortgage) is regulated by the Law on mortgage.

In the event of the pledge of rights, the subject of pledge shall be the property rights which may be alienated, in particular, lease rights to an enterprise, structure, building, installation, right to a share in the property of a business partnership, debt claims, author's, investor's and other property rights.

The pledge of rights to a land parcel, and also the rights to other natural resources are permitted to the extent and on the conditions established by the legislation on land and other natural resources.

A short-term right may be the subject of pledge only until the expiry of the period of its operation.

The debtor of a pledged right must be notified of the pledge. If a pledged right is confirmed by a document, the pledge contract may be executed by the transfer of the right-establishing document.

The pledgor of a right may be a person to whom the pledged right belongs (article 364 of the Civil Code).

The pledge of a right of lease or another right to a third party's property is not allowed without the consent of its owner or of the person having the right of economical management to it, if a statute or contract has forbidden the alienation of this right without the consent of these persons.

Article 368 of of the Civil Code mandates a written form for the pledge contract. A mortgage contract, and also a pledge contract of movable property, or of the right to property in provision of obligations under a contract are subject to notarization.

In accordance with article 369 of the Civil Code the mortgage of a building or construction is allowed only with the simultaneous mortgage under the same contract of the land parcel on which the building or structure is located, or of the part of the parcel functionally supporting the pledged object or the right belonging to the pledgor of lease of this parcel or the corresponding part of it.

In case of pledge of a land parcel, the right of pledge does not extend to buildings or structures located or built on this parcel that belongs to the pledgor, unless it is otherwise provided by the contract.

In case of absence of such a condition in the contract, the pledgor in case of levy of execution on the pledged land parcel shall retain the right of limited use (servitude) to the part of it that is necessary for the use of building or structure in accordance with its designation. The conditions for use of this part of the parcel shall be determined by agreement of the pledgor with the pledgee and in case of disagreement, by a court.

If a mortgage is established on a land parcel, where buildings or structures are located, and which do not belong to the pledgor but to another person, then in case of levy by the pledgee of execution on the parcel and its sale at public auction the rights and duties that the pledgor had with respect to such person pass to the purchaser of the parcel.

Problems: The problem of the norms of the Civil Code of Tajikistan mentioned above is that, first, the law “On mortgage” has not been adopted yet, and second, despite an indication in art. 362 of the Civil Code, which states that the pledge of rights on land parcel, and also rights for other natural resources is permitted within the limits and under conditions established by land and other natural resources legislation, at the present time the mechanism of implementation of this norm in practice is lacking, on account of lacking appropriate norms in the Land Code and other natural resource legislation.

3.2. Problems and weaknesses of the legislative regulation of land use and development

Our analysis shows that in Tajikistan there is a unique system of legislative regulation of land relations built on the basis of state land ownership with private use and position of land plots complemented with the elements of their disposals. Use rights and inheritable tenancy are complemented with regulatory rights: subleases (secondary use), transfer of the land use right to plot during the transfer the ownership right on immovable property (building, premises, and construction) by pledge use right for receiving mortgage credit, and a right to implement the development of land plot.

On the whole this legal design allows developing legal zoning as the system of regulating of the types and parameters authorized use of land plot, including construction regulations.

From the point of view of market reforms and the creation of favorable private sector climate, the current legislation concerning land, land management, and urban planning has a number of deficiencies.

Land is not considered immovable property. The main problem is not the lack of private ownership of land in Tajikistan, but rather that, by legislation, land is not included in the category of immovable property and economic activity. The legislature has determined that land is property (in this case, exclusively of the state, art.2 of the Land Code), but an owner may not put it in economic activity as an immovable property. The main regulatory functions remain with the state and it is done in the view of “creating conditions for rational use and lands protection, reproduction of soil fertility, protection and improving of natural environment for equal development of all forms of management” (preamble of the Land Code).

All other weaknesses, from the point of view of market development and legislation system, result from provided above a juridical interpretation of land as an object of property.

At the present time, Tajikistan lacks a clear system of registration of immovable objects and

land plots. The state registration of the rights of land use is carried out by the state bodies of land surveying. From the totality of norms it is clear that under registration it is understood provision and certificating land use rights in the form of registration and issuing of documents confirming the right of land use. It follows from these regulations that registration is not a public recognition of right, but to a greater extent sounds like a technical procedure without state guarantee to a private person on “purity” of received right

As mentioned above the law about registration has not been adopted yet, which is huge problem for development of the market of immovable property, the private economic sector and the introduction of legal zoning. There is an intensive discussion about who will register the rights on property and transactions with them and how this will be done. In particular, it has not been decided yet, whether there will be a single system of registration of immovable property for land plot and building or all components will be registered separately, as it is now.

For the introduction of legal zoning this is not the best situation. Legal zoning, first of all, works for establishment of rights on land plots and other objects of immovable property and “adjusting” under an acting registration system.

The registry and cadastre are not legal instruments of inventory of immovable property. The state land cadastre is normatively defined as a technical information system, but not as a legal instrument of inventory and identification of immovable objects.

Article 61 of the Land Code states that “the state land cadastre is indissoluble unity of the automated system of land cadastre information and land-cadastre process”, and its purpose “is to receive reliable information about natural, legal and economic situation of the unified state fund of land reserves”. In addition “the state land cadastre contains information about land that can be useful for rational land use and protection for regulation of land relations, grounds for land pricing, the system of land tenure, and evaluation of economic activity”.

Everything is listed, except the main function, under which the state cadastre is essentially built, namely inventory and single-valued identification of land plots and other objects of immovable property, is essentially built. It could be easily seen by comparing the considered norms with Russian legislation, not to mention cadastre schemes in the developed capitalist countries. A cadastre does not need to be a computer-based system to provide useful information. Cadastre systems have been working for 300 years in France, 150-200 years in England, Australia and other countries, and they appeared at the times when not only was there no “computer-based inventory”, but also more than half of population could not read nor write.

It is necessary to correctly and normatively direct this activity, in order for it to work on protection of rights, on precise, unambiguous reflection and registration of immovable objects. At the same time it is desirable for the inventory of property to be unified, that is, under one cadastre number there were both land plot and buildings related to it and other improvements. This would help owners and users to capitalize the immovable objects, accessing finance through credits and other ways. It is important today, since the Civil Code allows pledging the right of use in provision of mortgage credit.

It should be mentioned against this background how an undoubtedly mistaken is the attempt to organize one more cadastre – the State urban planning cadastre. In accordance with article

23 of the law “On architecture and urban planning” of May 15, 1997, #440, this cadastre is an obligatory informational basis for elaboration of architectural-urban planning documentation, a complex economic and social-ecologic evaluation of a territory and immovable property located within its boundaries, determination of specific rates of land taxes on the lands of settlements, etc. Similar attempts of introducing one more, beside land, the state cadastre were made in Russia and Kyrgyzstan, in both of the countries all this was not implemented, although a significant amount of money was spent for this undertaking. In fact, supporting of these two legal systems of inventory and monitoring by a state is impossible, since there is neither funding nor organizational resources, and above all necessity. It is important to create at least one normally acting land cadastre. And what an urban planning cadastre has been tried to be posed as, in fact should be functioning as geo-informational system supported at different levels, as it is done in the majority of countries with market economy. The same has been done in the new Urban planning Code of the Russian Federation.

Current regulations do not provide independent rights for land and for the immovable property located on land. A more essential consequence of the regulations provided above is lack of the notion of land plot as immovable property and accordingly lack of requirements of production of any actions on allocation and use of land plots only after they are formed as a unit of immovable property.

The Law on land management (33) contains a narrow terminology (article 2), developed for conditions when land is legislatively taken out from turnover and handed for use.

The central notion is use of land, which replaces the notion “land plot”: “Land-use is the territory of a land plot (aggregate of land plots) with a fixed closed border, area, location, used by physical or legal entities for definite purposes in accordance to legislation.”

Article 25 indicates that formation of land use is carried out at:

- 1) allocation of land plots to physical and legal entities;
- 2) withdrawal of land plots for state and public needs;
- 3) completion of transactions by physical and legal entities associated with transfer of land use rights.

During formation of land use, only those characteristics particular to the land plot should marked out: location, certain boundaries, and area.

However, the language of law “On land management” about handling land plots that have been just formed is missing in the Land Code , which puts this requirement along with technical, but not legal norms and significantly weakens it. Besides that, the features of a formed land plot are listed in the Russian and Kyrgyz Land Codes, among which there are introduced such regulations, like absence of the rights of the third persons, obligation of conferment of unique cadastre number, etc. As a result, the Tajik practice demonstrates the activity on land plots that are not well formed and without cadastre register.

Rights to lands are limited in time in many cases. Land is given for a private business, for entrepreneur activity only for temporary use, that is, the term of land plot is always limited in time (art. 13 of the Land Code). At the same time, in art. 11 of the Land Code in the list of subject to whom a land is given for perpetual use, legal entities, other than state and public, are not included. The terms of use could be different (from one year until 49 years), but mainly this is a short term use.

Land lease is legislatively allowed only to primary users (art.14 of the Land Code), yet the local bodies of the state authorities could not lease a land plot to entrepreneurs or private legal entity. As the secondary users can not change the end purpose land plot of a primary user, and as well as the term of providing land for use, then it could be confirmed that legislator utterly limited the possibility of long-term projects. It is appreciable, since in many cases business can not receive money in credit offering as pledge short-term rights; besides that, a whole range of projects requires quite a long term of life connected with the necessity of a full payback of invested funds and receiving of stable profit.

The category of “end use” and user rights are poorly defined. The basic legislative construction of land use regulation, “end use” runs all through the whole Land Code and other laws and normative acts connected to it. The main point of this category has already been mentioned above (see paragraph 2.2.) and it means that user is granted only the right of use. At the same time, it is impossible to know what is specifically meant by “end use” (for example, “consumer services”). It could be both a workshop and barber’s shop. Business requires a quick reaction on market conditions; however, the change of end use is always a long, expensive and complicated task, which, from the point of view of legal procedure, is equal to receiving of permission for a new construction.

In the context of the analysis of the legislation’s weaknesses the following circumstances should be indicated. First, in the Land Code nowhere is mentioned how an end use should be established, changed and identified an end use. There is a reference to a rule on the Decree of Government, which such a procedure should be established. However, most likely, the matter concerns attribution of lands to large categories provided by the Land Code, like “agricultural lands” or “lands of settlements”. It is obvious that within these categories there could be a full scatter of opinions and uncertainty.

Second, because of this uncertainty and “inflexibility” the category of end use becomes an extremely dangerous legislative norm. Unfair officials could easily take off the right of use from a legal or physical entity. Here are only two examples from the Land Code .

- changing of the end use of a land plot with violating of rules (that is, a procedure established by the Government) is a basis for refusal for the state registration of right of land use (article 16 of the Land Code). It is obvious that after refusal in registration follows seizure of the land plot;
- use of land contrary to the end use stated in the documents confirming right of land use is a basis for the termination of the right of use (art. 37 of the Land Code).

Under these definitions, taking into consideration what was mentioned above, if an official cares to, it is possible to put to a stop practically any current use of land plot, building, premise and thus, forcing the user to leave the land plot.

The norms on seizure and compensation of use are weak, as in the other legislations of the post Soviet area. It is significant that article 30 of the Land Code devoted to the procedure of withdrawing land plots for non-agricultural needs, contains no norms, which are directly related to this issue. It is fully devoted to the procedure of allocating land plot for construction. In other words, the legislature considers that from the legal point of view the procedure of choosing the place of allocating an object “automatically” agrees with the procedure of withdrawing this plot from the previous user. This is a very dangerous tendency,

which extremely weakens protection of the rights of a land plot user.

Determination of compensation during withdrawal of land plot is conducted through calculation of the amount of payment of damages to land users in accordance with article 43 of the Land Code that reads: “When calculating the amount of compensation for damage caused to land users, actual prices on equipment and materials, as well as prices on construction assembling and other works existing either at the moment of withdrawal of a land plot and drafting of deed shall be applied”. It is obvious that at this approach the user loses everything; he is not able to acquire or build a new object for the money from the compensation, as in this case he will already pay according to market prices.

3. 3. Legislative changes necessary for the introduction of legal zoning

In principle, the legislation does not contain major hindrances to the introduction of legal zoning. It is quite another matter that in the conditions of absence of private land ownership, market sales of land plots, essential change of a normative regulation towards the interests of the state authority and state bodies of management over private interests, legal zoning will not be entirely a “market” one. It should be adapted to the basic constitutional norms and values of the Tajik society. Some of the technologies of legal zoning should be neglected, but in this case, we could say that “something is better than nothing.”

As always, in these cases, at the first stage of introducing legal zoning it is possible and necessary to use the ambiguity of legislation, and the ambiguity of norms.

1. Form a proper registration system. The registration system in Tajikistan is not formed. In other countries we worked in conditions where registration is already acting and has passed through primary inventory. Now we must act in other way – to initiate registration through introducing its elements in the Rules of land use and development. Of course, it should be done in a way that would not contradict current legislation.

2. In time, introduce some amendments to the Land Code connected with the land cadastre, in order to clearly define its objective and the procedure of introduction. The State cadastre has not been formed yet and it is in an embryonic stage. It is important for us, since the availability of information about land plots and their cartographical cadastre registration is a critical aspect for the development of legal zoning system. Regulation of rights is possible, when there is a basis in kind of description of existing objects of immovable property and rights to them. At the first stage, the elaboration of the Rules of land use and development will rely on the present legislative norms.

3. Amend the Law “On architecture and urban planning” to renunciate the urban planning cadastre and replace it with an obligatory introduction of each level of geo-informational system by authorities. However, this correction is not very urgent, it should be considered in the context of amending the entire urban planning legislation.

4. Concretize the concept of “formed land plot.” In time it will also be necessary to specify and concretize the norms of Land Code and the Law on Land Management concerning the concept of “formed land plot”. At the first stages it is possible to work on the basis of the interpretation of the acting norms.

5. Eliminate the category “end use.” The category of end use could not be excluded from

legislation for political considerations. Yet, it could be rejected through binding it to “the categories of lands”, provided by the Land Code. Within the category, for example, “lands of settlements” another authorized use will be acting. That is what was done in Kyrgyz and Russian legislation. At the same time, it is necessary to try excluding “end use” from a Certificate and replace it with “the types of authorized use”.

4. INSTITUTIONAL AND ORGANIZATIONAL ANALYSIS

4.1. Competence of organizations and their readiness for cooperation

The introduction of legal zoning touches upon the interests of mainly three institutional subjects:

- local authorities, mainly the state bodies of executive authorities in the cities (Hukumats);
- the State Land Committee of Tajikistan and land management Committees that are under their jurisdiction in the provinces;
- the State construction and architecture committee of Tajikistan and local bodies of architecture and construction in the administrations (Hukumats) of cities.

We examine each in turn.

4.1.1. City Hukumats —state bodies of executive authority in the provinces.

The Hukumat's basic function of interest is the right to provide, to secure and to seize land plots. Absolutely all the people whom we met with emphasized the decisive significance of a Mayor of city, and his decree on assigning of land plots for use.

The local authority of districts (cities) is obliged to provide land plots in accord with the state bodies of land surveying of Tajikistan (article 261 of the Land Code). There is a significant influence towards the bodies of land management over the bodies of architecture and urban planning.

The disposal (conveyance) right of Hukumats on land plots for non-agricultural needs is legislatively restricted with the sizes of plots up to 10 hectares. (from the lands of forestry, except the lands of the forests of first category and the lands of water reserve for agricultural needs up to 10 hectares, and for non-agricultural needs up to 5 hectares). Only the Government of Tajikistan has the right of disposal of all plots above the rates indicated above, in accordance with the local authorities of districts, cities and regions and the state bodies of land surveying of Tajikistan.

Unfortunately, the commissions of the bodies of local authority and local committees on land surveying are poorly prescribed and intersect with each other. So, the competencies of the state bodies of land surveying of Tajikistan in the sphere of regulation of land relations (article 6 of the Land Code) looks as follows:

- conducting state land cadastre and monitoring of lands;
- state registration of rights to lands use and issuance of documents certifying the right of land use to users of land according to established procedure;

Some of the competencies of the Hukumats of regions, cities and districts (article 7 of the Land Code) repeat the competencies of land surveying bodies word for word:

- organization and implementation of land management, approval of land management documentation connected with the implementation of works that are of

regional significance and in the lands assigned for their introduction, *introduction of the state land cadastre and monitoring of lands*;

- provision of land plots for agricultural production;
- provision, withdrawal and securing of lands for non-agricultural needs (in the version of the Law “On Land Management” of 28.02.2004. #23);
- protection of the rights of land users;
- termination of land use rights;
- *the state registration land use rights*

It is difficult to say what has caused such an obvious intersection of commissions in normative documents. In practice it does not exist. The cadastre has not been conducted at all, but in places that have made any attempts in this regard (Firdavsi district in Dushanbe), it is the State Land Committee that is engaged in this activity. The state registration is entirely under the management of the State Land Committee. Therefore, actually we did not find any problems in the interaction of the local bodies of authority and land management committees. All realize that final decision in the disposition of land plots is always made by the Mayor of city, but the project of regulation is made by the local committee of land surveying.

The mayors and chairmen of cities and districts submit the programs of socio-economic development, other programs and plans to the Majlis (Meeting) of People’s Deputies for approval, and render an account in session about their implementation. The Majlis of people’s deputies of cities and districts, within its commission, adopts a resolution approving the specified documents.

The resolutions of the Majlis of People’s Deputies, which have an obligatory nature on an appropriate territory, are sent to the Ministry of Justice in a procedure established by normative legal acts of Tajikistan for the state inventory, control, and registration.

The procedure of official publication and implementing the acts of the Majlis of People’s Deputies is defined by the President of Tajikistan.

The regulations mentioned above are important for us, since, following them we could give entire legitimacy to the Rules of land use development.

In principle the situation with the commissions of the representative body of local state authority (Majlis) and with Hukumats does not hinder the introduction of legal zoning. It is important that the Tajik system of state management acts not only in the frameworks of legislatively ascribed commissions, but also relies on the “unwritten” traditions of a strict subordination. All the chairmen of cities and the large part of the employees of Hukumats mentioned that for introduction of innovative activities, like legal zoning, it is necessary for them to have a certain “instruction” of higher state bodies. In each city it could be interpreted differently (see the next section). However, it is considered that in order for our work to proceed smoothly it is necessary and sufficient to have any decree/decision of government or ministry level on conduction of system of activities on the introduction of legal zoning in the pilot cities.

4.1.2. The State Land Committee

The State Land Committee of Tajikistan (SLC) consists of central office and local bodies (regional, city, districts committees on land management), and also state enterprises and

organizations, with which the SLC concludes bilateral contracts. For example, one of these organizations, the design-research institute Fazo, implements activities on creating cadastre and conducting land plots inventory, and also a design institute on land management Tojikzaminsoz, which is mainly engaged in rural lands. Thus, there is formed a unified subordinate system of the bodies of state management in the sphere of land surveying, land use, land relations with a direct subordination bottom-up.

The Committee was created in 1996 under the Government of Tajikistan; in 2001 its status was raised to the State Land Committee of Tajikistan. The Committee has large commission and high level of management centralization. So, Certificates certifying the rights of land use are issued for the whole country only from the SLC's headquarters in Dushanbe.

The SLC pulled over most of the authority from the Committee of architecture and urban planning and there is a latent war between the institutions so far for authority, and accordingly money flows. Currently, the SLC possesses incommensurably huge influence, resources, and organizational possibilities in comparison to the Committee on Construction and Architecture.

4.1.3. The State Committee of Construction and Architecture

The regulation on the Committee was approved by a Decree of the Government of February 28, 2003, #74. The Committee is not large; it has 30 employees, including the department of urban planning-normative documentation. The local bodies of architecture and construction that are responsible for the issues of urban planning regulation are not under the direct subordination of the Committee, but are included in Hukumats. The basic operative function of the Committee is the coordination of activities of the architecture and urban planning services of executive bodies in the provinces and scientific-methodological provision for their work.

In fact, the Committee has minimal financing, and does not carry out a serious urban planning policy and dynamic activity. Its influence is reduced and nobody in the Government wants to strengthen it. Partially, it is because not many people understand the necessity of territorial planning, urban regulation and other components of urban planning process.

For the most part this situation is stipulated by a specific position of the Committee of construction and architecture. The Law "On architecture and urban planning" of May 15, 1997, #440 provides that: "Architecture-urban planning activity is a purposeful formation of a propitious habitat for men through spatial organization of systems: settlements, allocation of productive forces, development of cities, settlements, rural and other territories, production, social, engineering and transportation infrastructures, construction design, reconstruction, modernization, restoration, thorough repairs of buildings, constructions and their complexes, objects of improvement and planting of greenery. The territory, within whose borders is carried out any architecture-urban planning activity, is related to the territory of urban planning regulation".

A similar definition was given by the urban planners of the Soviet time, and so do the present followers of the Soviet urban planning school. While such urban planners in Tajikistan, Kyrgyzstan, Ukraine and Russia consider that their basic mission is "formation of a propitious habitat for men", nobody will need them. Such situation is found in Tajikistan: due

to the weakness of urban planners, all important commissions and objectives of activity, which the modern society and certain people are very interested in, are given to the SLC.

4.1.4. Interaction between the bodies of land surveying and urban planning

A paradoxical situation exists now, the land surveying department has undertaken almost all basic objectives and tasks of the Committee on architecture and construction, but at the same time does not involve specialists (urban planners) in their implementation. For instance, the Law “On land management” includes: elaboration of the projects of forming new and regulating existing land surveying objects, elaboration of land plot’s plan (which brings our attention to a legal chaos – “land plot” lacks a legal category, but the “plan of land plot” exists!), land surveying, planning of lands use, various types of land surveying documentations (article 29):

- 1) Materials of zoning (except for the objects of town-planning activity) and nature-agricultural regional assignment, placing and definition of borders, especially protected territories;
- 2) Land management schemes of administrative-territorial formations, schemes of city land-use, the schemes of formation of special land funds, plans of land plots which are not subject to building, the lands of cities and settlements on which construction is temporarily forbidden;
- 3) Projects of reallocation of lands, formations of new and ordering of the existing land-use, organization of their territories, inter-farm land management (except for the projects of land surveying in the settlements which are made while developing town-planning documentation);
- 4) Materials on land-use formation, land-surveying, making the plan of a land plot, consolidating and changing of borders of the line of settlements;

Essentially all this documentation substitutes for urban planning activity, is prepared in the frame of another discipline, on other bases, with other goals and methods and specialist of other profession. This dangerous tendency existed both in Kyrgyz Republic and Russia, but in consequence of our activity urban planning approaches to territorial planning and regulation have been resolved.

Where is the danger? Land surveying procedure interprets all its actions as technical, but intellectual component in decision making is lost. One gets the impression that planning decisions occur spontaneously as a result of negotiations between an applicant and an official. Unfortunately, experience shows that the consequence of such understanding and actions is very ineffective, wasteful, mistake and conflict-ridden land use. The correct approach requires making of decisions on the basis of design method within urban planning discipline. Another matter is that specialists, who have a certain set of modern knowledge and technology, are necessary for that. That is why training and preparation of these specialists is an important part of our work on introduction of legal zoning.

In fact, the legislative and actual condition of key issues varies significantly. Although in laws there is prescribed the necessity of design works, introduction of cadastre, land use inventory, registration of rights, entire formation of land use before its provision, in reality none of this exists, or it is done in a very pared-down way.

There is no money for planning activities. General plans became out of date in all the cities without exception. Some attempts to start activity (not successful so far) have been made in

Dushanbe and Khujand the two largest cities of the Republic. In rest of the cities the picture is just pitiful; sometimes even topographical maps of a city's territory are lacking, not to mention design works and perspective documents. The plans of land plots are prepared primitively, without urban planning development of situation. Design borders are made on them on the applicants, without analysis of a planned development and complex evaluation of the situation. At present red lines, main transportation corridors, engineers' nets and many other regulations are not depicted on the plans of land plot.

It seemed the bodies of construction and architecture are more interested in introduction of legal zoning than the SLC. Technical assistance during lack of financing urban planning activity represent the only chance for the Committee of Construction and Architecture to get regulation documents in the cities. According to the Deputy Chairman of Architecture and Urban Planning Department of the Committee, Akram Akbarov, the committee supports our activity on improving legal zoning.

During a meeting with the First Deputy of SLC, Rahmon Umarov, we realized his enthusiasm was lukewarm. According to him "this activity is 60% urban planning and 40% land management", and therefore he thinks we should mainly work with the Committee on Construction and Architecture. This is nothing odd; in Kyrgyzstan and Russia we also worked mainly with the bodies of architecture and urban planning. Such an attitude to our proposal may affect the contradictions between the two departments, which we have talked about above. In any case, the basic work on the introduction of legal zoning in Tajikistan will be conducted closely with the Committee of Construction and Architecture in cooperation with the administration of SLC on specific issues of collecting cartographical materials, and other information and procedures.

4.2. Procedure of providing land plots for use.

The procedure of providing land plots for use is prescribed by several laws. More completely it is provided in the Rules on allocation of land plots for physical and legal entities approved by the Resolutions of the Government of September 1st, 2005, #342.

The procedure consists of the following steps:

- 1) Provision is initiated by an applicant.
- 2) Local bodies of land management carry out formation of land use.
- 3) The application is considered by a Commission with the purpose of confirming the location of the object on the basis of urban planning documentation. The Commission makes decision in the form of preparation and approval of "An act of land plot selection".
- 4) The Mayor of the city makes the final decision in the form of a decree. The draft of decree is prepared by the local committee on land management. The Decree (let us call it #1) concerns only permission for designing. This is the substitute for a land right, since there is still no real right for land. The use of Decree #1 is that it gives the right to spend money for the design of the land plot, for which the applicant has no right yet.

- 5) On the basis of Decree #1 designing and authorization, documentation given by the local bodies of construction and architecture (ADO, conditions of connecting to nets and etc.), an applicant orders the building design (construction, reconstruction, etc.) from a licensed design organization.
- 6) After completion, the design is confirmed by several official channels (including, non-departmental state and ecological expertise), approved by the local bodies of architecture and construction and the applicant receives permission for construction-assembling work. On the basis of this authorization the Mayor of the city adopts another Decree (call it #2) about provision of land plot for use and about authorization for construction. Only Decree #2 has a real rights-granting meaning. We should draw attention that in this decree two independent right-granting decisions are integrated: about land used and authorization for construction.
- 7) Local body of management prepares land documents.
- 8) Land documents and other papers are sent to Dushanbe, to SLC, which issues a Certificate (which in reality means rights registration).
- 9) The Certificate is issued to the Applicant, after which he has the right to open investment for construction and begin construction work.

Regarding this procedure the following should be mentioned:

1. The land plot is provided free of charge and only for allocation (construction) of any object. Of course, in reality land plots cost money (see discussion land market below), so the cost of land plot is paid by Applicant in the form of open and concealed payments in the course of the procedure's advancement. Free provision of land is a fiction. In fact it is a basis for corruption and bribe-taking in the interests of the state officials of all levels.

The cost of the right of use in this case is cheaper than in secondary market, because the risk of not carrying the procedure through legalization of Certificate and losing invested capital. In the secondary market a customer acquires rights that are more secured and, for this reason, they are more expensive. We should mention that the whole procedure of provision of a land plot for use takes much time according to market yardstick, as it includes designing of project.

2. The legislature has determined only one type of the procedure of handing over the rights of use by primary users, namely, on the basis of conforming preliminary location of an object. There are no other alternative means of rights hand-over. A competitive mechanism is not foreseen. This significantly distinguishes the Tajik (involving bidding or otherwise) laws and the conditions of business conduction from Kyrgyz Republic and Russia, where competitive mechanisms are acting legislatively and practically.
3. The procedure contains many subjective, undefined and unregistered elements. Therefore, practically, each intermediate decision within the procedure is made at parties' discretion, by negotiation. In essence, the majority of decisions are farmed out to different officials. For example, one can not understand who makes decision about the type of provided right (temporary or perpetual) and, in case of temporary use, on which

basis the term of use is defined. It is not clear what must be done if the Mayor of a city does not approve the decision of Commission, or if there should never be these kinds of cases, etc.

4. As there is no urban planning documentation in the cities, or it has become out of date, and nobody is familiar with it, the references on conformity of urban documentation and general plan are mainly rhetorical. Instead of this, a formal concordance with the bodies of construction and architecture on undefined bases and according to concealed criteria exists in practice.
5. According to entrepreneurs the registration of the right to a land plot is an extremely complicated and expensive process, absolutely closed, and with high risks. The Chairman of the Association of Small and Medium Size Business in Dushanbe, Matlyuba Uldjabaeva, and the Chairman of the Association of Entrepreneurs in Sughd region Shuhratjon Rahmatboev both told us of this feeling. It is typical that a large business does not have any problems with this procedure —not with terms, nor with risks of losing money, nor with obtaining use rights. That was told by very professional people from Khujand, for example a contractor, general director of “Eurostroiservice” Maksudjon Umarov, and an owner Abdurasul Rajabov. It is absolutely clear why this is happening: the procedure (by the way, as all over the world, including the most democratic countries) is designed for huge investors and developers and unwillingly admits the representatives of small business and small owners.

This is not the best situation for a market economy. However, legal zoning could be established in these conditions. No contradictory evidence exists to prevent this. Moreover, the activities on its introduction help to concretize the procedure, and correct it in order to protect small investors and applicants.

The most important element needing change is connected with the slippage of the provision of right of use for the period until the beginning of designing. Officially it means, first of all, changing the decree about authorization of designing with the decree on provision of land plot for use, and secondly, after the completion of design and confirmation, the issue of a separate decree #2, and now only on authorization for construction (according to the results of testing design documentation and authorization of the body of architecture and construction for construction-assembling works).

It is hard to expect a rapid change of the procedure; however, work in this direction is needed.

4.3. Existing market of immovable property

4.3.1. Prices for apartments and land plots

In Tajikistan a legal immovable property market (apartments, houses, buildings, constructions and premises) exists, as does a half-legal market of land plots. Despite the state land ownership secured by the Constitution, not including land to immovable property and legislative withdrawing of land from market activity the latter is more symptomatic. At the same time, land plots in Tajikistan are sold according to market prices, which are practically known to everyone. In other words, the secondary market of land plots does exist, as does market activity for land use rights.

To conduct a sales transaction, a plan of reserving a land plot for building during changing of an owner of a house is used. The purchase-sale agreement is made for any existing construction in a land plot, and then the land is reregistered to a new owner of the house for use. It is important that such sale takes place in accordance with law; land de-jure is not sold, but is reregistered for use under the new owner of immovable. De-facto, this is the secondary market of land plots with prices and peculiar method of regulation and rights transfer.

Our informal survey revealed quite an interesting and unexpected feature of the cities of Tajikistan. In comparison with medium incomes of population and the level of budgets in public sector the market of immovable property operates with very high prices.

Below we show some prices for apartments and land plots, which we found during meetings with various people. In other words, these are the prices, which the sellers of immovable property do not know, but which the citizens that do not have special professional interest to immovable property market know, but somehow facing the prices for immovable property.

Location	Property type	Price, approx.	Price/m2
Qurghon-Teppa suburbs	0.1 ha land plot	\$4,000	\$4
Qurghon Teppa city center	0.06 ha land plot	\$15,000	\$25
Khujand city center	2-room 2nd-floor apartment, 45m2	\$15,000	\$330
Khujand city center	2-room 1st-floor apartment, 45m2	\$20,000	\$445
Khujand periphery	1-room apartment, panel house, 30m2	\$3,800	\$125
Khujand periphery	2-room apartment, panel house, 45m2	\$7,500	\$150
Khujand periphery	3-room apartment, panel house, 60m2	\$10,000	\$165
Khujand suburb	Agricultural land plot, 100m2	\$450-1,000	\$4.5 – 10
Khujand suburb	0.05 ha land plot	\$12,500	\$25
Khujand center	0.05 ha land plot	\$25,000	\$50
Dushanbe center	Elite apartments, 270m2	\$300,000	\$1,100
Dushanbe center	Land plot, 0.05 ha	\$80,000	\$160
Dushanbe, elite suburb	0.1 ha land plot	\$200,000	\$200

Prices for immovable property are very high, which is apparent out of their comparison with situation in Russia and in Kyrgyz Republic. For example, a land plot of 0.01 ha costs \$2,500 in Moscow oblast. In the range from 10 to 15 thousand dollars it is possible to buy quite good land plots with nets, gas, asphalted road, and quite close to Moscow. The cost of apartments in the interval of \$700 – 1,500 is typical for the largest cities of Russia, with the incomes of people in an average in two-three times more than in Tajikistan.

The high prices of immovable property and land plots create an essential problem; such prices cut off a large part of population from the possibility to acquire dwelling, apartments, houses and premises for conduction of business and land plot. With a high probability it could be assumed that a “free” initial receipt of right of land use costs not less than 40-50% of the prices mentioned above.

The high prices for immovable property are connected with the lack of available land plots. Beside that, high prices are determined by secrecy and corruption of this entire sphere. Because of this, private business hardly receives land plots for dwelling construction, not enough houses are built and as a consequence there are few offers in primary and secondary markets.

Thus, even a brief analysis of the real estate market shows that any change in the direction of more transparency of the procedure of provision of rights for land plots and improving the security of developers, other representatives of small business will be a benefit; it will lead to deceleration, and probably to stabilization of prices. In any event, this reason makes it necessary to try to introduce legal zoning, as one of the effective instruments of reducing corruption and improving market reforms.

4.3.2. Design cost

The market of design services holds great importance for functioning of immovable property market. Today in Tajikistan there are extremely high prices for design works. According to the Assistant Chairman of Sughd region on economic issues, Anvar Yaqubov, in a number of cases the cost of designing exceeds the price of building.

For example, consider the construction of a multifunctional trade-hotel complex of in Khujand. The owner of this complex and the general contractor, whom we mentioned above, told us that local designers required \$40,000 for affixment of design and partial redesign. It seemed expensive and they went to a design institute in Tashkent, where this design was prepared for \$8,000, that is, one fifth of the price.

According to Iskandar Shomurodov, a consultant of the USAID Project on Trade Facilitation and Investment, the high cost of design work is connected with the lack of competition between designers. There are very few design firms and private workshops that hold the license for the implementation of design work. Licenses are issued by the State Committee on Construction and Architecture under Hukumats. Due to this, receiving of license became one of the corruption “hoops”, through which it is very difficult to jump. The same designers may easily increase prices, being sure that clients will come to them in any case.

4.3.3. Taxation of land plots

In principal taxation is not included among the issues connected with the evaluation of the feasibility of introducing legal zoning. However, in this case, an important situation was revealed.

The land tax in Tajikistan is paid by land users, to whom are land plots secured for perpetual, temporary use or lifelong inheritable use (article 264 of the Tax Code). The rates of land tax are fixed as following:

Dushanbe	400 somoni/ha
Kujand, Qurghon-Teppa, Kulob	300 somoni/ha
Regions of Repub. Subord.	200 somoni/ha
Other cities and city-type settlements	150 somoni/ha

It turns out that the rates of land tax do not differentiate further within the territory of each city.

What does this mean for the owners of immovable property or any other business? Let us take, for example, two grocery stores, which are approximately of the same size and with the same equipment, one of which is located in the center of city and the other in the periphery. However, clearly the value of the land in the center of the city is higher than the value of the periphery land, because an enterprise can make much more money on land in the city center than on land in the periphery. Yet the land tax is the same for both. Besides that, in this situation public finances suffer, as the profit connected with location is practically not imposed taxes and does not get to the budget of city.

All these are nuts and bolts of the theory of land rent and city economy and it is odd, why the tax on land in Tajikistan has not been differentiated according to the territories of cities.

At first, the differentiation of the land tax rates should be carried out by introduction of different economic zones in the city. That is what was done in Russia, Ukraine, Kazakhstan and Kyrgyzstan. From the point of view of the introduction of legal zoning, zones of differentiation of tax rates are more effective if they are built according to the zones of regulations of authorized use of land plots and immovable property provided by the Rules of land use development. In this case, the income received from economic activity is protected by legal zoning. This is the best combination from the point of view of improving market mechanisms of business regulation until such time that taxation does not entirely rely on a market price of immovable property or capitalization of incomes from use.

Thus, for the situation in Tajikistan, the introduction of legal zoning may give one more additional effect – it should initiate the differentiation of the rate of land tax in cities and thus increase the effectiveness of enterprises' activities and the incomes of local budgets.

4.4. Plans of existent land use and topographical materials

1. The weakest point of introduction legal zoning in Tajikistan, as shown in our analysis, is fixation of existing land use in cities. In sum, the picture looks as follows:

- Departments of architecture and construction under the Hukumats of cities do not keep temporary land use plans, where the land plots provided for use should be recorded;
- There are no new topographical surveys. Topographical maps and plotting boards, which are found in the cities, are absolutely out of date, and as a rule, do not cover the whole territory of the city and are not updated. New cartographical activities are not carried out practically, but whatever is done, it is done very slowly due to the lack of financing.

2. The State Land Committee has only started activity on keeping inventory of land plots in cities and creation of cadastre. The local bodies of land surveying do not have cadastre

plans yet, where organized land plots, indicated cadastre numbers and other related information should be reflected,. At present, at it was mentioned above, inventory is carried out in the form of composing and keeping of land surveying documentation, and registration takes the form of issuing Certificate or another right-certificating document.

According to Rahmon Umarov, the First Deputy Chairman of the State Land Committee, until now the Committee was engaged in agricultural lands, which was priority in their activity. At present the first steps in creation of state cadastre have been made. The first, “pilot” district of Firdavsi in Dushanbe of 400 hectare is in the process of completion. According to Mr. Umarov, the completion of cadastre scheme all over the city requires not less than 4 years because of insufficient financing.

We became familiar with an activity on creation of cadastre of Firdavsi district by a design-research institute “Fazo”. The Director of the institute, Akbar Yatimov, pointed that this work includes correction of topographical maps according to current condition, correction of the borders of land plots, their areas and users. The initial materials are topographical plans of the year of 1982; there are no new maps. One of the completed plotting boards was shown to us. It was far from being a completed work, and is first of all in need of clarifying methodological approaches. A topographical survey is conducted professionally on the scale of 1:2000, corrected existing constructions and colored, well-read print. However, on this supposedly cadastre map the borders of all land plots given for use and ownership were not marked. Yet, the marked borders can not be seen well. It was not clear with which line the borders of land plot should be identified on the map. Also cadastre numbers of plots and the numbers of land management documents were not put down.

Mr. Yatimov estimates the cost of creating a cadastre map at approximately \$215 – 250 thousand for one district of the city. According to him, under contractor’s agreement half of activity is financed by SLC and half of it by the Hukumat of the city. SLC has fulfilled its responsibilities, but the Hukumat transmitted the implementation of financing to the administration of Firdavsi district, which does not have fund. The work has stopped and it is still unclear when it will continue.

3. Donor support in creation of land cadastre in the cities of Tajikistan is not anticipated.

Some activities are carried out by the Foreign Agency of Sweden National land service “Swedesurvey”. The Deputy Manager of the Project, Zoya Faradje, explained us that it is not their task to prepare cadastre maps and the technology of conducting cadastre. The aim of the project is to support establishing of modern cadastre system in Tajikistan. They conduct trainings for specialists, train them to work with new equipment using modern computer technologies.

The World Bank finances an experimental project on registration of land plots of agricultural purposes in a number of administrative district of the republic (activities are headed by Victor Boltov). “Fazo” creates cartographical materials for them as well.

Similar activities are not carried out in cities (see Introduction, p. 1.2. on this issue).

4. In Russia and Kyrgyz Republic we worked in a different condition; we started elaborating of the Rules of land use and development after completing an inventory of land plots or, at

least after its partial completion within urban territory.

In Tajikistan it is vice versa – legal zoning should be created before creating cadastral maps. In these conditions the elaboration the map of existing land plots, which are provided for use becomes an important element of the work. This is mainly a technical problem, yet very complicated. From the point of view of development of immovable property market it means that introduction of legal zoning should be considered as initiating and stimulating activity.

5. In Russia we have already used the technology of creating a map of existing land plots and other forms of land use not on the basis of cadastral maps but topographical plans. This is much more complicated activity, which requires much more people and money, than an activity, which is based on cadastral schemes, but it is in fact possible.

However, for this technology, new, corrected topographical maps are needed. It turned out that these kinds of maps exist only for one city – Qurghon-Teppa, but for other cities they need to be prepared yet. Moreover, it became clear that in Tajikistan city topographical maps are considered “secret”. Moreover, special organizations and people watch it very rigorously.

For the evaluation of the possibility of solution of these problems we met with the administration of two enterprises that produce cartographical materials.

OJSC «GIINTIZ». The oldest institute of Tajikistan, which works in the sphere of geodesy and cartography.

Executive Director of “GIINTIZ” Rahmatullo Saidov explained that they have topographical plotting boards from 1980, and for a part of the city even older ones. The cartography of Qurghon-Teppa has been already updated. For other cities he also mainly old surveys. Renewal in Dushanbe and Khujand are expected next year. The most difficult thing for him is to pass us materials for Dushanbe and Khujand, due to the secrecy of materials. It is a little bit easier with material for Qurghon-Teppa and Istaravshan.

He is ready to scan the old available plotting boards for \$20 per 1 plotting board. According to his evaluation for Dushanbe it is required to make 600 plotting boards and for the rest of cities 200 more.

He preliminarily estimated this work at \$16,000 However, he has doubt about being able to eradicate the secrecy.

Institute “Tajikaerokosmos” under the State agency of space, geodesic and cartographic works under the Government of RT (“Kosmogeodeziya”).

During the meeting the Deputy of general director of the Institute Donaboi Toshayev the following was found out:

In Qurghon-Teppa there are 24 updated plotting boards;

In Istaravshan there is a survey from 1990. According to him updating is not required.

There are only 36 plotting boards;

In Khujand part of the territory is already done, activities are in process and they will be completed in next year, it is required to prepare only 36 plotting boards;

In Dushanbe the work is in process, completion is expected next year; there are

problems with financing; in total 400 plotting boards are required.

On the question about the possibility preparing for us “opened” (for a mass use) materials he responded positively. He considers that they will not have problem with this, since he is the chairman of Commission on the state secrecy in the sphere of cartography.

At the same time he mentioned a price for scanning and revision of each plotting board for taking off the secrecy and specification of the present condition of development of \$1,500 for each plotting board. When we showed our astonishment for such a high price, he said that this requires much work, checking in kind, and in essence they are ready to consider the price in two times less, where information already exists and it only requires taking off the secrecy.

It seemed to us that Mr. Toshaev did not properly understand the aim of our project and simply wants to implement the renewal of all topographical materials in the cities at our expense. In any event to work with him appears quite possible; first of all it is because he will start removing the secrecy of cartographical materials. Beside that we got the impression that he is ready to deal and agree to acceptable alternatives on a price, under the conditions of exact determination of the content of work.

For comparison, the scanning activity of similar plotting boards in Bishkek, without any changes and corrections of a scanned material costs the same, - \$20 roughly for 1 plotting board. The same price suggested the director of “GIINTIZ”. With taking into account the fact that there will be carried out activities on taking off the secrecy of cartographical materials, the price suggested by Mr. Toshaev in 150 dollars per plotting board could be cut in half to \$70-75, but during the implementation of additional work on clarification and mapping of existing condition, an acceptable price could be \$120-\$125 for one plotting board. In the view of this my evaluation of this entire work at present come to maximum to 55 – 60 thousand dollars with the possibility of reducing this amount through negotiation.

That is a large sum for our project, but in all probability, realistic due to the shabby condition of maps in Tajikistan.

4.5. Professional opportunities and preparation of specialists

Before the fall of the USSR the urban planning specialists worked mainly in the State design institute “TAJIKGIPROSTROY”, which implemented the design of district’s planning and general plans of cities and settlements. After creation of independent states, orders and financing of urban planning activities was stopped. Many specialists went to other spheres of activities (including architectural design) or left for Russia, Ukraine or other republics of Central Asia.

At the present time in the Republic there is an acute lack of architectures and urban planners. So, for example, in the department of “Designing” of the design institute “TAJIKGIPROSTROY” less than 10 specialists with higher education, who may implement the general plans and other urban planning activities are left. However, these specialists also do not have necessary knowledge and experience of designing in market conditions with application of the modern methods of economic and social analysis.

The situation in other cities of Tajikistan is worse. Out of more than 80 districts and cities of the Republic, only in 23 places, on the position of main architecture work the specialists with the diploma of architecture. In the rest of the cities these positions are engaged by people with other occupations, which considerably complicates urban planning activity in the provinces.

Preparation of architects and urban planners has been carried out by the Tajik Technical University (TTU), the faculty of construction and architecture since 1964. From 1966 to 1992 this faculty admitted 50 students annually. Preparation of urban planning specialists has not been carried out. However, every year 2-3 students, starting from the 4th course went through specialization on a course “Urban planning” and then prepared diploma on this discipline. Starting from 1993 students’ admission to architectural department was reduced to 20 people in a year. Urban planning specialization of students is not been carried out now.

In November 2003 a Center for professional development and consulting services under TTU was organized, with the aim of retraining architects and engineer-technical cadres in accordance with modern requirements of city management in the conditions of market economy. During 2 years, the Center conducted courses for professional development for the main architects of cities and heads of architecture and construction departments of local Hukumats. Besides that, young architects and designers of other specialties went through the courses of professional development on SAPR program with using “Auto CAD” program.

The Center of professional development under TTU could be effectively used for trainings necessary for introduction of legal zoning in the cities at a little technical support.

5. ANALYSIS OF PILOT CITIES

Four cities were chosen for analysis of the feasibility of introducing legal zoning and conducting elaboration and approval of the Rules of land use and development: Dushanbe, Khujand, Istaravshan and Qurghon-Teppa, where the evaluation was conducted.

5.1. Dushanbe

Information about the city. Dushanbe is the capital of Tajikistan; it covers 124 sq. km and has approximately 635,000 people. It is the largest administrative, cultural and economic center of the Republic (see Annex 2). It was founded in 1924 on the site of an old village with the same name. Starting in the end of the 17th century the inhabitants of all adjacent settlements started using the bazaar of this village for trade. This bazaar functioned on Mondays (Dushanbe), and thus the city received this name.

Dushanbe is the only city in Tajikistan that is divided into districts. For this reason, according to the Law of RT “On state authorities in provinces”, the Majlis of People’s Deputies and the city’s Executive authority receive regional status. The city consists of 4 districts: Ismoil Somoni, Sino, Firdavsi and Shohmansur. The chairmen of the districts also hold Executive authority.

The organizational, legal, economic and social conditions of the implementation of the functions of the capital of Tajikistan by Dushanbe are determined by the Law of RT “On the status of the capital of the Republic of Tajikistan”.

Representative and Executive authority in Dushanbe are carried out by a representative of the President, that is, the Mayor of the city, Mahmadsaid Ubaidulloev, who acts according to principal of one-man management and carries out the functions of state management in city. Mr. Ubaidulloev is also the Chairman of the National Majlis of the Supreme Majlis of Tajikistan.

Dushanbe’s administration is stable. The city’s Hukumat works quite independently within the legislative framework, and is quite independent from the Government of the Republic in choosing and implementing the city’s policies. Programs and conceptions for the city’s development and economic reform have been adopted, including “The economic development program of Dushanbe city until 2015” (2002), “Investment attraction program for 2003 -2005”, “Entrepreneurship support and development program”, (Decree of the state Majlis of people’s deputies from December 23, 2002). By the decision of the Mayor, the city has founded an Information-analytical center.

According to the Law of Tajikistan “On the status of the capital” Dushanbe is empowered to directly establish external contacts and open representative offices abroad. Accordingly, starting in 1996 an Agreement on trade-economic, scientific-technical and cultural cooperation between the Hukumat of Dushanbe and the Government of Moscow has been in place. Moscow developers have implemented a project of elite living house “Poitakht” on Rudaki Street, the city’s main thoroughfare.

It is expected that about \$200 million will be invested in construction of the capital in the next 2-3 years. Among the constructing objects are a five-star hotel and trade center with

apartments in Aini street, the Ismaili Center in Somoni avenue, a business center in Bokhtar street and other housing and social-industrial objects.

The city's industrial complex is not large. Presently it includes more than 145 enterprises of various forms of ownership, employing 25,000 people (approximately 5-7% of the city's working population). Production of the capital producers makes up about 30% the Republic's consumption. The basic exported products produced in Dushanbe are cotton yarn, ready-made cotton fabrics, textile production, cable wares, stop valve, processing of agricultural products, and equipment for trade.

City services include gas, electricity, partial heating supply, water supply and sewage. However, the services work with stoppages. There is shortage of gas, heat and water; there are often stoppages of gas and electricity supply in houses.

There are serious problems with drinking and technical water in the city. The state unitary enterprise "Dushanbevodokanal" (SUE DVK), a subdivision of the city's executive body, is engaged in providing the population, institutions, productive-commercial enterprises with drinking water and removing sewage. SUE DVK exploits four water-wells, more than 96 pipe pumps, 683 km of water pipe networks. Only 30% of the city is provided with quality drinking water from three underground springs. 70% of the city is provided with water through septic disposal plants of self-flowing and pumped water-pipes, which come in from above-ground sources. Though the city consumes 730 thousand cubic meters of water, the total planned production capacity of all stations is only 520 thousand cubic meters. Because of a long-term activity the city's entire water-supply system has become out of date both morally and physically and requires to be totally changed. Currently the World Bank supports the project "Reconstruction of the water supply system of Dushanbe city" and allocated a credit in the amount of 17 million US dollars. The implementation contract was won by the firm "AG Hidroplan". It should be mentioned that "Dushanbevodokanal" is frequently criticized in press in the view of implementing this project of reconstruction of the city's water supply.

Support of Hukumat From Dushanbe's Hukumat we met the Head of Department for construction, Rustam Ibragimov. He expressed support for the possibility of developing legal zoning in the city and emphasized that during allotment of land plots, state expertise of designs and authorization of construction the administration of the city follows the Decree of the Government of the Republic of Tajikistan "On confirmation of the Rules on allocation of land plots for physical and legal entities" of September 1, 2005, # 342. No other documents, which are especially provided for the capital, are foreseen.

According to him the main problem of the city is finding space for new construction, especially for individual houses. The city is surrounded by agricultural lands, which could not be transferred to another category.

Land Committee of Dushanbe. The First Deputy Chairman of Dushanbe's Land Committee, Abduhafiz Odinaev, indicated that their committee is subordinate to both the SLC and the city's Hukumat. The SLC issues 100-150 land use certificates to legal and physical entities each month. Mr. Odinaev emphasized that all provisions for use are carried out in accordance with the general plan (which we doubt) and only after the conclusion of a main architect (which is true).

The city committee of land management does not carry out cadastral inventory. The committee has no computer. Land plots are marked on topographical plotting boards on 1:2000 scale issued in 1980 – 1984. The duration of preparation of documents for a land plot is 1-2 months without taking into account the duration of designing. It was confirmed that a complete inventory of land use is started in Firdavsi Street(see section 4.4.). They hope that it will be the prototype of land cadastre.

At the end of the meeting Abduhafiz Odinaev emphasized again that the Land Committee is interested in working with us; they are in need of legal zoning development and in methodological and technical support.

Architecture and construction department of Dushanbe. The main architect of the city, Bahrom Izzatov, told us that an acting general plan was elaborated in the 1980's for the period until 2005. It was decided to prolong the official period of validity of the general plan until a new design could be elaborated. At present such order has been already made, but activity has not started yet, since financing is not available.

A “single window” system of management has been created to simplify the procedure of receiving various confirmations. This system presumes that an applicant submits all of documents to the department and further, all employees, now without the applicant's participation, go through with these documents all instances and receive all necessary approvals. If necessary, they call the applicant (developer, owner, and customer) so that he can make necessary amendments in design and other documents. The services provided through the system of a single window are fee-based.

In total 24 people work in the department, including 15 people that make up a self-sustained group; it has 10 computers, 6 people work on computer. The self-sustained group implements design activities.

There is an old topographical survey of a Scale 1:10000 and 1:2000 in the department of architecture and construction. At present there is a new satellite survey, yet they do not have new topographical maps.

Unfortunately, as in other cities of Tajikistan there is no temporary plan. That is why it is difficult to get information on plots, however, employees know the city very well and have materials through which they can mark temporary land use.

Mr. Izzatov was thoroughly introduced to the Rules of land use and development elaborated for the cities of Kyrgyz Republic and Russia. He thinks that such a normative act is very important for Dushanbe. He is ready to cooperate with us on all issues. At the same time he mentioned 2 problems:

- secrecy of topographical materials (maps), which we talked about above;
- the necessity of even the slightest instruction from “above” about conducting activity on introduction of legal zoning.

Thus, taking into account the opinions of the administration of the bodies of land management and urban planning, intentions to start elaborating general plan of the city, and also the availability of cadastral maps, at least for city's district, we conclude that the

situation in Dushanbe is quite favorable for preparation of the Rules of land use and development and the introduction of legal zoning system.

5.2. Khujand

Information about the city. Khujand is Tajikistan's second city, covering 2852 hectares and housing 153,000 people (according to official statistics) or 200,000 people according to the city's administration. Khujand is the largest cultural, industrial and administrative-political center of the northern part of the country. The city is located on two banks of Sir-Darya River 300 meters above sea level. Because of the advantages in location near to Ferghana valley, and its beautiful landscape and climate, the city was called the "diamond" of Central Asia.

Khujand is a cultural center with centuries-old history. With Samarqand and Bukhara it is one of the main historical centers of Tajik culture. The remains of the Alexandria Eskhata fortress from the 10th century are preserved, surrounded by a garden and park, mosque, madrasa (school), mausoleum, an old city with a wonderful historical environment and cultural traditions. It is important that succession of architecture is kept in the city. Interesting buildings of the 1950's, a covered market with and a bazaar square, and theatre are supplemented with quite attractive modern buildings of a university, trade complexes, and library. There is a botanical garden, which was created in 1985, as well as historical and museum of local lore and picture-gallery.

Khujand is the administrative center of Sughd (Leninabad) region, which has borders with Uzbekistan (approximately 40 km away) and Kyrgyzstan. The population of the region is 1.9 million people; it includes 15 districts, 9 cities and 21 settlements of a town type. Besides Khujand, the big cities are Konibodom, Isfara, Shurob, Chkalovsk and Kayrakum. The main branches of industry are light, food, mining, ore mining and processing and building materials.

The region is rich with stone and grayish-brown coal, ozokerite, copper and complex ore, bismuth, metal, phosphorus, salt, molybdenum, antimony, mercury, mineral colors, building materials, etc. The largest deposits are Bolshoy Konimansur, where the silver reserves are estimated at 380 thousand tons. The Shurob and Fan-Yaghnob coalfields have reserves of more than 350 million tons.

Support of Hukumat In Khujand we were met by the Mayor of city, Olimjon Rahmatovich Djalolov and a group of chiefs of departments, which emphasized the Commitment of the city's administration in cooperation with our Project.

It is significant that the Mayor of the city knows the planning history of Khujand, and excellently orientates himself in urban planning documentation and ongoing construction. Now he is trying to find financing for elaboration of new general plan and is very interested in any kind of support in this direction. When he found out that our activity in fact comprises a significant part of planning works, he expressed his absolute interest in participation in the project of introducing legal zoning.

According to him the city has survived the worst times and now is beginning a new rise. Today 50% of the city's industrial complex works, whereas 5 years ago only 10% of enterprises gave any production. Now 23 joint enterprises are successfully acting in the city.

Khujand is a net donor to the state budget. It collects 30 million somoni. Of this sum 45% remains in the city, the rest go to the regional and State budgets. The city's total budget is 13,7 million somoni or 90 somoni (\$28) per person.

The economy of the city has a lot of problems. Officially 3000 unemployed are registered, but in fact the number is more. New employment opportunities are necessary. There is lack of investment. The Asian Development Bank has allotted a credit, Japan finances organizations supporting repairing of water-pipe, but this is not enough for reconstruction and development of the social and engineer infrastructure.

A serious problem is the low rate of new housing starts. In the city territories for many-storied house constructions provided by the city's general plan are reserved. However, there are no investors willing to invest money in construction of multi-storied dwelling houses. For 10 years only 3 multi-storied dwelling houses have been built in the city. At the same time there is a large demand for individual construction but no land plots available. Thus, an obvious contradiction is evident: the lack of land proposes multi-story construction, for which there is no demand or money, but for what there is money and demand, there is no land. In these cases, another conception is required. Similar dilemmas, as a rule, arise as a consequence of wrong initial requisites.

These issues show to what extent modern Khujand is in need of new conceptual and technological approaches to urban planning regulation, which luckily the city administration's present team understands.

Despite the location of the regional administration in the city, the Hukumat of the city has great political influence and is quite independent in making decisions on functioning and development of city.

Architecture and construction department of Khujand. The department is headed by Abdusator Shokirov, the main architect of the city, who made an impression of a professionally prepared, qualified specialist, loving and knowing his city.

The first general plan of Khujand (formerly Leninabad) was elaborated in 1939 and functioned until 1951. The second general plan was adopted in 1967. The third and last one was adopted in 1986 (was elaborating in the period from 1982-84), the period of its validity came to end this year. In view of this, Mr. Shokirov initiated the process of elaborating a new general plan until the year of 2020. According to his evaluation 500,000 somoni is necessary to implement this work. Yet there is no money for a general plan. At the same time he knows very well that the general plan by itself will not "work" in market conditions. A legal mechanism of realization, as the one put in "the Rules of land use and development", should be attached to it. That is why he supports the possibility of developing legal zoning in the city.

At present, four specialists work in the Department, in the future a self-sustained group of 12 persons will be created mainly for the elaboration of general plan of the city. For these purposes a big lodgment in the Hukumat's building has already been allocated. The Department has two computers; the specialists of the department know graphical and other professional programs.

There are four private architectural workshops, a branch of the design institute “Tajikgiprostroj”, where 30 people now work. According to Mr. Shokirov in the city they have specialists for working on the Rules of land use and development.

An old geodesic topographical survey of 1983-1989, which does not cover the whole city, is used for the work. Topographical maps for new districts do not exist at all. As it was mentioned above “Cosmogeodesia” intends to make a new topographical survey; preliminary term of completion is 2007, there is no financing yet. A temporary plan for the city does not exist.

Land Committee of Khujand. According to a statement of Rahimjon Rahimovich, the Deputy Chairman of Khujand Land Committee, the city has approximately 31,000 land users, out of which 25,000 land plots are under private use (mostly dwelling individual houses with land plots). However, on January 1st, 2006 only 918 users were registered.

Cadastral plans are not kept. Topographical plotting boards are the same as in the department of architecture and urban planning, that is, old and incomplete. Formation of land plots during the selection of location is done not well, borders of land plots are determined with mistakes. We believe the activity of Khujand Land Committee is not of a special interest yet, although in comparison to other cities (except Dushanbe) it is not bad. The Committee is filled with staff; there is a computer, with which they started reporting. Land records are kept manually.

Mr. Rahimov was quite open with us, he agrees that there is no inventory yet and activity on registration of immovables and land plots has been just started. He is ready to cooperate with us and support the introduction legal zoning in the city.

5.3. Istaravshan

Information about the city. Istaravshan is a city of a regional subordination; located in Sughd region, 37 km to south-west from Khujand on the road connecting Ferghana with Samarqand. It is one of the oldest cities of Tajikistan, it is 2500 years old and founded by a Persian king Kir as a city of Kirop. The wonderful ancient city and a great number of historical and cultural monuments are preserved. A mosque Abdulatif-Sulto with a madras Gumbaz dating to the 16th century with a magnificent ceramic portal; Mosques Hazrati Shoh and Sari Mazor, Mausoleum Bebe Tagho; Old Fortress and other historical objects.

Istaravshan city differs from the previous cities by its administrative-territorial structure. It includes the city’s part and adjacent to it a territory with rural settlements and agricultural lands, Istaravshan is a small agglomeration from central place surrounded by rural settlements, chosen as an administrative unit. In view of such status, in essence the city is hardly identified. In the administrative unit live 210,000 people, whereas, in fact 60,000-70,000 people live in the city. Because of this there is no border of Istaravshan; it could not be marked out as a separate city. The territory of the “big” Istaravshan makes up approximately 12,000 hectares.

The activity of Hukumat. The mayor of Istaravshan-city Juma Zokirov considers the main problems of the city to be a lack of habitation and land for individual construction. After the dekhkan farms were created, transference of lands to another category (in lands of settlements) is not possible. By the special decree of the President of Tajikistan seizure of

irrigating lands under dwelling is prohibited. There is no funding for building multi-storied block of flats, including for compensation of demolition for dwellings owners.

The city experiences economic problems. Knitted outerwear mill is running at 2% of capacity, the rest is not working, since there is no raw material. With the support of the European bank of reconstruction and development there was created a factory on production of water and drinks, which forms 30% of the city's budget. There are functioning factories of sock-stockings produce and handicrafts, where 5000 women home workers work. Tinned food factory processes 55 million tones of production in a year. There are also a functioning winery, brickworks, and a center for production of spirit.

Nevertheless, working opportunities for more than 30% of population are provided by bazaars. In the city the 3 largest bazaars of the Republic of Tajikistan are functioning. There is a lack of employment opportunity in the city, therefore approximately 10,000 people leave to Russia every year.

The budget of the city for 210,000 people is 11 million somoni or 52 somoni (\$16) per 1 person.

Architecture and construction department of the Hukumat of Istaravshan city. The main architect of Istaravshan city Abduhafiz Jumaev is also a practicing architect designing apartment houses, public buildings and commercial objects. In the department there are working 2 persons and a self-sustained group out of 3 persons.

On the whole the work is in a sad state. There is no topographical map. Questioned where they are, Mr. Jumaev explained that everything burnt down during the civil war, including materials of old general plan. He conforms land plots according to local topographical surveys, which are brought by applicants. There is not kept any urban planning documentation, registration of allocated land plots, and temporary plan as well.

Nevertheless, after our explanation, he considered that changes connected with introduction of legal zoning are necessary.

Land Committee of Istaravshan city Despite his preliminary agreement to meet us, the Chairman of land Committee of Istaravshan was not found in his place. We talked to the director of a "daughter" enterprise under the land Committee "Zamingir" N. Rashidov. It turned out that the situation in land committee does not much differ from the department of architecture and construction. Topographical maps are available only for rural settlements, which are included in the city; for the city there is no map as it is in the department of architecture. They just received the first computer, and nobody has started to work on it.

On the whole, despite the valuable historical heritage that the city possesses, the city's administration is on a low level, especially in comparison with Khujand. The main architect is mostly engaged with architectural design, then in the problems of functioning and development of city, but the land Committee is mainly, mechanically, engaged in rural but not urban lands.

5.4. Qurghon-Teppa

Information about the city and support of Hukumat. Qurghon-Teppa is the administrative

center of Khatlon region. The territory of Khatlon region is basically mountainous; it has borders with Afghanistan and Uzbekistan. The population of the region on January 1st, 2000 made up 2,14 million people. Khatlon region includes 25 districts, 9 cities, and 21 settlements of a city type. Main cities – Qurghon-Teppa, Kulob, Yovon and Sarband.

The region is the leading cotton-growing region of Tajikistan. 255 of the county's 453 thousand tons of raw cotton is collected in Khatlon. The region is the only province in the country, cotton of special valuable fine fiber sorts is grown. Main spheres of agriculture are grain growing, silkworm breeding, rice growing, cattle breeding, gardening, and viticulture. The region is rich with gas, oil, shale oil, salt, construction materials, etc. There is also a natural gas field in Khoja Sartez.

More than 30 historical and architectural monuments are located in the territory of Khatlon region, including the Buddhist temple Adjina Teppa, a unique world reserve "Tigrovaya balka" that is included in the list of UNESCO.

During the meeting with the Mayor of Qurghon-Teppa city Mahamdali Nasrulloev there were discussed the issues of city development, possibilities and necessities of introduction of the system of legal zoning and preparation of "Rules of land use and development".

Population of the city – about 70 thousand people; territory is approximately 8000 hectares. Despite the relatively low concentration of population, Mr. Nasrulloev considers the first and main problem the lack of land plots under the construction of individual dwelling houses. That is why he, like other chairmen of the Hukumats of other cities, considers that multi-story buildings should be built in the city, although there are no investors for such dwellings. There are 1000 families in the queue for dwelling at the moment.

Quite a strong industry has been formed in the city, which is only working at 50% of capacity. There are 19 factories and plants, and two large markets. A transformer factory forms the basis of industry, which has cut down the number of employees by 90%, from 3000 until 300 people. There is severe unemployment in the city.

The city's budget is 6,3 million somoni, or 90 somoni (\$28) per person (it is significant that it is exactly the same size as in Khujand. For comparison, the budget of Dushanbe in 2004 was \$45 per person).

Despite the fact that the cities of Khujand and Qurghon-Teppa have the same status – regional administrative centers ("regional capitals"), the administrative situations there differs fundamentally. In Khujand the city's administration makes decisions within its competence independently, not consulting with regional administration on any issues. Certainly, the subordination and vertical line authority in the Tajik system of management have an extremely great importance, but in the cases of negotiations with us, no managers, including the Mayor of Khujand asked us to receive preliminary approval in the regional administration.

It was different in Qurghon-Teppa. At the end of our talk the Mayor, Mr. Nasrulloev, confirmed his interest in receiving technical assistance for introducing new system of legal zoning and promised to support in the preparation of the Rules of land use and development. Nevertheless, he asked before making a final decision, to receive approval for these activities in the regional administration, without whose instruction he is not able to work with us.

We heard the same refrain – support of the very idea of introducing in the city legal zoning and the necessity of receiving approval for this activity from the regional authorities – during talks with the main architect and head of the city’s land committee.

Regional and City Committee on architecture and construction. After we had shown him the Rules of land use and development, elaborated in Kyrgyzstan, the main architect of Qurghon-Teppa, Nuriddin Mullojanov, suggested to continue this talk with the main architect of Khatlon region Mirzosafar Nazriev, who agreed that all main decisions in the city are made in the regional—not the city’s—committee on architecture and construction.

Judging by their words, activity in Qurghon-Teppa principally do not differ from what we saw in other cities. An old general plan is in effect in the city. The design institute “Tajikgiprostroy” charged 200,000 somoni (approximately \$62,500 dollars, which is one-third or one-fourth the price of similar work in Russia) for the elaboration of a new general plan. However, there is no such money in the city’s budget. The institute started to create a basis plan, but there was not any other progress. There is also no cadastral map, as in other cities.

Importantly, “Cosmogeodezia” created a new topographical plan of 1:2000 scale for the city. These materials are confidential. Topographical maps and plans are not passed to the city, since this activity has not been paid yet. Therefore, allocation of land plots are marked on preliminary copies “by pencils” (that is, they are trying to do it imperceptibly). A temporary plan is not kept.

There are specialists in the department. Two people are working in the city’s department and two people in a self-sustained group. Three people work in the regional department and there is a design office, where seven others work.. 5 people work in the state inspection of constructional inspectors (SICI).

Understanding the necessity of urban planning regulation and a sad state of this sphere in the city, both main architects of the region and city expressed their readiness to immediately start introducing legal zoning and elaboration of local normative act of the Rules of land use and development. At the same time they reminded us that topographical maps of the city are confidential and special actions for their declassification are necessary for us to work with them.

Land Committee of Qurghon-Teppa. The chairman of land committee of Qurghon-Teppa, Faizullo Hurmatov, said that they are working according to instructions prepared by the State Land Committee. He confirmed that there is a city line and an appropriate scheme is available. However, there are few available land plots, since there is no free land in the city. On the whole he was ready to support our activity, but he did not express a special interest.

6. CONCLUSIONS AND RECOMMENDATIONS FOR INITIAL STAGE OF WORK

6.1. The feasibility study on introducing legal zoning to Tajikistan through the Land Reform and Market Development Project consisted of the following elements:

- analysis of legislation concerning land relations and urban planning;
- institutional analysis, meeting state and other organizations, and analysis of implementation of legal norms and procedures;
- assessment of technical capabilities of elaboration of the Rules of land use and development;
- analysis of situation in 4 cities (Dushanbe, Khujand, Qurghon-Teppa, and Istaravshan).

Legal zoning is a technique providing for an open, public establishment of urban planning regulations of using land plots and other immovable property in various places in a city (in zones), as well as the procedures for using these regulations in the process of receiving land use rights approvals for construction. Zoning aims to achieve a balance of private and public (state) interests.

The introduction of legal zoning in Tajikistan is necessary for stimulating market reforms in immovable property and construction, provision of an effective process for urban development, rational use of sparse urban lands and renewal of the urban planning process in market conditions.

Legal zoning is necessary:

- to improve access to land plots for developing small and medium size business;
- to enhance investment security of small businesses in relation to their land use rights, in particular by introducing a modern inventory system and registration of land plots;
- to reduce corruption during provision of land plots and authorization for construction.

In addition, with undeveloped infrastructure of land plots and immovable property market, the introduction of legal zoning creates a basis for introduction of differentiated rates of land tax for different zones in the city, development of appraisers and developers, and creation of more favorable conditions for developing mortgage markets.

6.3. Despite the lack of private ownership on land, the legislation of Tajikistan does not hinder the introduction of a legal zoning system. Land use rights provided by the state for private legal and physical persons are supplemented with the elements of rights of disposal, which in fact allows for market movement of land plots. Tajik legislation also provides the possibility of putting into action local normative acts adopted by representative authorities (city councils).

6.4. The administration of the assessed cities, starting with Mayors of cities and finishing with technical services of urban planning and land management expressed, their complete readiness to cooperate with USAID on introducing legal zoning, since they realize that it is practically the only chance to renew and modernize the system of urban planning

management. Up to present, because of the longstanding lack of financing, urban planning is in full decline. There is either a lack of general plans or they have become out of date; there is no cadre, inventory, operative registration of development and provided land plots are not kept.

The state bodies of land management and architecture are more reserved about developing the system of legal zoning in the country, although in the whole their representatives came out to support the development of this project.

6.5. The main technical difficulty of the upcoming work is the preparation of basic cartographical information for elaboration of urban planning regulations of the use of immovable property and land plots for the Rules of land use and development. In the cities of Tajikistan there is a lack of cadastral maps describing present land use; there is no “thorough” registration of rights on buildings and land plots, and no “temporary” (of current importance) plan of lands provided for use and authorization for construction. The only map we could find at present was an incomplete cadastral map of one district (Firdavsi) of Dushanbe city.

In these conditions, creation of the maps of present land use in the territory of the cities (with indication of existing types of land and immovable property, that is, premises and buildings use) requires much time, and human and finance resources in comparison to implementation of similar tasks in Kyrgyzstan and Russia (about 50% more).

The lack of updated topographical maps in the cities presents a special set of problems. Most topographical maps of the cities were made in 1982 – 1984. Today they considerably differ from the actual situation. In some cities new dwelling areas emerged, borders of cities have changed (new territories have been included) and, finally, many new buildings and transportation constructions. This problem becomes more acute following prohibition on open use of topographical maps, which are issued under the label of “secrecy” and used by people with special permission.

Both of these problems can be overcome. In the process of the assessment we discovered new organizations (“Tajikaerocosmos” and the State agency of space, geodesic and cartographical works under the Government of Tajikistan), which are ready to elaborate new topographical maps of the cities on the basis of space surveys and carry out their declassification until the level of open use in the public sphere. Preliminary estimates are approximately \$50,000-\$60,000, including preparation, declassification and scanning of 436 plotting boards 1:2000 scale for Dushanbe and Khujand, and mainly declassification and scanning for 60 plotting boards 1:2000 scale in Qurghon-Teppa and Istaravshan. For comparison, in Kyrgyz Republic, where cadastral maps already existed in most cities, \$18,000-\$20,000 was spent for similar activities on scanning and preparation of topographical materials.

6.6. We conducted assessments on the readiness of cities to introduce legal zoning and elaboration of the Rules of land use and development, which showed that since much higher expenditures will be required for the preparation stage, the most effective choice would be to work only in three pilot cities – Dushanbe, Qurghon-Teppa and Khujand.

This proposal is supported by the following reasons:

- Dushanbe and Khujand are the most important cities for economic and political life of the country. Innovations introduced in these cities in administration sphere will

undoubtedly be spread throughout the country. Otherwise, we could have a situation similar to Kyrgyzstan and Russia,, where although legal zoning in those countries was introduced in several cities, it was not introduced in the capital cities and therefore its future is somewhat unstable.

- Dushanbe is the only city in Tajikistan where on one-fourth of the city the cadastral map is almost completed. This would be a great help for developing a map of present land use.
- Qurghon-Teppa is the only city of the four examined for which new topographical maps are already prepared. It would take a bit of time to declassify them. In addition, Qurghon-Teppa is situated nearby Dushanbe, allowing the project to pool resources when implementing the project.

Despite the fact that Istaravshan is one of Tajikistan's most valuable historic cities, work is not so effectively conducted there. This is because, first, the city enjoys less significance in terms of economic and political life compared to the other cities. Second, it has less resource to implement the technical aspects of the work on issuing a Law on use of land and development. There is lack of professionally prepared experts and the majority of the city is inhabited by rural population for whom it is difficult to introduce modern management technology (for example, public hearings). Taking into account the expensiveness of the project in terms of preparing (open) topographical maps, excluding Istaravshan from the list of the pilot cities would also allow savings in the planned budget which could be reallocated to the three remaining cities. If USAID releases supplementary funding of the work in Istaravshan, or if there are savings after implementing the pilot project in the other three cities, then Istaravshan should be included in the activity at a later stage.

6.7. In the view of this the best version of organising the activity could be reallocating of some funding and work under additional tasks (Option 1 and Option 2).

The first stage in 2006-2007 is envisaged as follow:

- Prepare digital topographical maps for 3 cities (Dushanbe, Khujand and Qurghon-Teppa)
- Launch work in Dushanbe in the district of Firdawsi with the existing cadastral map;
- Launch simultaneously work in Qurghon-Teppa as soon as "open" (public) topographical maps become available, since they are already prepared and the disclosure of secrecy will take some time;
- Continue work in Dushanbe once the topographical maps are ready in the other districts of the city.

The second stage in 2007-2008 is planned as follow:

- Complete Rules for Dushanbe and Qurghon-Teppa;
- Start and complete work in Khujand as the open maps will only be ready by the end of 2007 for this city.

The possibility of working in Istaravshan will be identified at this stage.

6.8. Introducing legal zoning in Tajikistan would preferably begin with a range of preparatory work:

- Preparation and issue of a State Decree on implementing tasks in Tajik cities on introducing legal zoning and pilot projects in the listed cities with tasks addressed to the State Land Committee, State Architecture and Construction Committee, as well as to the governors of the regions and cities. The tasks of the state committees should be geared towards obtaining their approval to order their subdivision organisations to present to the Project required information (for instance, cadastral plan on Firdavsi district of Dushanbe from the State land committee) and to begin preparation of open maps.
- After the State Decree is issued there will be a need for the project presentation and its official authorization by the regional administration offices of Khatlon and Sughd regions. These tasks will provide the complete legitimacy of introducing legal zoning in the cities of Tajikistan and will serve as a basis for decision making in all the subsequent stages of project realisation.

USAID's support on introducing legal zoning in Tajikistan can play a decisive role in fostering economic reform in such a complex and unknown area as in the provision of land plots and receiving authorization for construction.

7. Annexes

Annex 1. Meetings conducted by project employees and STTA to implement feasibility study

	Name	Position	Phone
Dushanbe			
1	Suhrob Tursunov	USAID – Tajikistan	(992) 93 570 2158
2	Ibragimov Rustam	Head of the construction department of the executive office of the state authority of Dushanbe	(992) 918 802 222
3	Odinaev Abduhafiz	First Deputy of the Chairman of Land Committee of Dushanbe	(992) 221 1869
4	Izzatov Bahrom Inoyatovich	Main architect of Dushanbe city	(992)372 233 9309; 233 9298; (992) 93 501 6562
5	Akbarov Akram	Deputy of the Head of architecture and urban planning department	(992) 93 505 0761
6	Yatimov Akbar Tabarovich	Director of Development Institute “FAZO”	(992) 372 221 4017
7	Uljabaeva Matlyuba	Chairman of the Association of small and medium size business	(992) 93 505 0008
8	Umarov Rahmon Faqirovich	First Deputy of Chairman of the State Land Committee of RT	(992) 372 221 7321; (992) 372 231 0200
9	Faraj Zoya	Deputy Head of Project for supporting of the establishment of modern cadastral system in Tajikistan (Swedesurvey)	
10	Toshaev Donaboi Khushaevich	Deputy of General Director of “Tajikaerosmos” of the State Agency of cosmic, geodesic and cartographical works under the Government of the Republic of Tajikistan	(992) 372 231 1931; (992)918 632 332;
11	Saidov Rahmatullo Safarovich	Executive Director of Join-stock company “GIINTIZ”	(992) 372 227 8991; (992) 918 611 631
Khujand, May 22-24, 2006			
12	Jalolov Olimjon Rahmatovich	Mayor of Khujand city	(992) 3422 60 244
13	Pulatov Naimjon	Head of the Department of international relations of the Government of Khujand city	(992) 3422 63 266; (992) (918) 67 0198
14	Shokirov Abdusator Jaborovich	Main architect of Khujand city	(992) 92 771 1852
15	Rahimov Rahimjon Bobojonovich	Deputy of Chairman of Land Committee of Khujand	
16	Mahmudov Abdumajid	Head tax inspector of tax inspection of Khujand city	(992) 3422 65 453
Government of Sughd region			
17	Yaqubov Anvar	Assistant of Chairman of the region on economic issues. Head of the department	(992) 3422 60 251; (992) 3422 45 223;

	Name	Position	Phone
	Shavqatovich	of economic reform	(992) 92 777 8572
18	Rahmatboev Shuhratjon Maqsudjonovich	Chairman of the Association of entrepreneurs in Sughd region	(992) 3422 46 012
	Shomurodov Iskandar	Project Consultant USAID/Pragma Trade facilitation and Investment Project	(992) 3422 65 565; (992) 92 7717 023
19	Rajabov Abdurasul	Founder of Association with limited responsibility “Abdurashid” (Khujand)	(992) 3422 63 034
	Umarov Maqsudjon	General Director of Association with limited responsibility “Eurostroy-service” (Khujand)	(992) 92 777 2424
Istaravshan city, May 23, 2006.			
20	Zokirov Juma Zokirovich	Mayor of Istaravshan city	(992) 3454 22 244
21	Jumaev Abduhafiz Rahimovich	Main architect of Istaravshan	
22	Rashidov N	Director of the branch of “Zamingir” enterprise under the Land Committee of Istaravshan	
Qurghon-Teppa, May 26, 2006			
23	Nasrulloev Mahmadali Nasrulloevich	Mayor of Qurghon-Teppa city	(992) 3222 27 431; (992) 3222 23 618; (992) 918 64 9037
24	Hurmatov Faizullo Zarifovich	Chairman of the Land Committee of Qurghon-Teppa city	
25	Mulojanov Nuriddin	Main Architect of Qurghon-Teppa city	(992) 918 84 0702
26	Nazriev Mirzosafar Aliahmadovich	Main architect of Khatlon region	

Annex 2. Development indicators of Dushanbe city in 2004

A. Social Indicators, 2004

Territory	124.6 sq. km.
Date founded	December 7, 1924.
Population	627,900 people
Density of population	5,051 people per 1 sq. km.
Administrative division	Shohmansur district: territory - 33 sq. km. population - 122.9 thousand people. Firdavsi district : territory – 18.9 sq. km, population – 152.8 thousand people. Ismoil Somoni district: territory - 34 sq. km., population – 111.9 thousand people. Sino district: territory – 38.7 sq. km., population – 240.3 thousand people.
Ethnic composition	Tajiks – 83.4%, Uzbeks – 9.1%, Russians – 5.1%, other – 2.4%
Language	Tajik – the state language, Russian – language of international communication
Currency	Somoni, 2004 - 1 USD = 2.97 somoni, 05/2006, 1 USD = 3.21 somoni
GRP	\$395.6
GRP per head	\$628.5
Average monthly salary	118.08 somoni (\$40)
Minimum living wage	25.748 somoni (\$8.6)
Life expectancy	68.1 year
Level of literacy	99.7%
Child's death-rate	12 persons per 1000 born
Maternal death-rate	69 persons per 100,000 born
Number of registered unemployed	6440 people
Working resources	374.2 thousand somoni
Economic activity of population, including:	1,115,600 people
- population employment	113,700 people
- received the status of unemployed	1,900 people

B. Structure of incomes and expenditures, 2004

Total gross regional product (million USD)	395.6
Industry production (% to GRP)	19.2
Service production (% to GRP)	32.2
Income from taxes (% to GRP)	9.4
Incomes of local budget (% to GRP)	5.9
Expenditures of local budget (% to GRP)	7.2
Export (% to GRP)	10.4
Import (% to GRP)	28.2

Balance (% to GRP)	- 17.8
C. Economic Development Trends, 2004	
Total gross regional product (million USD)	395.6
Annual growth (%)	8.6
GRP per head (USD)	628.5
Total proficiency / deficit of budget (% to GRP)	-1.4
D. External Aid, 2004	
Direct foreign investments (million USD)	6.9
E. Trade, 2004	
Retail sales, all channels (million somoni)	458.4
Of which, through registered enterprises	18.1
F. External Sales, 2004	
Export of goods and services (million USD)	41.0
Import of goods and services (million USD)	111.4
Total balance of payment (million USD)	- 70.4