

LAND POLICY INSTRUMENTS IN CONDITIONS OF MARKET- ORIENTED ECONOMY AND IN PLURALISM OF PROPERTIES

Prof.Dr. Albin Rakar

FAGG-Institut za komunalno gospodarstvo, Ljubljana

Received for publication: September 14, 1994

Abstract

The article presents the current state in the field of land policy and physical planning in Slovenia and enumerates needs and possibilities for some not directive instruments. Of the latter, the article deals with more detail only building-grounds stock forming and land redistribution.

Keywords: *building-grounds land redistribution, building-grounds stock-piling, Geodetic workshop, land policy, physical planning, Radenci, 1994*

1.0 INTRODUCTION

Housing policy is land policy e.g. development of cities and carrying out land policy in practice. In Germany the first premises have been evident since the beginning, but the second one in the mid 1950' of this century (Guettler 1983). To all appearance in the consciousness of our politicians these premises are still far from being noticed. Even authors of the law in question and authors of the so called "aim development programs" for the field of space and housing are far from being familiar with them. Declaratively we do have market economy and are very close to the developed part of Europe but in fact our interventions into space are still in a brigade's manners. A considerable part of planners is certain that a nicely elaborated and bound project report is good enough for these purposes. What other explanation is there for the fact that in four years since Slovenia's independence the system legislation for the field of physical planning has not been adopted yet and that for the present it is not even entered the regular parliament procedure. Bearing this in mind the Constitutional Court has unilaterally reached into the existing law on building-grounds and by making some of its articles null and void it enabled the turnover of parcels to be set free without insuring public interest at the same time. In this way the "right locations have begun to pass into the right hands" and through political lobbies the new owners started to enforce changes of the existing city plans which is in fact the beginning of the end of a planned settlements planning.

The liberalization of the turnover of parcels and uncontrolled transition from social to private ownership has been enabled also by the law on housing. In this way the state has in fact created conditions for a criminal like privatization of

building-grounds especially those of the highest quality (Bežan 1994) instead of forming and adopting a consistent system of laws and by-laws for the field of physical planning and land policy (Rakar 1983). The so caused conditions in the field of land policy and physical planning the state might restore only by means of directives and repressive instruments. In the following nondirective instruments of land policy which European countries with a high degree of civilization and its achievements, carry out in this field.

2.0 NONDIRECTIVE INSTRUMENTS OF LAND POLICY

The construction of cities and their physical planning has to be guided because it is unreal to expect the public interest in this field to be ensured by itself. In the introductory chapter the meaning and the role of adequate instruments of the land policy at its spatial broadening of cities and the resulting consequences of its lack, were indicated. As a matter of fact instruments of land policy must promptly solve some oppositions of objective nature among the owner of the capital (investor), the owner of a parcel, and the state e.g. local community. Inside the given triangle there are of course numberless connections whereas the typical ones for the field of land policy are above all the following:

- ☐ The owner of the capital (investor) is not the owner of the parcel he wants to build on.
- ☐ The shape and position of the parcel, the investor has at his disposal are not suitable for the intended construction.
- ☐ The construction of an object is in opposition to public interests e.g. it does not comply with the statelly defined ecological and social functions the property on a parcel is to ensure.

Since capital has its own price and the enumerated disproportions have their timely dimension, therefore the demand of the owners of capital is orientated towards a prompt solving in an objective way. The so far said is true also for or rather especially so, when the owner of the capital is the state or a local community and construction of objects is in the public interest.

In the egalitarian socialistic society the enumerated disproportions had quite a different range and meaning since private property was in a subordinate position especially in the field of parcels and all the capital was in fact "social property". In the conditions of pluralism of properties each intervention into space will primarily be an intervention into private ownership and with it into the economic interest of the owner. Since democracy and constraint are not good partners, the so far directive and authoritative mechanisms in the field of land policy are to be replaced by cooperative ones. To make instruments of this kind successful, they have to be first provided for (Guettler 1992):

- ☐ The legitimate carriers of the instruments of land policy. These may be a local community, owners of land complexes, or a specialized firm.
- ☐ Uninterrupted succession of activities needed in the sense of: purchasing an individual parcel, shaping the complex, planning the land complex for construction needs, sale e.g. letting out individual construction parcels.

- Financial funds for the execution of an individual instrument have to be provided for. They may be regular or irregular budget funds or funds of investors. Lately, a combining of both fund sources has proved to be very successful in the sense "Private – Public – Partnership" (Bartholomaei 1994).

For a planned construction and spatial development of cities carriers of the land policy have the following nondirective instruments at their disposal (Guettler 1992):

- purchase of parcels for stock-piling
- purchase of parcels for current needs (as a rule with intention of later sale)
- executing the right of pre-emption
- executing the right reserved e.g. stipulated right to purchase land for specific purposes e.g. certain social groups
- regrouping of parcels
- purchase and equipment of building-grounds through private legal companies
- purchase and equipment of building-grounds through mixed companies on the basis of special contracts.

As to the limited space of this article, each of the given instruments can not be presented in to the detail. Two issues were chosen to be discussed further, first forming stock-piling and than regrouping of parcels.

2.1 The building-grounds stock-piling as an instrument of guiding spatial development

In normal conditions a consumer will form his stock of consumer goods in at least two cases, namely: in case he is sure that certain goods, when needed, will not (no longer) be on the market, and in case he is sure certain goods will in time gain more value on the market. If there is a perfect competition on the market for certain goods and in addition the political situation is stabile then these goods are not needed on stock e.g. the more the actual state of affairs on the market for certain goods is moving away from circumstances of perfect competition the more justly (of course, in the economic sense) seems to form stock-piling for the particular goods.

For the conditions on the market the following two things may be stated with pretty much certainty:

- a certain (building) ground will most probably not be available when needed, and
- in comparison with the present, admittedly monopolistic price, building-grounds will most certainly grow more expensive.

Forming parcel stock-piling is with this fact more than justified, naturally the extent of the stock itself has to be defined on the basis of economic principles. In our concrete example this means that (even) in forming building-grounds stock, we have to strive to ensure: first a timely and with minimal cost the needed extent of building-grounds for construction of dwellings and other objects in public interest and next available funds for the highest possible extent of parcels to be used for construction of dwellings and other objects in public interest. The result of all this is that forming a stock of building-grounds is one of the possible instruments of land policy in the sense of covering needs and not in the sense of maximizing the profit. In

case we wanted to maximize the profit by forming building-grounds stock we would buy especially those parcels which ought to bring us the greatest profit in re-sale. To be more explicit: above all, parcels would be bought, which should (by speculating, naturally) obtain the highest difference between the purchase and the (re)selling price.

When referring to given e.g. available funds we have to bear in mind that these funds have their timely dimension as well as prices of building-grounds and a readiness of a buyer to sell a certain parcel. Since all the important elements regarding the building-grounds stock forming decision-making are not exactly known. This kind of decision-making may be considered as decisions with uncertainty. Namely in deciding on building-grounds stock we can not predict accurately enough the following items:

- ☐ changes of rates of interest
- ☐ building-grounds increase of prices
- ☐ vendors' response to changes of building-grounds prices.

For the stated elements, there are also no reliable data about how they have been changing in the past so our decision-making may be based only upon experiences from the past and from our judgement of building-grounds conditions on the market in general. Judging from the experiences from the past and considering the present state of building-grounds conditions on the market, the following starting-points and guidance for forming the needed building-grounds stock may be suggested.

The needed building-grounds stock is the extent of building-grounds. A local community will need to construct objects and devices inevitably for the execution of public affairs of local meaning. On these grounds a local community has to be registered as the owner prior to the beginning of an individual plan period in which a construction of stated objects and devices is planned. Such an extent of parcels form the minimum of the stock needed. As to concrete conditions on the market of building-grounds and taking into consideration the index of increase of prices a local community, may form a stock that is greater than minimally needed. In this case the time component for which it is still reasonable to form parcels stock, is defined among other things, for example by the relation between the index of building-grounds increase of prices and the current rate of interest.

According to the Municipal Economics Institut data, the increase of prices on building-grounds on sale (in the sense of executing the right of pre-emption) for the period 1988-1992 grew twice as fast as the real interest of rate for fixed deposits in this time. Supposing the index of increase of prices for fixed deposits is even higher in future than the rate of interest for fixed deposits in a bank. A hypothesis may be made that it is needed to be paid to a local community to make a stock of at least those parcels on which according to the agreed PIN a construction of objects in public interest is planned. Naturally, the precondition is that PIN was prepared and adopted on the basis of actually well founded needs. On the assumption, the index increase of prices of building-grounds is getting higher than the real rate of interest for deposits in a bank, a local community may profit by buying free agricultural parcels. These are parcels which (for the time being) are not yet planned to be built up. At a later date these parcels may be either exchanged for

building-grounds or simply changed into building-grounds. Such meaning and role of building-grounds stock is understood in Germany (Guettler 1983).

2.2 Regrouping of building-grounds

The regrouping of building-grounds is in Germany considered as one of the instruments of physical planning and providing parcels needed for construction (Bundesbaugesetz, Articles 45-79). Opinions about its successfulness and above all its effectiveness are various. Some authors consider building-grounds regrouping as having great meaning and cite as reference examples the cities Bonn (Sandmann 1983), Nuernberg (Hildebrandt 1983), and Frankfurt (Joekel 1994). In building-grounds regrouping we reshape and rearrange built-up and not built-up building-grounds in such a way that individual parcels correspond to construction and city planning demands as to their position, shape, and size. Regrouping as an instrument of physical planning is above all suitable for a transformation of the existing agricultural parcels into building ones or even for a reconstruction and revitalization of already built-up complexes of buildings (In Germany in this sense a reference example is the post-war reconstruction of the old city kernel in Bonn. The regrouping area comprised altogether 852 parcels measuring 40,7 ha. The procedure officially began on Sept. 8, 1946, its conclusion beeing as late as 1969. For more details: Sandmann, cited source).

To carry out regrouping especially by larger complexes an adopted and valid development plan is needed whereas the elaboration of a development plan may be carried out parallel to a regrouping plan preparation. The building-grounds regrouping procedure is roughly divided into three phases (Joekel 1994):

- ☐ Parcels from the whole regrouping area form (in an accounting sense) the regrouping mass.
- ☐ From the regrouping mass the needed extent of parcels for public e.g. joint purposes (traffic, green and recreational grounds) is excepted.
- ☐ The remainder of the parcels (redistributing mass) may be formed into new building parcels and divided by one to the redistributing keys among previous owners. The basis for the redistribution may be the value of surface or the turnover value of previous parcels.

The ones in favor of building-grounds regrouping state especially its following advantages (Joekel 1994):

- ☐ Regrouping of building-grounds is an instrument of a development plan realization with the minimal possible intervention into private property and at the same time at a high level of readiness for cooperation of all involved parties.
- ☐ As a rule, the execution of the regrouping of parcels serves alike to satisfy interests of both an individual and a community.
- ☐ Regrouping means adjusting and balancing interests whereas in the ideal and the greatest possible way advantages and shortcomings comprised in town planning are adjusted.
- ☐ The regrouping procedure is executed in a legal way and according to law it is compulsory to take into consideration the turnover value of parcels as one

of the starting-points for a redistribution. In this way an equal position is guaranteed to each individual participant and therefore parcel owners could not demand additional e.g. special advantages.

- Building-grounds regrouping enables faster objects construction beginning, parcel owners are not obliged to pay sales tax and some other taxes.
- At the same time the regrouping procedure enables the commune to gain in a very elegant way parcels for public traffic, green, and recreational grounds.

3.0 CONCLUSION

At the end the first sentence of this article should be recalled again, namely that housing policy is land policy and the construction of cities is the execution of land policy in practice. For the current state of affairs in Slovenia, the thought should also be read from right to left something like: since there is no housing policy neither land policy nor its execution in practice are needed. Amen to that!

In doing this we tend to forget that in future owners of parcels will not only build but also plan spatial use. The strongest among them will also decide where and what is to be build. The times when above all the architect was the one to decide on the city's spacial expansion and when the quality of development plans depended on their graphical equipment are simply over for good. Interventions into space will be above all interventions into private property and in democratic societies, the latter must be subtle. If in the past the architects' ruling-pen dominated the property, from now on it is the property which dominates not only the ruling-pen but also capital looking for its location. In this triangle, surveyors should look for their opportunity. It is ment for now and here and not in ten years' time, than they will be left with the role of "contracted executors". Unfortunately, the present direction of the education and the disposition of the profession do not raise any hope for an essentially different and more promising scenario.

Literature:

- Bartholomaei, E., 1994, *Staedtebauliche Vertraege, referat, 327. Kurs des Instituts fuer Staedtebau Berlin, Berlin, 7 str.*
- Bežan, M., 1994, *Stavbno-zemljiška politika in urejanje mest, razprava na okrogli mizi o urejanju okolja in stavbno-zemljiški politiki, Ljubljana, 12. maj 1994, 5 str.*
- Dresen, A., 1992, *Schaffung administrativen Voraussetzungen zur Durchfuehrung von Umlegungen in den neuen Bundeslaendern, referat, 301. Kurs des Instituts fuer Staedtebau Berlin, Berlin, 6 str.*
- Guettler, H., 1984, *Bodenvorratspolitik gestern und heute, Schriftenreihe des Instituts fuer Staedtebau, Bodenordnung und Kulturtechnik der Universitaet Bonn, Heft 6, Bonn, 35-55.*
- Guettler, H., 1992, *Ueberblick ueber Moeglichkeiten und Verfahren der Baulandbereitstellung, referat, 301. Kurs des Instituts fuer Staedtebau Berlin, Berlin, 11 str.*
- Hildebrandt, H., 1984, *Baulandumlegung in Nuernberg, Schriftenreihe des Instituts fuer Staedtebau, Bodenordnung und Kulturtechnik der Universitaet Bonn, Heft 6, Bonn, 275-283.*
- Kobale, D., 1994, *Lastninska razmejitev stavbnih zemljišč – Primer stanovanjske soseke Nova vas I v Mariboru, Diplomaska naloga (mentor: prof.dr. A. Rakar), FAGG-Oddelek za geodezijo, Ljubljana.*
- Ministrstvo za okolje in prostor, 1993, *Zakon o urejanju prostora in graditvi, delovni osnutek, 1. december 1993.*
- Mueller-Joekel, R., 1994, *Baulandumlegung, referat, 327. Kurs des Instituts fuer Staedtebau Berlin, Berlin, 11 str.*

- Rakar, A., 1986, Nekateri vidiki gospodarjenja s stavbnimi zemljišči v ZR Nemčiji, *Geodetski vestnik* (30), Ljubljana, šte. 3, 191-198.
- Rakar, A., 1989, Aktualni problemi gospodarjanja s stavbnimi zemljišči v SR Sloveniji, *IB – Revija za planiranje*, Ljubljana, šte. 8.
- Rakar, A., 1992, Aktualni problemi in odprta vprašanja lastninske razmejitve zemljišč v mestih, XII. Sedlarjevo srečanje, Postojna, Zbornik referatov.
- Rakar, A. et al., 1993, Oblikovanje celovitega modela in opredelitev instrumentov zemljiške politike s posebnim ozirom na zajemanje mestne rente v Ljubljani, FAGG-Institut za komunalno gospodarstvo, Ljubljana, 109 str.
- Rakar, A., Čerček, J., 1994, Zaloga stavbnih zemljišč kot instrument usmerjanja prostorskega razvoja, FAGG-Institut za komunalno gospodarstvo, 61 str.
- Republiška geodetska uprava, 1993, Teze za Geodetski zakon, 6. verzija, 30.09.1993.
- Runkel, P., 1993, *Baugesetzbuch*, Verlag Bundesanzeiger, Koeln.
- Sandmann, A. J., 1984, *Baulandumlegungen in der Stadt Bonn*, Schriftenreihe des Instituts fuer Staedtebau, Bodenordnung und Kulturtechnik der Universitaet Bonn, Heft 6, Bonn, 253-275.
- Šubic-Kovač, M. et al., 1994, Opredelitev in operacionalizacija pogojev za vzpostavitev kontroliranega trga stavbnih zemljišč na območju mesta Ljubljane, FAGG-Institut za komunalno gospodarstvo, 102 str.

Review: Prof.Dr. Tone Klemenčič
Prof.Dr. Milan Naprudnik