12.00.06 «Земельне право; аграрне право; екологічне право; природоресурсне право» / Б.В. Даниленко. – Х., 2012. – 19 с.

В статье исследуются теоретико-правовые подходы относительно функций земли и их влияние на определение особенностей использования земель. Предложен механизм правового регулирования устойчивого использования земель через призму обеспечения социальной функции права собственности.

Функции земли, социальная функция, право собственности на землю, устойчивое развитие, использование земель.

This article investigates the theoretical and legal approaches to the functions of land and their impact on the determination of the features of land use. A mechanism of legal regulation of sustainable land use through the prism of social function of property rights is offered.

Functions of the land, social function of the ownership of land, sustainable development, land use.

УДК 349.4

PERMITTED LAND USE AS THE RESULT OF ZONING

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The article is devoted to defining the legal structure «permitted land use» and its place in the system of legal regulation. The relations between such legal categories as «designated purpose» and «permitted land use» have also been covered.

Land zoning, planning of territories, designated purpose, permitted land use.

In connection with the large-scale involvement of urban and rural lands into civil circulation an urgent need arises to deepen the approach to definition and changes in designated purpose. Therefore, of crucial importance is the issue concerning the addition of the prescription on designated purpose of particular lots of land taking into account their location and established restrictions on their use to the legal norms of the main designated purpose. Thus, the legal structure «permitted land use» has emerged.

The matter of the definitions of designated purpose and permitted use

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and the relations between them has not been thoroughly investigated in juridical literature. The problems in question have been considered by such Russian and Ukrainian jurist as A.P. Anisimov, V.I. Andreitsev, S.A. Bogolyubov, A.A. Borysov, V.A. Burov, O.I. Krassov, P.F. Kulynych, A.M. Miroshnyhenko, D.I. Mysov, V.V. Nosik, P.M. Pavlov and others.

However, one can hardly state, that legal field has been fully regulated. The questions of incompleteness and contradictoriness of some legal norms, ambiguity of their application as well as expediency and efficiency of, in particular, designated purpose and permitted land use remain open. For this reason the present article aims to search for relation between legal categories mentioned above.

According to article 180 of the Land Code of Ukraine, land zoning is to be realized within human settlements with the result that the requirements for permissible kinds of construction and other use of land within separate zones are established [1].

As it has been reasonably pointed out in juridical literature, zoning can be defined as «the division of the territory of a city or other kind of human settlements into different zones, areas, districts for the purpose of establishment certain land use restrictions, determination a minimal size of lots, regulation of the types of buildings and constructions, which are permitted to be built within these zones» [2, p. 500].

Urban areas zoning, as stated in the literature, is realized in town planning activity and establishes exactly permitted use of lots in cities, it should be regarded as the process and the result of segregation of parts of city territory with the defined kinds and restrictions of their use, functional purpose, parameters of use of lots when implementing town planning [3, p. 130].

Thus, land zoning represents such a way of providing use of land for different community needs that allows to determine a designated purpose not only for one lot but for a group of neighboring ones within a corresponding zone. This is just this group of lots that forms a functional zone. Despite the fact that each functional zone has a specific general designated purpose (e.g. residential, manufacturing, recreational etc.), a certain range of permitted and preferential uses of territories and separate lots is fixed for each zone, defined within a settlement according to a zoning plan.

In this connection the following distinctive features of zoning within settlements can be pointed out: 1) it can be applied only within settlements; 2) it is a form of planning, use and protection of land; 3) it defines the rights of owners and users to exploit and develop lots of land; 4) it determines the restrictions on land; 5) it lists permitted kinds of land use as well as possible changes of real estate objects during town planning activity within each zone; 6) the designated purpose is defined not for one lot but for a group of neighboring ones.

Since land zoning establishes permitted use of lots, in this connection there is a necessity to clarify the essence and key characteristics of the very notion «permitted use».

First of all, permitted use is established only for lots of land. And it is

only due to the fact that the lots with the same permitted use form one territorial or other zone, permitted use also becomes characteristic of this zone.

Secondly, it is defined by a special normative act, according to which land zoning is conducted. Whereas the uses of land of a certain category range widely according to generally determined designated purpose and in some cases it can be sufficient to efficient use of land, the separation of a territorial zone in special, provided by a normative act order under the conditions of land deficiency in a settlement makes the choice of uses considerably limited but most effective.

The difference between designated purpose and permitted use can be clearly seen when a specific designated purpose or permitted use of a lot have to be changed. In case of the former an individual act of a body of local self government, for example, is sufficient. As for the latter, it is the changes in a normative act that are to be made to alter the boundaries of a territorial zone. As a result, zoning and permitted land use create legal safeguards to preserve designated purpose. That is why, if the lands have been zoned and permitted use of lots, which belong to a corresponding zone has been determined, it is unnecessary to refer to designated purpose of the above-mentioned lands or lots, that belong to them, alongside permitted use.

Thirdly, the structure «permitted use of a lot» represents a mechanism of specification of lot designated purpose, determined for the whole category of lands, including separate subcategories of lands. Furthermore, such specification is particularly provided only by town-planning legislation and is applied to the lands of settlements and some part of their suburbs in case of urban areas. To most of other categories of lands zoning plan is not applicable, which means that permitted use for them is not determined.

This in its turn implies that a part of the land fund of the country is out of the scope of application of permitted use structure. Permitted use is indeed determined by a land zoning plan, which does not cover the lands designated for forestry, lands of water fund occupied by water objects, reserve lands, farmlands within lands of agricultural designation, etc.

Therefore, the lots of land within a settlement and a part of suburban zones (e.g. non-farming lands within the category of lands of agricultural designation, allotted for gardening, vegeculture, small-scale cultivation and construction) are within the scope of application of zoning plan. Other kinds of zoning (for example, that of farmlands or lands of industrial and other special designation) are not provided by land legislation.

Permitted use is applied only to the lots, situated on the land of settlements and intended for construction. However, construction can be conducted not only on the lands of settlements but also on the lands of other categories (mainly of industrial and other non-agricultural designation) if it corresponds to their designated purpose. Consequently, permitted use must be applied to the lots of land which are intended for construction irrespective of land category.

If we try to sum up everything mentioned above about designated purpose and permitted use it will enable us to give their general definitions. Designated purpose is a granted on legal basis and in a provided by law order permission of authority for exploitation of lands and lots of land, included as their compounds only in a certain way. Permitted use is the most limited designated purpose of a lot, determined by a normative act, adopted as the result of land zoning.

Thus, the very institution of permitted use is not new one, legal distinction between different kinds of permitted use have already existed before. It is an attempt at their total territorial division via defining uniform similar territorial zones and turning land zoning institution from supplementary into principal method of defining legal treatment of land lots that is new.

However, before making amendments concerning permitted use of lots to legislation, it is also necessary to clarify the essence of this concept and its place in the system of legal regulation. There are three possible variants:

1) permitted use is applied only to the lots intended for construction, being unnecessary for the others;

2) permitted use is an instrument of land law, which complements and specifies the notion of a category of lands to provide their intended and rational use. Each category of lands is supposed to have a certain range of options of permitted use;

3) categories of lands are revoked, kinds of permitted use are established instead.

At present Ukrainian legislation is based on the principles of the first variant, although in practice it is developing in other direction. Basically, a law-maker can choose any variant on condition that they are realized consistently, although the least desirable is the third one, revocation of categories of lands.

Its realization will demand the most considerable changes in legislation, including principal alteration of the Land Code of Ukraine, which establishes legal regime of lands according to the category they belong to. This will require re-legalization of entitling documents for lots, which, as we know from experience, can be protracted for a long term, creates obstacles to conducting business activity, falls as a burden on the owners of lots, causes a great number of collisions in legal practice. Moreover, in case of approval of such a decision, the permitted use institution will have to accept the functions, which are performed by categories of lands as for provision of their intended use.

For instance, in order to preserve the most valuable lands, farmlands, it will be obligatory to establish as strict procedure of alteration of their permitted use as that of currently in effect of switching to other category.

But in this case, one can hardly expect essential simplification of procedures without detriment to assurance of public interests in land use, hence, it is more sensible to enhance the current procedure of defining and changing a category of land.

If the second variant is applied, some additions to legislation should be made. In particular, the reasons and the order of determination and change of the permitted use types as for specific categories of lands are to be established by the Land Code of Ukraine.

Taking everything into account, we can draw the conclusion, that «permitted use» of lots is the result of further development of the structure «designated purpose» of a lot. This statement can be interpreted in the following way: designated purpose of lands (and, correspondingly, the requirements for intended use of lands), are determined by the category they belong to, whereas permitted use is a supplementary element, which legal regime of a land lot consists of. That is why, permitted use and designated purpose can not be opposed and regarded as alternatives of each other, for the opposition between a whole and its part is self-contradictory.

The prospect of scientific research of the problems in question can be application of obtained results to further investigation, namely, to a study of issues of legal regime of land lots of different designated purposes, land zoning.

References:

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2. Land Law of Ukraine: Tutorial / ed. A.A. Pogribnyi and I.I. Karakash. – K. : Truth, 2009. – 600 p.

3. Ivanova E.O. Legal regime of residential and public buildings in cities / E.O. Ivanova // Bulletin of the Odessa Institute of Interior. – 2004. – № 1. – P. 130–133.

Стаття присвячена з'ясуванню юридичної конструкції «дозволене використання земельних ділянок», його місця в системі правового регулювання. Розкривається співвідношення таких правових категорій, як «цільове призначення» та «дозволене використання» земельних ділянок.

Зонування земель, планування територій, цільове призначення, дозволене використання.

Статья посвящена исследованию юридической конструкции «разрешенное использование земельных участков», его места в системе правового регулирования. Раскрывается соотношение таких правовых категорий, как «целевое назначение» и «разрешенное использование» земельных участков.

Зонирование земель, планирование территорий, целевое назначение, разрешенное использование.

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ПРОЦЕДУРА ВИНИКНЕННЯ ПРАВА ПРИВАТНОЇ ВЛАСНОСТІ НА ЗЕМЕЛЬНУ ДІЛЯНКУ

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Стаття присвячена дослідженню правової проблеми процедури виникнення права приватної власності на земельну ділянку. Особлива увага приділяється аналізу чинної процедури державної реєстрації права власності на земельні ділянки громадянами України.

Земельна ділянка, процедура державної реєстрації права власності на землю, виникнення права приватної власності на землю.

Проведення в Україні земельної реформи зумовлює необхідність теоретичного осмислення процедури виникнення права власності на земельну ділянку. В умовах сьогодення проблема процедур в земельному праві набуває теоретичної ваги і практичного значення, оскільки з початком 2013 р. процедура реєстрації прав на землю зазнала певних змін. Насамперед це стосується Закону України «Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень» та Закону України «Про державний земельний кадастр». Новелою в законодавстві України є те, що при формуванні земельних ділянок та реєстрації прав на них здійснюватиметься ведення двох реєстрів, а саме: формування земельних ділянок фіксуватиметься в Державному земельному кадастрі, а реєстрація прав на земельні ділянки – у Державному реєстрі речових прав на нерухоме майно та їх обтяжень.

Законодавчо врегульовані процедури у сфері виникнення права власності на землю мають забезпечувати реалізацію основних принципів земельного права.

Метою статті є дослідження правової проблеми процедури виникнення права власності на земельну ділянку та змін після 1 січня 2013 р. щодо процедури державної реєстрації прав на земельні ділянки.

Конституція України проголошує, що «право власності на землю гарантується. Це право набувається і реалізується громадянами, юридичними особами та державою виключно відповідно до закону».

У Земельному кодексі України (далі – ЗК) викладено загальне правило виникнення права приватної власності на землю, відповідно до якого громадяни та юридичні особи набувають право власності на земельні ді-

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