

# **UKRAINE: EFFECTIVE LAND RESOURCES MANAGEMENT AT THE LOCAL LEVEL**

**Kyiv  
2005**

This book comprises of the report on results of the Project “Policy Advice for Effective Land Management at the Local Level“ jointly implemented by the Center for Land Reform Policy in Ukraine (Kyiv, Ukraine) and Krakow Real Estate Institute (Krakow, Poland) during 2003-2005.

The book is offering an analysis of legal and conceptual aspects of urban land management in Ukraine. A general characteristic of the importance, role, legal status and specifics of land management has been supplemented with results of field research in pilot cities (Kyiv, Lutsk, Odesa and Kharkiv). A great attention was paid to the perspectives of formation in Ukraine's cities of modern transparent market for land and real estate as well as to the role of communities in the decision making process. A separate part of the book is dedicated to the experience of Poland in long-term lease of land parcels.

Materials collected in the book may be used by local self-governance, state executive while taking decisions in the field of land resources management, and also by NGOs for the protection and lobbying of local communities interests. This chapter of the book offers English translation of the part of the report dedicated to Ukraine and Kyiv in particular.

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# Land Resources of Ukraine: importance and general characteristics

## 1.1. Land as a natural resource of special importance<sup>1</sup>

Land is one of the basic natural resources which the mankind has been using for ages along with the air, solar energy and water. Whatever ways the human civilization is following, these ways are always related to land, they are starting on land, going by it and ending up on it.

The significance of land is so many-sided that it is not easy to say at once why it is a resource of special importance. First of all, land is a *natural resource*, a natural object which is used by mankind for serving of its needs. Secondly, land is a *territorial basis* for all sorts and kinds of human activities, and the living of the society is always linked to the land use. Every one of us is a land user, either consciously or not. Thirdly, land is a *factor of production*. Use of land in that or other way has certain special features, and *combination of these features* is one of the principles of land law of Ukraine.<sup>2</sup>

Other natural resources are often tied with land. Of course, a dispute about “*the most important resource*” may last indefinitely, but legislation of Ukraine is building upon the idea that land is a *fundamental resource*, i.e. it serves as a *foundation* for many other resources. It may be proven by the fact that property rights over the land parcel are extending automatically, *by virtue of law*, on *surface (soil) layer, forest, perennial plants and water objects* within the borders of the parcel. Property rights over the parcel are also extending on the *space above and under the surface of the parcel* necessary for the construction of dwelling, production and other buildings and installations.<sup>3</sup>

According to the Guidelines on land administration developed by the Working Party on Land Administration of the UNECE in 1996, “Land is the *ultimate resource*, for *without it life on earth cannot be sustained*. Land is both a physical commodity and an abstract concept in that the rights to own or use it are as much a part of the land as the objects rooted in its soil. Good stewardship of the land is essential for present and future generations.”

So, it is not surprising that land has a special status according to the legislation of Ukraine. The Land Code of 2001 provides that *land is the primary national treasure which is under special protection of the state*.<sup>4</sup> The Constitution of Ukraine — the legal act of supreme power — guarantees for every citizen of the state and for legal persons property right in land.<sup>5</sup>

Limitations and violations of rights of land users and land owners may result in irreparable damage for the latter. An example which disturbs, upsets and shows the significance of land for a society, — Indians of the Northern America, who used to live on the territory of today’s New-York. They sold their lands to colonists from Europe, and by doing so they deprived their society of the territorial basis for further development. There are more modern and close to us examples of the violation of rights of land users. In June 2005 Evgen Zhovtyak, a Chairman of the Kyiv Oblast State Administration made public the information on illegal building up of Dnipro River on the section between Kyiv and Kaniv. According to Mr. Zhovtyak, illegal private building-up has practically left no free access to the river. When we are resting (or have a possibility of resting) on sides of our historical river, land is indeed a *national treasure*, and we are the *nation*. When river banks are densely built up with private homes, and an average Ukrainian cannot again and again proudly repeat “*A rare bird would fly that far as to the middle of Dnipro*”, and has to murmur sarcastically “*A rare bird would fly that far as to the bank of Dnipro*”, land becomes an object of fierce disputes, people become wolves and the nation turns into a crowd.

Mind you that land is a *national treasure*, that is, it belongs to the nation. Not to the state, not to citizens — to the nation, to all citizens united by the idea of Ukrainian statehood. Land therefore is a uniting factor for Ukrainians, a factor of *national identity*. We love our land — that is what we have in common, what unites and joins us.

Accordingly, a violation of legal regime of land use and protection is a crime against the nation, against Ukrainian statehood and identity, an attempt to convert the nation into a crowd. Plundering a factor of national identity, a criminal facilitates the mutation of the nation into a wolf pack. Agree, it is a grave crime.

*Territorial communities of cities*, of other settlements of Ukraine are collective landowners and land users, and violation of rights of this specific category of subjects of land relations leads to *worsening of living environment of the settlement as a whole*. Therefore the management of land resources has a high importance and shall receive constant attention of local self-governance.

Land is also a factor of production. This factor of production has certain specific features, namely: certainty and permanency of location, constant dimensions (size), absence of physical and moral depreciation (value of land parcels is not depreciated). Moreover, climate conditions of use of land as a *factor of agrarian production* must be also taken into account.

As any other factor of production, land is characterizing by its ability to generate capital. Under conditions of proper documentation and registration of legal relations of ownership, use and disposal of land parcels, they become a foundation for the creation and development of such a complex subsystem of a modern market economy as a ***real estate market***. In developed countries of the West, the real estate market generates up to **30%** GDP.<sup>6</sup> In Ukraine this share is much lower — for countries with economy in transition a level of **5-6%** is more common. Thus, development of real estate market may significantly augment Ukraine's GDP and facilitate solving of such complex challenges as overcoming of poverty, reduction of unemployment and satisfaction of housing needs (from the mass satisfaction of housing needs of the population starts the booming growth of the real estate market and economy at large — it has been proven by the experience of Europe and Kyiv). In medium- and long-term perspective the increase of GDP shall facilitate the accession of Ukraine to the EC, because without significant growth of GDP and standards of living Ukraine will remain a foreigner to European countries — the following Table 1 is clearly proving it. Reforms are required not only in the political sphere, but also in the economy of the state; to be more precise, political and economic reforms shall go hand by hand and mutually support one another.

*European countries ranked by GDP'04 (output approach)  
with reference to area and population*

Rating by GDP	Country	Area, thousand sq.km	Ratio of area to that of Ukraine	Population, mln.	Ratio of population to that of Ukraine	GDP, USD bln.	Ratio of GDP to that of Ukraine
1	Germany	357	0.56	82	1.71	2163.826	8.41
2	France	551	0.87	62	1.29	1651.518	6.42
3	UK	241	0.38	60	1.25	1649.315	6.41
4	Italy	301	0.48	58	1.21	1497.075	5.82
5	Spain	505	0.80	41	0.85	909.982	3.54
6	Poland	312	0.50	38	0.79	438.480	1.71
7	Sweden	450	0.71	9	0.19	258.356	1.004
8	Ukraine	630	1	48	1	257.176	1

*Table 1*

The level of gross GDP close to that of Sweden does not make Ukrainians proud for the level of GDP per capita is still shamefully low for a country with huge industrial and technological potential.

Modern real estate market consists of many components, among which there are cadastre, insurance, legislation, judicial system, alternative dispute resolution, construction corporations, land surveyors, real estate agencies, assets management companies, banks and investments funds, hypothec institutions etc. All of them are consumers of diverse services and goods, that is, the very fact of their coming into being facilitates economic development. They all employ specialists. Specialists are studying, taking additional academic and practical courses in the educational establishments, so they facilitate employment and the development of education system. Even this short description is promoting understanding of the importance which the real estate market has for the economy; it works as a locomotive of the economy (it is clear even without taking into consideration the added value the market produces every year). Let us look again at the statistical data (Table 2). According to *Terre Initiative*, there is a certain correlation between relative GDP per capita in percent points (PPS) and employment at the real estate market.<sup>7</sup> The results of the analysis of GDP and employment in several countries of Europe are the following:



*Employment at the real estate market and GDP per capita*

Rating	Country	Employment at REM, %	GDP per capita, PPS
1	Austria	21	125
2	Denmark	18	122
3	Belgium	19.5	118
4	Sweden	22	117
16	Slovak Rep.	17	52
17	Poland	13	45
18	Lithuania	12.5	41
19	Latvia	14	40
20	Romania	7.5	30

*Table 2*

We can also see that it is not always so that high employment rate leads to high effectiveness, and among leaders the highest employment rate has Sweden, which reaches only 4<sup>th</sup> position by GDP per capita.

Agricultural lands shall not be left without attention. These lands account for almost **70%** of the land resources of Ukraine. These lands are not only production basis for the agrarian sector of the economy, they may also become a *solid collateral*. Agriculture is a sphere of risky financing. The revenue of producers depends on world market which is often and significantly fluctuating.<sup>8</sup> Harvest may become a victim of a natural disaster. Movables may be stolen or destroyed. Land as an object of mortgage is almost not exposed to such risks. Ability of land to produce goods may not only be supported and sustained during a long time, it may also be restored and improved. Existing legal mechanisms allow the creditor who claimed a land parcel to cover his losses to lease it or sell it in favor of more effective an owner (for instance, on a competitive basis). In case of sale, a creditor may secure the payment for land with the hypothec thereof; secondly, after having made sure in effectiveness of a new owner, the creditor may finance the production cycle of the latter (who is now having solid collateral at hand). Realization of these and other variants of capital generation with the use of agricultural lands will become available after the opening of the

market for these lands, i.e. after January 1, 2007, providing a necessary infrastructure is in place.

## **1.2. Land as an object of property rights. Legal regime of categories of land**

Highly important role of land in all spheres of human activities has influenced the constitutional separation of land from all other objects of property rights and approval of principles of special protection of land by the state. The meaning of the special protection of land is in particular consisting in legislative limitation of rights of a landowner.

The object of property rights is not land in general as a physical object of material world, as a surface of our planet; it is a *land parcel as a part of the surface of the Earth with delimited borders, certain location and defined rights in it.*<sup>9</sup>

In legal terms, a piece of land without delimited borders and defined rights is not an object of civil intercourse and may not be used.<sup>10</sup>

In contrast to other objects of property rights in respect of which an owner may undertake almost any actions at will (relocate, consume, destroy, damage and abandon etc.), a land parcel *shall be used without fail* and secondly, it *shall be used strictly according to its end use*. The end use of a parcel is defined by the belonging of it to a certain *category of lands*.

The legislation of Ukraine provides for the following categories of land:

- a)** lands of agricultural use;
- b)** lands of housing and civil use;
- c)** lands of natural reserves and of other environment protection use;
- d)** land of health-improving use;
- e)** lands of recreational use;
- f)** land of historical and cultural use;
- g)** lands of forest fund;
- h)** lands of water fund;

j) lands of industry, transport, communication, energy, defense and of other use.<sup>11</sup>

Categories of land have also their internal subdivision depending on the specific of land use. For example, lands of industry is subdivided into lands of extractive industry, metallurgy and metal processing, industry of production and distribution of energy, industry of production of construction materials (excluding construction sites) and also lands of enterprises of other industries.

Categories of land have a special legal regime.<sup>12</sup> The meaning of this special legal regime may be briefly described as follows:

1) *Qualification of land under certain category* is carried out on the ground of decisions of state executive and bodies of local self-governance according to their competence.

2) *Change of category of a land parcel* of state or municipal property is done by the bodies of state executive or bodies of local self-governance which take decisions on alienation of parcels or on lease thereof, or on confiscation (buy-out) of parcels and approve land surveying projects or take decisions on creation of objects of environmental protection and of historical and cultural use.

3) *Change of the end use* of land parcels of private property is carried out on the ground of decisions of owners and according to the procedure established by the Cabinet of Ministers of Ukraine.<sup>13</sup>

4) Landowners and land users are *obliged* to use land parcels according to their end use.

5) Use of lands contrary to their end use, violation of the procedure for the qualification of parcels under certain category and for the change of end use set in action a *protecting legal mechanism*, which includes the restoration of the previous conditions and legal liability – administrative, criminal and civil – of violators.

6) A right of legal entities and natural persons to acquire certain land parcels may depend on the end use of the parcels.<sup>14</sup>

The law is also limiting the circle of persons entitled to acquire land in property,<sup>15</sup> the size of land parcels of agricultural use which may be privately owned (now it is **100** ha).

Other special feature of land as an object of property relations is that property rights in land are coming into being from the moment of their state registration and not earlier. Thus market transactions with

land have transparent and controlled nature, but, on the other hand, they are linked with additional *transaction costs*.

### 1.3. The role of land resources in formation of public funds

The territory of Ukraine is **60354800** ha, including **57926700** ha of dry land (**95,98%**) and **2428100** ha of waters (**4,02%**).<sup>16</sup> The land stock has the following structure (Table 3):

*Structure of land stock of Ukraine<sup>17</sup>*

#	Category of land	Area, thsnd. ha	Proportion, %
1	Agricultural lands	43000	71.25
1.1	including agricultural grounds	41800	69.26
2	Housing and civil building up	1700	2.82
3	Natural reserves and other environmental protection	2744.3	4.55
4	Health improving lands	23.9	0.04
5	Recreational lands	106.9	0.18
6	Historical and cultural lands	40.3	0.07
7	Land fund	10500	17.4
8	Water fund	3400	5.63
9	Industry, transport, communication, energy, defense and other use	1740	2.88
9.1	transport	660.6	1.1
9.2	communication	5.2	0.0086
9.3	energy	52.4	0.087
9.4	defense <sup>18</sup>	>500	0.83
9.5	polygons for storing hard waste	>3	0.005
9.6	other use	518,8	

*Table 3*

**Notes:** Data are reproduced according to the National program for use and protection of lands developed by the State Scientific and Research and Project Institute on request of the State Committee of Ukraine on Land Resources. Program is an addendum to the respective draft law. It is interesting that the sum of areas of land of all uses amounts to **63255,4** thousand ha, i.e. it is **2900,4** thousand ha more than the territory of Ukraine. We think that it is because there are territories in the land stock

which are due to different reasons are not used or may not be used. The alienation zone of Chernobyl Nuclear Power Plant occupies **277,4** thousand ha; area of radioactive pollution is **534,5** thousand ha; impounded **500** thousand ha of agricultural lands; eroded **154,5** thousand ha etc. Certain figures are outdated. For instance, in one of his messages to the Parliament the President of Ukraine noted that during 1990-2003 the area of agricultural grounds shrank from **41721** thousand ha to **37877** thousand ha, i.e. by **3844** thousand ha (**9,2%**). According to another source, the area of agricultural grounds as of January 1, 2004 was **41788,5** thousand ha.<sup>20</sup> We hope that Parliamentary hearings planned for September 2005 will reveal more precise and reliable data on land resources.

In the course of the land reform in Ukraine (began in 1991) the structure of land ownership has changed dramatically (Table 4):<sup>21</sup>

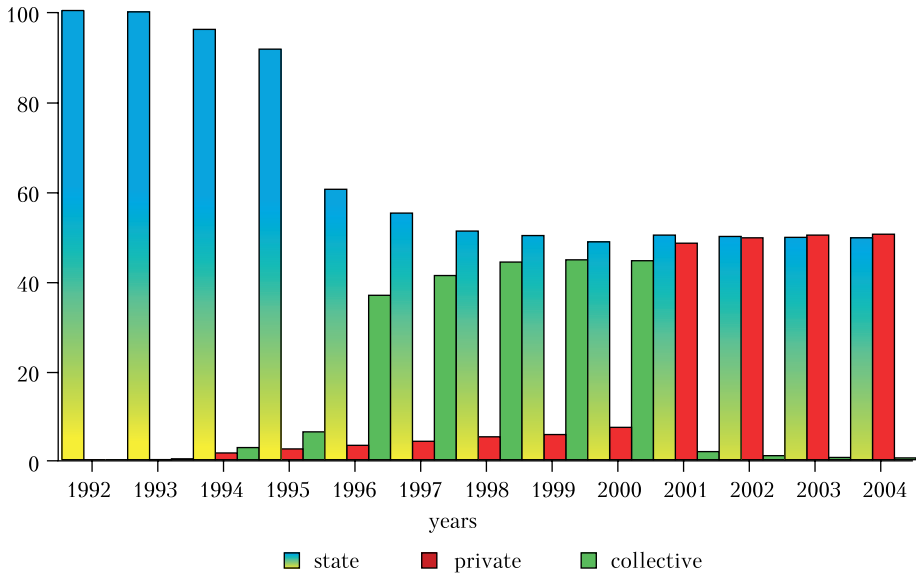
*Changes of land ownership structure, 1992-2004*

As of the beginning of the year	Pattern of ownership					
	state		private		collective	
	thsnd. ha	%	thsnd. ha	%	thsnd. ha	%
1992	60354.8	100	0	0	0	0
1993	60199.2	99.7	13.8	0.02	141.8	0.2
1994	57822.6	95.8	910.6	1.5	1621.6	2.7
1995	55148.5	91.4	1488.6	2.4	3717.7	6.2
1996	36310.5	60.2	1925.4	3.2	22118.9	36.6
1997	33141.6	54.9	2446.6	4.1	24766.5	41.0
1998	30701.2	50.9	3090.3	5.1	26563.3	44.0
1999	30097.0	49.9	3393.8	5.6	26864.0	44.5
2000	29265.5	48.5	4327.3	7.2	26762.0	44.3
2001	30166.5	50.0	29109.2	48.2	1079.1	1.8
2002	30027.1	49.7	209807.0	49.4	520.7	0.9
2003	29872.2	49.5	30178.0	50.0	304.6	0.5
2004	29796.8	49.4	30326.3	50.2	231.7	0.4

*Table 4*

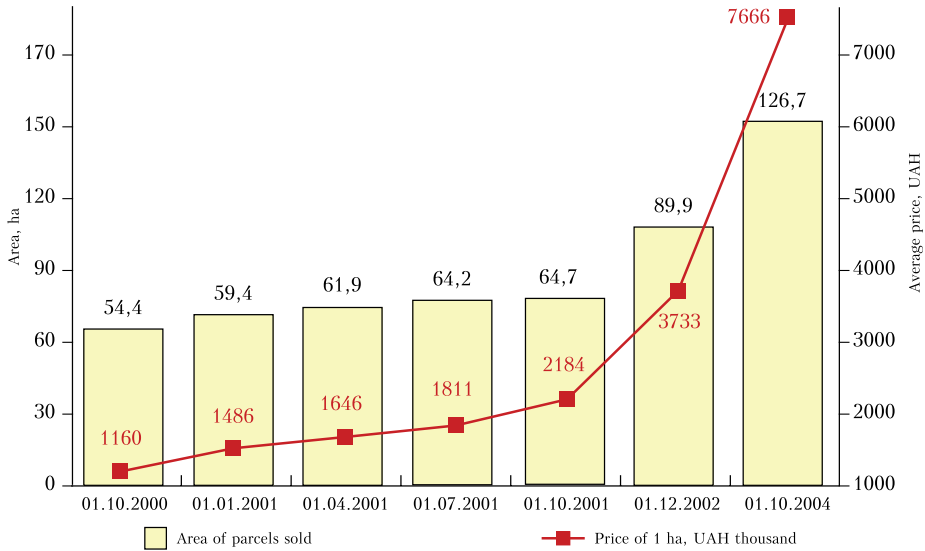
The following Diagram 1 is expressing the year-by-year dynamics of these changes. The changes are even more impressive taken in conjunction with the fact that with the growth of weight of private lands the rise of land prices has been reported (Diagram 2; sale of parcels – progressive total).

*Changes of the structure of land ownership in Ukraine, 1994-2004*



*Diagram 1*

*Sales of land parcels of non-agricultural use and average prices, 2000-2004*



*Diagram 2*

Aggregated normative value of Ukraine's land resources is amounting to approximately UAH **330** trillions (USD **66** trillions).<sup>22</sup>

Modern Ukrainian civilization is characterized by the high level of urbanization, development of industry and extremely high level of reclamation of lands. Ukraine has one of the world highest rates of ploughed land: in total, **32,5** million hectares ploughed, or **54,1%** of the territory of the state. It may be connected with the fact that active development of agriculture in Ukraine coincided with the times when extensive tendencies in increasing agricultural output prevailed in the world, i.e. by way of claiming new areas. To compare: there are **20%** of ploughed lands in the USA, **28%** in the UK and **34%** in Bulgaria.

The *infrastructural equipment* of the territory of Ukraine is also quite impressive. The following Table 5 gives the impression on areas and tendencies of building-up on a national scale:

*Building-up of the territory of Ukraine, 1991-2001 (sq. km)*

	1991	1995	1996	1997	1998	1999	2000	2001
Housing building-up		4189					4315	
Industrial building-up		3474					2367	
Other building-up		15468					18880	
TOTAL:	21612	23131	23300	23300	24400	24562	24562	24562

*Table 5*

**Note:** data for 1995-2001 are reproduced according to the Ministry of Environmental Protection of Ukraine.<sup>23</sup> Data for 1991 are reproduced according to the publication of the State Committee of Ukraine on Land Resources and National Agrarian University.<sup>24</sup> Under "other building-up" one must understand: lands of commercial use, land for positioning of communal objects, lands of mixed use, lands of transport, communications, engineering infrastructure and of recreational use. Different sources use different methods, therefore data on building-up are varying (1991 – **34696** sq. km, 2004 – **24562** sq. km).<sup>25</sup>

*Urban lands* has special importance and very high value. By area, these lands account for **2,09%** of Ukraine's total area, but here **32,574** million people live (**67,2%** of Ukraine's population), and industrial complex, educational and scientific establishments are located on these lands. Infrastructural equipment of urban lands is also proving their high potential and attractiveness for investments: **22,4%** of urban lands have been built-up, including **50%** of the territory of cities. The

value of lands of cities is exceeding the value of lands of other types of settlements by **2-5** times. The value of lands of settlements is exceeding the value of lands around settlements by **10** times. But this difference in prices on urban and rural land is also evidencing ***the significant difference in social and economic development and in living standards between rural and urban zones***. In our opinion, development of the real estate market (subchapter 1.1) is capable of facilitating the solution of this intractable problem. But the society and the state shall clearly understand the existence of this problem and make conscious attempts on solving it.<sup>26</sup>

The National Program for use and protection of lands which is being currently considered by the Parliament provides for the extension of the area of housing and public building-up by **400** thousand ha, including the area of big and medium settlements by **200** thousand ha. Moreover, it is also planned to extend the area under objects of infrastructure, recreational objects and reduction of agricultural lands. Demands and requirements of the national development and rational use of natural resources suggest the change of the structure of land stock of Ukraine.

The proceeds from land related payments in ***cities*** amount to **50%** of all land related payments (*ground rent* and *land tax*) in Ukraine, and in general land related payments in ***settlements*** exceeds **80%** of revenues from land related payments at the national scale.<sup>27</sup> The Table 6 below consists of few elements but it shows impressive picture of the significance which urban lands have in formation of public funds:

*Land payments in Ukraine*

	Type of lands	Proportion of country's area, %	Share in land related payments, %
1	Lands of settlements	11.77	80
1.1	cities	2.09	50
1.2	villages, towns	9.68	30
2	Other lands	88.23	20

*Table 6*

And again, the table is proving that rural budgets are much poorer than urban budgets. Rural budgets which accumulate only **30%** of all land related payments are financing the realization of social and



other functions of the state in favor of **17** million Ukrainians, or **35,42%** of the nation. In our view, the solution is not in simple re-distribution of revenues, — such measures are temporary, provisional, extraordinary, and being used on the permanent basis, they may hinder the development of urban as well as rural territories. Systematic and complex solution shall envisage the directing of private and public investments into rural areas on the ground of *public-private partnership*: a community is providing a land parcel, and developers are erecting objects. These objects may include dwelling micro-districts, infrastructure (modern highways, communication lines, electricity supply grid, gas distribution pipelines<sup>28</sup> etc), trade and entertainment centers, recreational complexes etc.

According to the Ministry of Finance of Ukraine, *payments for land are the second source of income of local budgets* (after individual income tax). During 12 months of 2004 the Aggregate Budget of Ukraine collected UAH **2293237088** of payments for land. Those proceeds had the following structure (Table 7):

*Proceeds of the Aggregate Budget (AB) of Ukraine as of January 1, 2005<sup>29</sup>*

Proceeds	Planned, UAH	Collected, UAH	Level of collection, %	Share of AB, %
Payment for land	2 273 328 084	2 293 237 088	100,88	3,63
including:				Share in payment for land, %
Land tax from legal entities	1 562 945 692	1 453 694 631	93	63,4
Ground rent from legal entities	531 579 180	634 180 752	119,3	27,7
Land tax from natural persons	84 840 717	90 684 959	106,89	3,9
Restructured debt on payments for land	2 476 490	4 887	0,2	
Ground rent from natural persons	91 485 205	114 673 955	125,35	5

*Table 7*

The payment for land is fully directed into local budgets. Therefore local budgets earned during 2004 UAH **2293237088** of payment for land, or **3,63%** of the Aggregate Budget revenues (**12,53%** of

local budgets revenues). During 1999-2003 the share of payment for land in the revenues of the Aggregate Budget was not exceeding **0,8%** at the average.<sup>30</sup> The dynamics of these proceeds of the Aggregate Budget of Ukraine in 1992-2004 is depicted by the Chart 3.

In our understanding, it is necessary to study a dependence between the rates of land tax and level of revenues. This research is enough complicated, because changes in taxation have been taking place along with the land reform, i.e. the share of taxed land was constantly changing. In any case, our analysis shows that certain dependency between the growth of tax rates and the growth of proceeds was present in 1996-2002. After the stabilization of the tax rates at the level of **2632%** to the level of 1996 the revenues kept growing. We think that this growth of proceeds happened thanking to the development of land lease relations and legal fixing of used-to-be “customary” land use. And really, in 2003 and 2004 the revenue from the land tax did not changed and was reported at the level of UAH **1,54** and **1,544** milliard respectively; at the same time ground rent grew from UAH **492,3** to **749,2** million. Following Table 8 and Chart 4 are showing these dependencies.

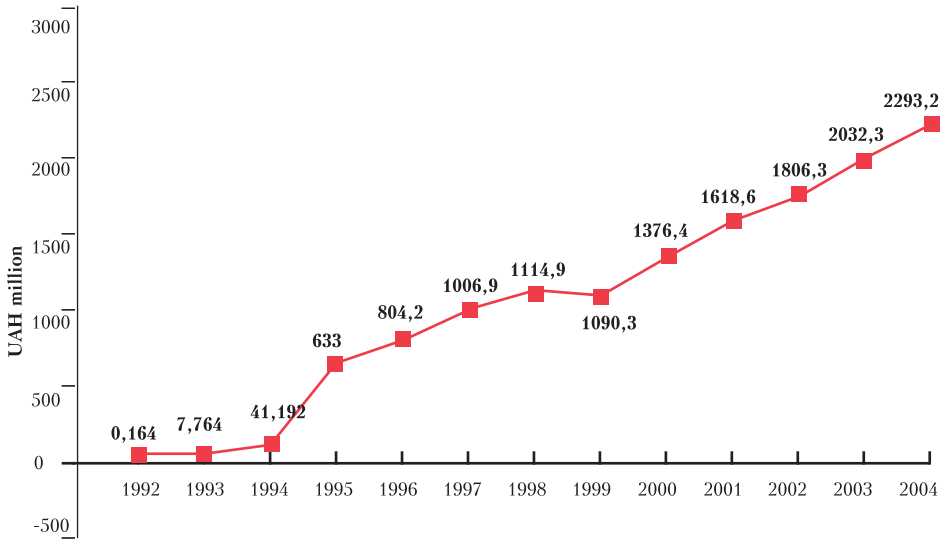
*Payment for land and land tax, 1996-2004*

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Payment for land, UAH milliard	0,8042	1,0069	1,1149	1,0903	1,3764	1,6186	1,8063	2,0323	2,2932
Payment for land to the level of 1996	1	1,25	1,39	1,36	1,71	2,01	2,25	2,53	2,85
Land tax rate to the level of 1996	1	1,81	1,81	3,62	8,688	22,763	26,325	26,325	26,325

*Table 8*

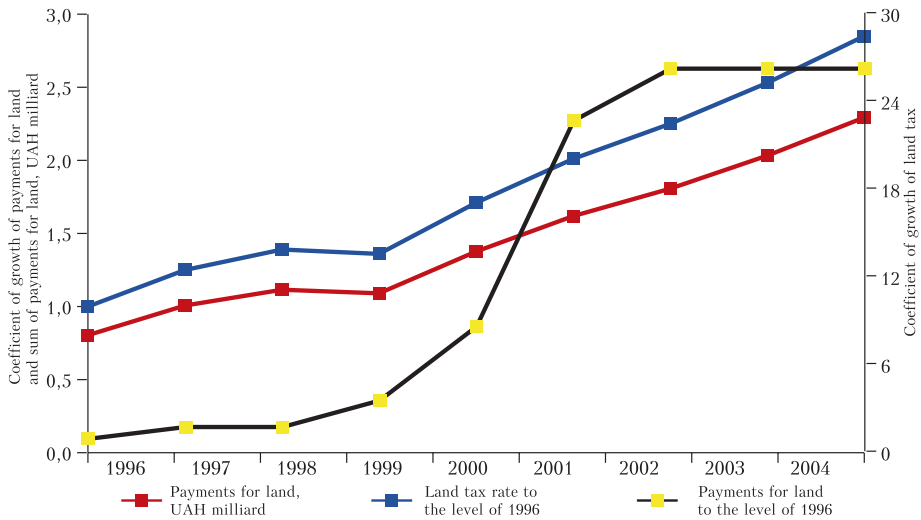
Besides, during 2004 local budgets received UAH **615878876** from the sale of land parcels. The State Budget of Ukraine also received UAH **68430988,85** from the sale of land. Thus, the aggregate contribution of land resources into the public funds in 2004 was UAH **2977546952,85** (**4,71%** of all revenues), including UAH **2909115964** directed into local budgets (**15,89%** of all revenues of local budgets).

*Land tax and ground rent in Ukraine, 1992-2004*



*Chart 3*

*Payments for land and land tax, 1996-2004*



*Chart 4*

**Note:** during 1996-2004 a rate of land tax for land parcels without monetary valuation was changing. The basic rate of land tax for parcels the monetary valuation of which has been done is **1%** of the monetary value.

We believe that payments for land shall gradually become the primary source of revenue for local budgets. This conclusion rests upon the world experience. For example, in cities of continental Europe the ground rent accounts for **50%** of urban budget revenues, and in European and Japanese cities with limited land resources – for **70%** thereof.

Statistics of recent years has proven that the revenue from land related payments in cities of Ukraine is steadily growing. This is explained first of all by the realization of measures aiming at including more land into fiscal relations: cities are making inventory of lands, delimiting state and municipal parcels, performing monetary valuation, improving the registration of land users, introducing new forms and methods for managing land resources. Among the new forms and methods – land auctions and contests at which cities sell rights of ownership and of use of land parcels. Secondly, the number of contract land users is growing rapidly. For example, in Kyiv in 2004 there were concluded **1018** ground rent contracts what is **35,4%** up the level of 2003 (**658** contracts).

Let us consider the significance of *ground rent* on the national scale. According to the information of the State Committee of Ukraine on Land Resources, as of October 1, 2004 the bodies of state executive and of local self-governance have signed ground rent contracts in respect of **2869,4** thousand ha, or **4,76%** of Ukraine's territory. The ground rent in 2004 amounted to UAH **748859594**, or **32,66%** of land related revenues (UAH **260,98** per **1** ha at the average). Now compare the *budgetary effectiveness* of ground rent and land tax. As of July 1, 2004 the area of land which was not alienated or leased or otherwise used was **5000,1** thousand ha from **60000** thousand ha available. Thus, the are of land which was taxed with land tax amount-ed to **52430,5** thousand ha, or **86,95%** of the national territory (this area includes *private land* and state lands granted in *permanent use*). This area brought into the Budget UAH **1544379590**, or **67,35%** of land related payments (UAH **67,35** per **1** ha at the average). Diagram 5 clearly shows these proportions. From the financial point of view, leasing of land is almost **4** times more effective than selling it or granting it in permanent use.

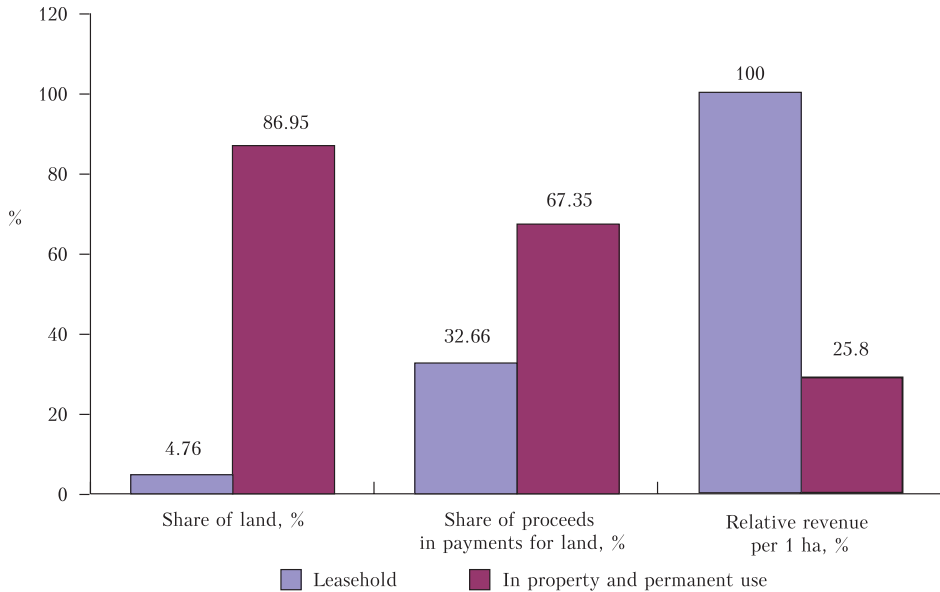


Diagram 5

#### 1.4. Specifics of urban land resources management

Land resources of settlements of Ukraine (cities, towns and villages) consist of **7180,4** thousand ha and have complex structure (Table 9).

Land resources of Ukraine's cities consist of **1,2816** million ha (**2,09%** of all national land resources) and have complex structure from the point of view of end use and patterns of land use (Tables 9, 10).

The important point is that urban lands are not an independent category of land; they consist of land parcels belonging to different categories. This feature requires from the local self-governance to discharge a very complex task of managing lands with diverse end use.

Accordingly, it shall be considered appropriate to involve actively the public, local community into matters of urban land resources management. This will allow for widening of professional, informational and knowledge base for the decision making and will improve

the condition of democracy and rule of law in the land sphere, it will also facilitate transparency and openness of local self-governance.

*Structure of urban land resources of Ukraine*

	Function/category	2001		2002		
		Area, thsnd ha	Share, %	Area, thsnd ha	Share, %	
A	Lands of cities	1265	17,8	1281,6	17,8	
B	Lands of towns			524,1	7,3	
B	Lands of villages			5374,7	74,99	
	TOTAL	7106,3	100	7180,4	100	
1	Building-up of all sorts	1590,9	22,39	1591,7	22,17	
					Of building-up	
					Of category's area	
1A	in cities	639,6	9	642,2	40,35	50,1
1B	in towns			160,4	10,07	30,6
1B	in villages			789,1	49,58	14,68
1.1	Lands of industry			204,4	2,9	
1.2	Lands of public building-up			153,3	2,14	
1.3	Lands of transport and communications			147,5	2,05	
2	Lands of agricultural use	4847,4	68,21			
3	Forests, perennial vegetation	290,2	4,08			
4	Lands of environment protection use, recreational use, health-improving, historical and cultural use			22,4	0,31	
5	Lands of defense			39,7	0,55	
6	Lands of water fund	145,4	2,05			
7	Lands of reserve and lands not allocated for use and not alienated			1688	23,51	
8	Open swamp lands without vegetation or with insignificant vegetation			232,4	3,27	
9	Lands not to be privatized			2198,2	30,93	

*Table 9*

**Note:** study of different sources shows that bodies of state executive are sometimes using varying data. For example, in the message of the President of Ukraine to

the Parliament (2002) it was stated that as of January 1, 2002 the area of lands of reserve and lands not allocated for use and not alienated in settlements of Ukraine was **363,2** thousand ha. In the publication prepared by the specialists of the State Committee of Ukraine on Land Resources another figure is used – **1688** thousand ha.

*Structure of lands of Ukraine's cities*

	End use/category	Share, %
1	Housing building-up	12,8
1.1	Including 1-floor housing stock	6,7
2	Industrial building-up	9,6
3	Commercial building-up (trade and services)	2,4
4	Lands of communal and state property not subject to alienation or lease	17
5	Other (lands under water objects, perennial vegetation, lands of transport, energy, defense, reserve etc)	45,4

*Table 10*

Involvement of the public may be performed by way of questionings, public hearings, public debates, establishment of permanent cooperation of local self-government with civic organizations, NGOs, creation of associations of assistance to local self-governance. It will facilitate transfer of knowledge and experience, distribution of best practices in the field of land resources management. Moreover, involving a community into handling of its own matters will support the growth of feeling of unity, belonging and identity, of responsibility of every individual for the well-being of the whole community. It is also necessary to define with maximal precision how local self-governance is reporting to the community on taking into account and practical realization of community's ideas, views and suggestions. – Without it all the events with public participations will acquire a dangerous pseudo-democratic nature.

Data on the structure of urban lands (Tables 9, 10) are pointing out that there are certain reforms which shall be performed. First of all, *one-floor housing stock shall be gradually replaced with multi-storey housing stock*. It is mostly actual for the big cities of Ukraine. For Ukraine's megacities this direction of reforming has a bit different meaning – *a beginning of construction of multi-storey housing stock of increased number of storey* (of height more than **67,5** m).<sup>33</sup>

The practice is evidencing that in Ukraine the share of *low (individual) housing building-up* is growing every year.<sup>34</sup>

*Low and multi-storey housing building-up in Ukraine (new construction)*

Type of housing building-up	2000		2004	
	mln. sq. m	%	mln. sq. m	%
Individual (low)	3,3	59,37	5	66,09
Multi-storey	2,258	40,63	2,566	33,91
TOTAL	5,558	100	7,566	100

*Table 11*

In our opinion, it is related to the fact that the state has decreased significantly financing of housing construction, programs of affordable housing construction are only being developed, and population under present conditions is not able to finance on its own multi-storey construction (high housing standards require high investments which vary from USD 300 for 1 sq. m in Kherson to USD 3000 for 1 sq. m in Kyiv. Therefore the cheapest one-room apartment of 30 sq. m will cost minimum USD 9000. This sum is almost twice higher than current Ukraine's GDP per capita).

A certain share of low housing building-up is being erected in cities. In particular, in 2004 in urban settlements there was constructed **75,8%** of all new housing stock. Taking into account that all multi-storey construction is done in cities, and its share in total housing construction is **33,91%** only, we may conclude that **41,89%** of housing building-up or **3,17** million sq. m, was constructed in cities in the form of low (individual) housing building-up. Respectively, in rural areas there was constructed only **1,83** million. sq. m of housing stock or **24,19%** of the annual housing construction.<sup>35</sup>

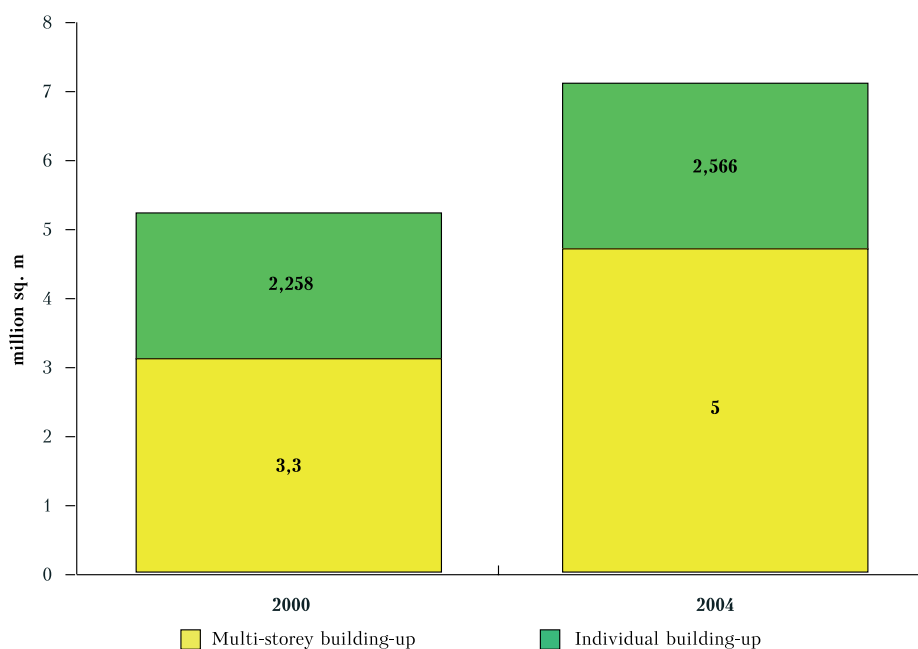
Citizens willing to possess one-floor houses shall in the long run move to suburbs and satellite towns. This process is already taking place in Kyiv, Donetsk. Moreover, these citizens may acquire their own houses in the course of realization of joint projects of cities and neighboring villages directed on creation of Urban Villages.

Urban Village is a community of city dwellers in rural area which is developed and built up with modern houses (cottages) and equipped with necessary infrastructure. Houses are occupied by people living in



cities but preferring to reside in rural areas. Sale or long-term lease of land parcels for the creation of Urban Village may become an additional source of income for the local budget. Creation of urban villages will influence the value of land in rural settlements, for expert valuation preceding the allocation of parcels for the construction of urban villages will take into account the cost of the project and define higher value of land. Local communities shall not be suspicious about selling or leasing land parcels to developers and investors (even to foreign): having paid once the price of land or price of lease, they will be investing into local budget every year. A long-term lease may be more effective for the local community, but it will take some effort to convince investors to accept the idea of leasing land instead of buying it.

*Housing building-up*



*Diagram 6*

It is also necessary to move from cities parcels allocated for private gardening. **500** thousand of these parcels of total area of **30** thousand ha in cities of Ukraine shall be considered an acute problem. It is

also true for one-storey garages in big cities: parking lots shall be either multi-storey or underground. For example, in the Netherlands, a country with small territory and significant population, underground garages are located under dwelling houses, trade centers and squares. Sweden is another example. It has almost the same area as Ukraine does, though its population is much smaller (**9** million). Underground garages are constructed not only in Stockholm, but also in towns with population of **10-15** thousands.

We would note that Ukrainian cities may not be interested in land users going underground, because owners of underground objects do not pay either land tax or ground rent (that is why the idea of placing hotels, restaurants and other objects underground or on water-borne platforms is so popular in Ukraine). We are suggesting certain solutions for this situation (section 1.7).

Secondly, it is necessary to *optimize the share of state and communal lands which may not be alienated or leased* (about **200** thousand ha). These lands are not bringing much money into local budgets (land tax is paid which is lower than ground rent). But this optimization shall take place within the framework of global reform of public administration and local self-governance aimed at significant reduction of personnel.

**45,4%** of urban lands is used for different types of activities which may be relevant or irrelevant for cities. Local authorities in cooperation with the public shall undertake an analysis of structure and end use of urban lands in order to *optimize and rationalize use of land resources*. For instance, national limits for allocation of land parcels for needs of industry, transport and energy are **2,5-2,7** higher than the same limits in the Western Europe. We are still building extensively, underestimating our land resources. Our extensive limits are also evidencing that *certain Ukrainian land users (industry, transport and energy) are overpaying land related payments (land tax or ground rent)*. They would pay less provided their property was located rationally. This problem is especially acute for major enterprises created during the Soviet era. Ukrainian practice has shown that in the course of privatization new owners of privatized enterprises are conducting the inventory of land parcels and disposing of excessive land.

In the context of rationalization of land use we would note that

the procedure for changing the end use of land parcels of state and municipal property in Ukraine has not yet receive appropriate normative regulation, and general permissive rule of the article 20 of the Land Code in practice turns into prohibition or, even worse, into the ground for numerous violations, because there are neither criteria nor clear procedure for changing.

It is also necessary to conduct the inventory of land parcels, because there are numerous cases of informal land use. In Ukrainian cities there are lands occupied with parking lots and market places, in respect of which plots any legal rights were not established. Accordingly, local budgets are losing money, and informal land users are doing whatever they want at seized parcels and worsening their properties. Informal land use is also a big problem of rural areas: according to the information of the Security Service of Ukraine, the number of cases of use of agricultural lands by legal entities without conclusion of lease contracts has significantly increased in recent years.

Thirdly, local self-governance in cooperation with local communities shall develop and implement *programs for effective land use*. Development of such programs will allow for structuring of land reform in cities and facilitate control of implementation of land reform measures.

Besides, it is of paramount importance to complete technical measures which are already being conducted in Ukrainian cities: delimitation of borders of settlements, separation of lands of state and municipal property, valuation of lands, inventory of lands and land titling.

Local self-governance shall take conscious efforts to stop ineffective use of every square meter of land. It is clear that many problems of land relations cannot be solved at the local level, the solution is often in hands of the legislative power. For example, the list of subjects entitled to acquire land in property is limited. A Ukraine-based subsidiary of a non-resident company is not entitled to buy land in Ukraine. At the same time a non-resident company established and located abroad is entitled to own land in Ukraine. This limitation looks like something accidental and creates real obstacles on the way of foreign investments to Ukraine.<sup>36</sup>

It is also essential to reduce the number of land tax exemptions.

*Land use in principle shall not be gratuitous*, because land is a unique resource. Gratuitous land use leads to irresponsible attitude towards land.

New approaches to land use require also infrastructural changes. As a result of the land reform which began in 1991, a new social stratum emerged in Ukraine's cities — *private land owners*. Taking into account special significance of land resources, this social group is entitled to the special attention. Private property on means of production, including land, is a basis of the market economy. In general, a private owner is more effective than collective owner or state. This assertion is true not only for Ukraine. For example, till 80ties of the last century German forestry was profitable, and there were many state-owned enterprises managing land parcels of forest stock. Later on the forestry became unprofitable, and the state privatized its enterprises. Newly created private companies again made German forestry profitable. Mr. Steffens, an expert of German company **BVVG** responsible for the privatization of lands in the Eastern Germany, at the meeting in the State Committee of Ukraine on Land Resources in December 2004 noted that the state and state enterprises turned to be worse managers than private owners.<sup>37</sup>

But we would remind that private land owners of Europe are acting in the environment which adjusted to the functioning of the private property during centuries. It is insufficient to declare private property in order to call into being the whole system. It is essential to create the *system of private ownership* comprising of *private owners* and *respective service infrastructure*. The infrastructure shall include judicial system, adequate laws, registry,<sup>38</sup> cadastre, supervising bodies etc. This infrastructure is called upon to secure realization of rights of land owners as well as discharge of their duties.<sup>39</sup>

On the other hand, private ownership in settlements shall not become an exclusive form of land ownership. Settlements are places of collective living of many persons — territorial community, and under conditions of modern democratic state and establishment of human rights value *it is of paramount importance to secure accessibility and availability of primary types of land use* (recreational, health-improving, educational etc.). An instrument for doing so is the *institute of right of communal (municipal) property in land* introduced in Ukraine in 2001.

### 1.5. The content of the right of municipal property in land

Land of cities is material and financial basis of local self-governance,<sup>40</sup> “territorial basis for location of urban-planning objects, production forces and for organizing and carrying out public production”.<sup>41</sup>

*A right of municipal property in land* is a right of a territorial community to own, use and dispose of land at its own will and in its own interests immediately as well as through bodies of local self-governance.

*A territorial community* consists of citizens united by the fact of permanent living within the borders of a settlement which is a full-fledged administrative and territorial unit. It is the community who owns lands of municipal property,<sup>42</sup> it has competence to possess, to use and to dispose of these lands. The competence is enforced by the territorial community directly<sup>43</sup> or by the local council (local *rada*) representing interests of the community and realizing on behalf of the latter and in the interests of the latter functions and competences of local self-governance established by the Constitution of Ukraine and laws of Ukraine.<sup>44</sup>

Lands of communal property include all land parcels within the territory of a city excluding lands of private and state property.<sup>45</sup> Moreover, local community may own land plots beyond the city’s line if those plots are used for the positioning of real property of the community.

Thus, in the context of subjects of proprietorship in respect of urban lands one may designate the following categories of urban lands:

- ✓ lands of communal (municipal) property (where separation and demarcation of lands of state and communal property is conducted);

- ✓ lands of state property;

- ✓ lands of private property.<sup>46</sup>

Due to the fact that in times of active urbanization (50ties and 70ties of the last century) the planning and building-up of territories were conducted according to the plans for settling and disposition of production forces, and also to the fact that in **1990** the state ceased to be the only land owner, *lands of cities nowadays do not have the form of a solid single massive.*

Parcels of private, communal and state property are bordering upon each other. Moreover, from time to time they are changing owners and joining either communal or state or private property. Besides, lands of cities have the *complex categorical structure*.

**So, *lands of territorial community of a city are a aggregate of parcels with different end use (function) which belong to the local territorial community and border upon parcels of other owners.***

We believe that the community shall own territories and areas the use of which is essential for the development of the city as a whole. These are recreational zones, parcels under objects of historical and cultural heritage and natural reserves. Moreover, it is appropriate to keep in communal property parcels used for profitable types of economic activities (parking lots, trade areas etc). This is not an attempt upon the idea of privatization. Communal property for land being compared with state property is serving the activities of more precisely defined group of people; communal lands have better perspectives in respect of democratic control exercised by the community. Thus communal property for lands of settlements is more desirable than state property. Private ownership of urban lands requires from the state the creation of effective mechanisms for protection and securing of interests of individuals which are not land owners. Till those times when the state is able to secure strict compliance with and obedience to rules of building-up, environmental protection and other rules of marked social importance on the part of private land owners, the private property for lands of settlements have all the possibilities to inflict damage on communities' interests.

Lands of communal property shall become *an instrument for securing rights of the community for full-fledged living environment and replenishment of local budget*. To exercise regulatory influence upon the local land market, the community may avail itself of the following measures: buy-out of land parcels, sale of property rights and tenure right at the competitive basis, confiscation of parcels being used contrary to their designated function etc. Some aspects of exercising these competences are considered in the following chapters.

The creation of the institute of communal property for land will become an indispensable instrument for the securing rights of the com-

munity provided a *new ideology* of urban land resources management is formed. The new ideology is building upon the fact that land resources of a settlement is a property of the community; accordingly, the realization of such urgent measures like delimitation of city lines, separation and demarcation of lands of state and communal property, inventory of lands, introduction of competitive forms of allocation of land parcels is ***investments into the nearest future of the city and the community*** (and not a simple implementation of governmental programs and legislative instructions). The new ideology consists of formation among members of territorial communities of the attitude of proprietors and masters of urban lands, and among representatives of local self-governance — the feeling of responsibility towards the land owner in respect of the well-being of the latter and effectiveness of the management of his assets. Local self-governance shall clearly understand who owns urban land resources and realize its responsibility; the decision making process in respect of allocation of land parcels shall be founded first of all upon the care about well-being of the community and take place with the latter's participation.

### **1.6. Land reform in city: specifics and problems**

Land reform in cities of Ukraine has certain specifics. These special features are caused by the fact that a city as a subject of social and political relations appears in several “capacities”.

City is a proprietor of assets, rights *in rem* and land parcels. Secondly, city is a unit of administrative and territorial division (ATD). From the point of view of growing importance of the local self-governance, such unit of ATD as city is one of the main actors of social activity even under conditions of a unitary state. Having these capacities, city has to deal with more complex land reform. If a private land owner cares about the delimitation of his real estate from the property of other owners, and borders of his parcel will suffice for this, the city must delimit its land property from all other owners and all adjacent units of ATD.

Cities as subjects of the new institute of property law — a right of communal property in land — in the course of demarcation of lands of state and communal property inherit from the state, along with land resources, problems related to the transition from obsolete forms of

land use to new form thereof (it is true first of all in respect of the review of the list of subjects entitled to the permanent use of land parcels).

Urban lands, in contrast with agricultural lands, have long time ago become an object of market transactions; the infrastructure of the real estate market in cities is gradually developing (about the importance of the real estate market we have already said). Following sections are focused on these and other special features of the land reform in Ukraine's cities.

### **1.6.1. Demarcation of boundaries of cities**

City boundary is a closed imaginary line on the surface of land separating the territory of a city from all other territories.<sup>47</sup> The line is *imaginary*, i.e. it is not marked in kind, except for *turning points*.

The line is included into the data of the state land cadastre. At the moment when the independence was declared many settlements of Ukraine did not have approved boundaries. Taking into account that the law on administrative and territorial division, the approval of which is provided for by the Constitution, has been there as a draft for several years now, the demarcation of boundaries is plodding ahead slowly. Heated discussions on autonomisation of regions and even federalization of Ukraine during the Presidential campaign of 2004 have also not facilitated working on the draft. Moreover, we would foresee the submission of draft laws based on new approaches to ATD. We are forced to admit that due to different reasons the population has already gained the negative attitude towards the reform of ATD regardless of its content.

The decision on establishment and modification of city boundaries is taken by the Verkhovna Rada of Ukraine upon the submission of the Verkhovna Rada of Autonomous Republic of Crimea, Oblast Radas (councils), Kyiv or Sevastopol city radas (councils).<sup>48</sup> In fact, the Verkhovna Rada of Ukraine approves not the boundaries themselves but projects of demarcation and total area of a city. The city boundaries are confirmed by the special title, the form of which is approved by the Parliament.<sup>49</sup>

From August 1990 till February 2005 the Verkhovna Rada of Ukraine adopted only **106** decisions in respect of city lines, including



**98** decisions on modification and **8** decisions on establishment thereof. By the way, the most recent decision was taken in November 2003. The figures are not impressive: according to the National Census of 2001, there were **454** cities and towns in Ukraine (as of January 1, 2005 – **456**).

As of January 1, 2002, demarcation of boundaries was completed in **71,7%** of settlements, including **24%** of cities of Oblast subordination, **46%** of towns of district subordination, **54,7%** of towns and **72,8%** of villages. The process of demarcation of boundaries was completed in Rivne, Khmelnytsky, Zhytomir, Zakarpattia, Zaporizhzhya, Kharkiv, Ivano-Frankivsk, Kyiv, Ternopil and Cherkassy Oblasts. The process is going very slowly in Kherson, Poltava, L'viv and Chernigiv Oblasts, cities of Kyiv and Sevastopol.<sup>50</sup> It is taken for granted that the main reason for the slow demarcation of boundaries is the lack of funds. According to the assessment of Lutsk City Council (2004), demarcation of boundaries of Lutsk costs about UAH **400** thousand. We would note that the city budget for 2005 provides that land resources will raise UAH **13,22** million, including UAH **7,95** million of land related payments (tax and ground rent) and UAH **5,27** million from the sale of land parcels. Therefore the cost of demarcation makes up only **3%** of these revenues. On the national scale the situation does not look hopeless too. According to the estimation of the Cabinet of Ministers of Ukraine, the total cost of demarcation of territories of settlements is UAH **840** million; demarcation works had to be completed within 2002-2005.<sup>51</sup> So, the annual budget of demarcation is UAH **210** million or about **8%** of the land related revenues of **2004**. These sums are not just budgetary expenditures – these are *investments* into the most secure asset, in the real estate, in land, and the earlier these investments are performed, the sooner they bring dividends for the territorial communities of Ukraine.

Demarcation of boundaries is one of the land surveying works. It is performed by the companies and experts who are in possession of appropriate licenses on the ground of contracts concluded with a customer (executive body of a local council). The surveyor designs a land surveying project for the establishment (modification) of boundaries of administrative-territorial unit, which project is to be approved by the Parliament of Ukraine.

Current laws of Ukraine lay down only general requirements for

land surveying projects for the establishment (modification) of boundaries of administrative-territorial units. The projects are designed to create full-fledged living environment and favorable conditions for the territorial development, to secure effective use of the areas' potential and preservation of their natural landscapes and historical and cultural value, taking into due account landowners and land users interests and approved town-planning documentation.<sup>52</sup> We believe that local self-governance being the user of the said land surveying projects shall demand from the surveyors not merely formal, but actual implementation of the requirements in respect of creation of the *full-fledged living environment and facilitation of territorial development*. Surveyors shall be obliged to give prove why and how a suggested decision will facilitate the creation of the full-fledged living environment of a territorial community. A respective condition shall be incorporated into contracts with land surveyors. The quality of land surveying projects may be improved by means of competitive selection of land surveyors as well as competitive selection of land surveying projects.

Establishment and modification of city lines may be of great importance for a city. For example, modification of the line may include or, to the contrary, exclude certain territories, objects and enterprises into from the city area. It may influence a city budget: taxes and duties are paid at the location of a taxpayer. Thus, certain establishment of the boundaries predetermines whether a city receives taxes and duties, including land payments, pollution fees etc.<sup>53</sup> Therefore the issue of the establishment and modification of boundaries shall always be on the agenda of the local council which is the first link in the long procedural chain.

If the boundaries have not been established according to the new land legislation of Ukraine, the boundaries provided for by the state land cadastre are used. Established and demarked boundaries are necessary for the separation and delimitation of lands of state and municipal property.<sup>54</sup> If there are no boundaries established, the delimitation may infringe upon interests of land owners and land users, including territorial communities and the state.

### **1.6.2. Delimitation of lands of state and municipal property**

The legal basis for the demarcation is the Law of Ukraine "On

Demarcation of Land of State and Municipal Property” of February 5, 2004 which came into force on July 14, 2004. A decision on delimitation is taken by a local council and agreed with bodies of the state executive. Delimitation is carried out according to the land surveying projects designed by state and private land surveying organizations on request of local councils.

The process of delimitation has already been going on for some time. The Provisional Procedure for delimitation was approved by the Cabinet of Ministers’ Resolution of August 1, 2002 # 1100. From the moment the Law of Ukraine on Delimitation entered into force the Provisional Procedure is not applied.

The pace, current status and perspectives of delimitation may be illustrated by the above mentioned statistics on demarcation of boundaries of settlements. It is clear that settlements without well-defined precincts will have certain troubles delimiting state and municipal lands within their boundaries (which are not marked).

Among the reasons of slow progress of delimitation a traditional one is named – the lack of funding. We would note that according to the Cabinet of Ministers of Ukraine estimation, delimitation would take UAH **270** million over 4 years (2002-2005),<sup>55</sup> i.e. annual assignments amount to UAH **67,5** million or about **2,5%** of land related revenues of the Aggregate Budget of Ukraine. These assignments are the investments into the future of Ukrainian cities, thus there is no need to explain their appropriateness.

We should underline that the Law on Delimitation has created prerequisites for the transfer of significant areas of state lands into municipal property. Critics claim that the state is losing control over land resources in cities. But we believe that this control is *shifting towards local communities*, i.e. there is a process of *formation and strengthening of material basis of local self-governance* going on.

Before the land reform of 1991 started, all the lands of Ukraine belonged to the state property. Land Codes of Ukrainian Soviet Socialist Republic (of 1922 and 1971) declared the state property for land the only possible. Upon the declaration of the land reform, urban private estates emerged. Nowadays due to the acknowledgement and establishment of local self-governance in Ukraine there is a necessity for introducing municipal property for urban lands as an institute for

securing rights of local communities. Thus demarcation consists of allotment from urban lands of a share of land which is necessary for the creation of *full-fledged living environment of a local community*.

The Law on Delimitation does not set up the **deadline** for the delimitation to be completed by. In the view of considerable cost of delimitation works which shall be covered on account of local budgets it is thought that the process will take a while. What are the consequences of delimitation not being done?

The first **result** is that there is in fact no municipal land property. It is so because the allotment of a parcel in kind (actual drawing of its boundaries) is the primary base for determination of legal rights in respect of the parcel. On the other hand, indeterminate boundaries do not affect the proprietor rights of the state, because prior the land reform all the lands were owned by the state (i.e. all the parcels within Ukraine's borders at the moment are state property except for lands of private property).

The **second** practical consequence is that local governments do not have land titles. Some notaries having failed to read properly the Transitional Rules of the new Land Code saw here the firm ground for rejecting the registration of deeds for sale of urban lands (local authorities do not have proper papers establishing their rights). In order to sell parcels of urban land the local self-governance bodies will not need land titles till the demarcation is actually done: municipalities derive their legal rights to dispose of land directly from the law.

Allegations that rights of private land owners may be violated by local self-governance selling out private parcels without producing land titles are ill-founded. In order to prevent trespassing against the rights of private land owners the law provides for the duty of local self-governance bodies to inform the public in advance about the sale of land parcels. Therefore a person with a land title would not be taken by surprise. Failing to inform, the local authorities are already in breach of the law which renders all their consequent acts and deeds illegal.

The **third** – financial – consequence is a **10%** share to be transferred by local authorities into the State Budget of Ukraine upon the sale of a parcel. This rule has already become a tradition of Ukrainian budget system. This “tithe” is not at all related to the shares of the state and local communities in land possessions provided for by the

Law on demarcation. Thus prior the demarcation in kind the allotment of funds is absolutely relative, based upon an assumption only; under the regime of lawful state this practice is unacceptable. There is also a risk that this **10%** share may be changed at will by the Parliament, and not to the favor of local budgets. This levy shall be considered as a tax on selling urban lands. In this context the “tithe” is also illegal as far as laws of Ukraine on the State Budget for a respective year must not establish or abolish any taxes and levies.

We would also point out that the delimitation turns the state into a proud proprietor of lands which are excluded from the market circulation. It is only strengthening our message about the groundlessness of the state’s claims for any share of earnings from the sale of lands.

### **1.6.3. Transition from the permanent use to leasehold and privatization**

Table 10 shows that low individual housing building-up occupies about **6,7%** of the territory of Ukraine’s cities, or about **1/2** of all housing building-up. Law provides that private land property is a part of urban land resources. A land parcels as an object of property relations is characterized by demarked boundaries and defined legal rights in its respect. Land titling in respect of urban land parcels (occupied with private houses) allocated before the land reform of 1991 is going very slowly.

According to the official estimation, **13,5** million of Ukrainian citizens have the right to privatize land parcels within the boundaries of Ukraine’s settlements. Within the period of 1992-2001 only **23,7%** of these individuals received land titles. In some Oblasts of Ukraine this process has already been completed, but there are cities where the level of privatization is not exceeding **6-20%**, mainly because of the complexity of procedures and high cost of preparation of documents. Most individual land users are still holding their land parcels without any title or with the most obsolete title of the permanent use.

Before January 1, 2008 all persons which have land parcels in permanent use but which are not entitled to have them in permanent use,<sup>56</sup> are obliged to privatize or lease their parcels.<sup>57</sup> Those who will not start the procedure of privatization or conclusion of lease contracts before that date will lose their right of land use; they also may be

obliged to demolish their houses on the parcels (because without a right to use the parcel one must not erect anything thereupon).

It is clear that the problem of privatization of parcels under individual houses may not be approached from the position of the interests of the city only. The interests of private land users and land owners shall be taken into account and balanced with the community's interests. It is essential to explain to individuals that only land parcels with duly issued land titles may be freely transacted (it may be mortgaged, inherited, sold or leased, i.e. after the issue of a land title it is starting to generate capital and well-being of its owner).

Nowadays the law entitles for the permanent land use the following entities:

1) enterprises, establishments and organizations of state and communal property;

2) resident civic organizations of incapacitated persons, their enterprises, unions, establishments and organizations.<sup>58</sup>

All other persons having land in permanent use shall lose this right after January 1, 2008. The Parliament of Ukraine is currently considering the draft law on entitling religious organizations for the permanent land use.

The existence in Ukraine's cities of land parcels allocated on the conditions of permanent use is a huge problem. It is clear that cities are not able to solve this problem on their own because the institute of permanent use of land is provided for by the Land Code of Ukraine. We believe that the institute of permanent use of land is not an instrument of the modern land law. The problem is that the right of permanent use is functioning along with the land lease. The ground rent paid by land lessees is always higher than land tax paid by permanent users, but it is not impossible to choose between the leasehold and the permanent use — the list of subject of the permanent use is set up by the law. Thus, a right of permanent land use under modern conditions is deprived of economic sense because of the following:

1) the competition between subjects of economic relations is distorted (first of all, for subjects of private law land use is more expensive than for subjects of public law; secondly, parcels in permanent use are allocated on uncompetitive basis). Economic success and

prosperity shall always be based upon inventiveness, efficiency and intellect. So, companies shall not try to prosper on the account of the community applying for some cheap form of land use; they shall optimize their land related expenses by increasing number of floors of their buildings, decreasing their ground floor areas and locating the objects underground;<sup>59</sup>

2) territorial communities and the state as land owners are loosing money on the permanent use;

3) municipal and state enterprises functioning in a non-competitive environment become maladjusted and unprepared to the conditions of competition, and may give up their share of the market in favor of private providers of different communal services.

Well, the right of permanent use has its drawbacks and dangers for its subjects: the term of use is not set up in advance, so this right is not predictable and may not be used as a collateral for financial obligations; it hinders investment activity. The right of permanent land use may cease on any reason, any ground and at any time on the initiative of the land owner; permanent land users do not have judicial protection against the land owner (a renter is entitled to judicial protection at the equal footing with land owners and may call upon the court to protect his rights even against the owner of the land being in his use). But these drawbacks are not overweighting the negative influence which the right of permanent land use is exercising at the formation of healthy competitive market environment in Ukraine. We believe that the legislator shall consider the possibility for the abolishment of this institute of land law or for further limitation of its application (for instance, to provide that the permanent use is applied only to non-for-profit bodies and organizations like state organs, local self-governance, establishments of education, health protection and culture which function exclusively on a non-for-profit basis).

We believe that it is essential to reconsider the application of the permanent use first of all in the sphere of business. For example, state-owned enterprises of oil and gas complex of Ukraine take land parcels for the extraction purposes in permanent use; they pay the annual **land tax** at the rate of UAH **500** per **1** ha (about USD **100**).<sup>60</sup> At the same time private and partly private companies conducting the same business shall lease land for the extraction purposes and pay huge **ground rent** (dozens of thousands).

The only possible way out of this distorted situation — to abolish the permanent use and make all the business entities to pay ground rent at the same footing. It will reconcile interests of business and local communities and improve conditions of the competition.

The permanent land use has another aspect — the aspect of Ukraine's international obligations. Ukraine within the framework of its European integration undertook to adapt and adjust its legislation to the rules and principles of the law of European Community. Without embarking upon all the fine details, we would point out that application of the permanent use exclusively by the state and municipal enterprises shall be qualified as a *state aid* under the rules of the EC on competition. As such, state aid is not prohibited, but if its influence distorts or may distort competition and affects trade between member states of the EC, that aid is declared incompatible with the single market.<sup>61</sup> It is possible to protect the preservation of the permanent land use for the state enterprises providing *services of general economic interest*, but it shall be proven that without the permanent use these enterprises would not be able to discharge functions they entrusted with. Moreover, while assessing all the circumstances of the case, competent bodies will take into account the general interests of the Community — and if the national law undermines those interests, EC institutions will ask for the abolition of the aid. A state which is refusing to abolish a certain law will be subject to solid sanctions of economic nature. Thus, Ukraine's course of foreign policy requires the abolition of the institute of the permanent land use for subjects of economic activities.

#### **1.6.4. Domestic and foreign investments in urban lands: some problems**

Urban lands in Ukraine is a marketable object, they are more or less freely sold and bought. But the circulation of them is being hindered. There two factors hindering the circulation: **(1)** existence of vast areas in cities in respect of which legal rights were not established (they are actually in informal, almost *customary* use) and **(2)** the legal regime for the alienation of lands of communal and state property in settlements.

Urban land resources in respect of which land titles were not



issued cannot be included into market circulation, because they do not have a legal status of land parcels and accordingly, they are not an object of ownership and of any market transaction. Citizens are still not capturing the significance of formal legal rights over the property in the modern world; moreover, the cost of issue of land titles is still too high compared with the earning of an average Ukrainian, and this obstacle prevails over any future benefits. Thus one of the primary tasks of nowadays is explanation to citizens of all benefits of holding legal rights and, secondly, optimization of cost of these rights acquisition and registration. According to the experience of the Ukraine Land Titling Initiative Project, the active, conscious and cautious cooperation with land surveying organizations may decrease the cost of land titling by **2/3 (!)**. But the eagerness in decreasing the cost shall not result in deteriorating quality of land surveying works.

The legal regime for alienation of urban lands of state and municipal property is characterized by the fact that the legislation of Ukraine limits the list of persons entitled to acquire land parcels in property. Among those disadvantaged who due to different reasons, including obsolete and old-fashioned terminology of the Land Code, are not entitled to acquire land, there are subsidiaries of non-resident companies. Moreover, foreign companies and joint ventures shall receive the approval of the Cabinet of Ministers of Ukraine and the Parliament of Ukraine prior to the purchase of land. Here is a brief overview of some rules in respect of the acquisition of land in Ukraine by foreign investors.

Purchase of land parcels by the foreign investors and joint ventures has certain distinctive features:

**1)** Foreign legal entities and joint ventures may acquire land parcels of non-agricultural use only. In this respect we should underline that agricultural lands are almost completely banned from trading till January 1, 2007.

**2)** Foreign legal entities shall have at least a permanent representative office of non-resident (PRONR) in Ukraine in order to buy a land parcel.

**2-1)** Foreign legal entities may buy land parcels for the purposes of conducting business. The law does not specify which particular purposes are connected with conducting business; in this respect we

must point out that any kind of activity included into the Articles of Incorporation of a company shall be considered to have relation to the business of a company provided they are aiming at earning profit.

**2-2)** Foreign legal entities may purchase land parcels of state property upon the approval of the Cabinet of Ministers of Ukraine agreed with the Parliament of Ukraine;

**2-3)** Foreign legal entities may purchase land parcels of municipal property upon the approval of the Cabinet of Ministers of Ukraine.

**2-4)** Foreign legal entities may purchase land parcels of private property without any authorization of the state bodies of Ukraine.

**2-5)** Foreign legal entities may purchase land parcels in cities in case of acquisition of the real estate objects (i.e. they are allowed to acquire land parcels occupied by structures owned by them). The acquisition of a parcel in this case is performed through the **buy-out procedure**, i.e. without a contest.

**2-6)** Foreign legal entities may purchase land parcels in cities for the construction of the objects related to conducting business in Ukraine. In case a parcel in question is of state or municipal property, the acquisition is performed on the **competitive basis** (at the auction).

**2-7)** Foreign legal entities may purchase land parcels outside cities in case of acquisition of the real estate objects (i.e. they are allowed to acquire land parcels occupied by structures owned by them). The acquisition of a parcel in this case is performed through the **buy-out** procedure, i.e. without a contest.

**3) Subsidiaries** of foreign legal entities, i.e. companies set up in Ukraine by non-residents and **wholly** owned by them may not acquire land parcels in property. This rule has already caused a lot of troubles and at the moment the Parliament of Ukraine is considering the draft law providing for the right of the said companies to own land parcels. We suspect that this draft may undergo a very long procedure for there are more immediate issues on the agenda now.

**4) Joint ventures** set up by foreign investors together with Ukrainian citizens and Ukrainian legal entities may acquire land parcels in property under procedures established by law for the **for-**

*eign* legal entities. This rule means that the approval of the Cabinet of Ministers of Ukraine in case of municipal lands and of the Parliament in case of state lands is required.

Under *joint ventures* Ukrainian law understands companies established and registered in Ukraine with a foreign investor's share in the Chartered capital of at least **10%**. If this share is **100%**, the entity is considered a "foreign enterprise".<sup>62</sup> Therefore if this share is less than **10%**, a company is not a joint venture. This conclusion has very strong and unfavorable consequences. A company with a foreign investor's share less than **10%** of the capital is not considered a joint venture for the purposes of the Law of Ukraine "On Regime for Foreign Investments"; accordingly, it will not benefit from the state guaranties provided for foreign investors by this act. On the other hand, for the purposes of the Land Code of Ukraine it will be considered a *joint venture*, and the respective — *restrictive* — regime for the acquisition of land parcels will apply.

There is no special definition for a "*foreign legal entity*". The Land Code of Ukraine, which defines the rules for the acquisition of land parcels, applies this term. As far as this term is being used along with terms "*legal entities established by Ukrainian legal and natural persons*" and "*joint ventures established with participation of foreign legal and natural persons*", and also taking into account that "*foreign legal entities*" shall have a PRONR on the territory of Ukraine to acquire a land parcel, it is thought that a term "*foreign legal entity*" for the purpose of the Land Code of Ukraine means a *legal entity established and registered abroad (non-resident)*.

As regards the lease of land parcels, the current legislation of Ukraine does not specify any additional conditions for the lease of land by foreign investors. The Law of Ukraine "On Lease of Land" lists among lessees Ukrainian legal entities and natural persons, foreign legal entities and natural persons, persons without citizenship, international organizations and foreign states. Under Ukrainian legal entities one shall understand all resident legal entities established in Ukraine in accordance with the laws of Ukraine, including *joint ventures* and *subsidiaries* of foreign companies. There are no rules restricting the rights of the said entities to hold land parcels in lease. As regards the foreign legal entities one must remember that a PRONR is not consid-

ered by Ukrainian law a potential lessee. The reason is that a PRONR is not an entity at all, either legal or natural. It is an *integral part of a foreign company*, so the said company is acting through the mediation of its PRONR. Accordingly, a foreign company itself is a lessee of a land parcel.

The issue of selling land to foreigners has always been tied with different myths, speculations and sometimes with real hysteria. This attitude is not an exclusive Ukrainian achievement — the same problem is known to all countries regardless of significance of land resources in the possession of a country (possibly that it is one of the manifestations of xenophobia). Some states have just abandoned the idea of selling land to anybody — either nationals or non-nationals and apply land lease only; most countries forbid or limit the acquisition of lands by foreigners. Look how active Ukraine has been in selling its lands to foreigners. During the period of September 2002 — September 2005 the Cabinet of Ministers of Ukraine approved the sale of **23** parcels to foreign companies and joint ventures (2002 — **2** parcels, 2003 — **2** parcels, 2004 — **19** parcels, 2005 — **0** parcels). The total area sold amounted to **85,68895** ha. By its resolution of March 30, 2005 # 71-p were cancelled the resolutions of July 13, 2004 # 474-p and of December 23, 2004 # 953-p which approved the sale of **2** parcels in Crimea with the total area of **19,0068** ha. Therefore foreigners and joint ventures are holding today **66,68215** ha of Ukrainian territory (though the area of land they bought from private persons is unknown). So, the threat of total buying-up of Ukraine's lands by foreigner is somewhat overestimated.

Well, today's practice is evidencing that selling land to our own nationals is not solving the problem of *balancing private and public interests* while selling municipal lands and performing urban-planning activity. We believe that public participation in the decision making process and creation of prerequisites for the dialogue between the business and the community, introduction of public-private partnership experience of Europe may improve the relations between the business and citizens and grade up the management of urban land resources, and also facilitate the development of the civil society in Ukraine.

There are also certain difficulties related to the regulation of procedure for acquisition of proprietorship over land parcels. Obscure and

vague wording of articles 127, 128 and 134 of the Land Code of Ukraine led some local officials to believe (or allowed them to believe) that only those companies may acquire proprietorship over land parcels which first concluded a lease contract in respect of those parcels. In our opinion, this conclusion is not in line with the general spirit of the Land Code of Ukraine which is trying to introduce more or less civilized rules for land market. The fact is that such interpretation leads to the practice when cities are not selling municipal lands at the auctions; they first lease parcels to companies which later on acquire the land through the procedure of buy-out, i.e. without any competition and at the cheapest possible price. Therefore local communities are losing money for their social and economic development, and business in cooperation with local self-governance is performing a nice trick for which the softest word is *free-riding*.

The problem is that one article of the Code is clearly requiring to hold an auction for the sale of land of state and municipal property in favor of a business entity, and the other article is not that definite and undisputable on this point. Local officials choose what they like.

We think that the law shall oblige the local self-governance to sell all parcels through the auctions only and to inform the public on the sale of land in order to create real competition and to prevent the violation of the rights and interests of a local community as a land owner.

We believe that the law is building upon the principles of forming open, transparent and competitive land market, but these principles are lost in fuzzy and contradictory rules. Our conclusions may be challenged on the ground of other articles of the Land Code of Ukraine. But we shall understand and recognize that the stake in this dispute is not the intellectual superiority, but the well-being of citizens, communities — the well-being of the nation. The well-being of the nation shall direct and lead the interpretation of the most intractable and obscure rules, serve as foundation for creating new land and property policy. It is known that the universal answer to all difficulties and problems is a right policy. We believe that new — responsible, transparent, unbiased — policy will become a system solution for solving all our problems in the sphere of land and property relations in Ukraine.

### 1.6.5. Long-term lease of lands of municipal property

Cities of Ukraine are not very much in favor of *long-term lease of lands*; under the laws of Ukraine, the lease is long-term if it lasts from **5** to **50** years. As of September 2004 there were reported a bit more than **1000** long-term lease contracts concluded in cities and towns of Ukraine for the maximum term of **49** years<sup>63</sup> (according to another source, there are more contracts for lease of land concluded for **49** years. Kyiv only in 2003-2004 concluded **443** contracts for lease of land for terms from **10** to **50** years).

In our opinion, no form of management of urban land resources shall have the status of primary or principal (be that sale, lease or long-term lease). Our research proves that every form of land management is better fit for a certain purpose; therefore cities and land users shall find the balance of interests and agree upon the most appropriate and adequate forms of land resources management in the context of main types of investment and business activities.

Long-term lease has its advantages as well as drawbacks, but it does not mean that it shall be abandoned or limited. Among the advantages it has are the following:

#### **1. Advantages** of long-term lease for a *lessee*:

**1.1.** It provides the possibility for the realization of investment projects which have well-defined long duration and are not comprising of the sale of a certain new real estate object (for example, construction of a hotel, business centre). The realization of projects ending up with the alienation of newly constructed real estate objects (housing facilities, for example) is better coordinated with a short-term lease or sale (but in the last instance the transaction cost is higher).<sup>64</sup> If the sale of a new housing stock is conducted with the use of hypothec schemes, the long-term lease also fits;

**1.1.a.** Long-term lease provides the possibility of long-term activities of persons which are not entitled for acquisition of land parcels in property (religious organization,<sup>65</sup> NGOs, international organizations);

**1.2.** It allows for long-term planning of payments for land (in case of purchase a buyer shall pay within **1-2** years maximum; in Kyiv a **10**-day term is applied);

**1.2.a.** It secures access to land resources for users with limited funds (it is especially important for cities with high value of land);

**1.3.** Rights of a long-term lessee are protected in the same way as rights of a landowner; duration of a contract allows for reimbursement of investments; therefore, a long-term lease is a corollary secure enough for investments, loans and credits. Unfortunately, under present conditions even property over the parcel is not enough secure corollary; it is necessary not only declare the inviolability of land property, but also to take effective steps towards eradication of corruption in the judicial system, local self-governance and state executive;

**1.4.** A list of persons entitled to a long-term land use is much longer than the list of those entitled to acquire land in property.

## **2. Advantages** of a long-term lease for *cities*:

**2.1.** Cities promote the realization of major investment projects (which mean tax revenues, new jobs, development of the local infrastructure);

**2.2.** Cities are retaining full control over municipal land resources (which is weakening or disappearing at the alienation of municipal lands);

**2.3.** Long-term lease allows for multiple reimbursement of the total value of land parcels allocated into the long-term lease. If the rate of a ground rent is **3%**, a city will receive the full original value of the parcel within **33** years. If the actualization is taking place, it will happen even faster. The application of short terms of lease leads to the use of higher rates of ground rent; the application of longer terms allows for lower rates. The latter obviously shall facilitate the development of land users. Of course, cities shall clearly understand the value of their land and the market price of rights they grant to lessees. For example, a lease contract for **50** years is an asset which may secure bank loans. But we shall stress that in Ukraine' cities the rights of lessees over land will become a secure corollary when and only when these rights are highly protected from and inviolable by the owners of the land.

In countries which use a long-term lease of land it is a common practice to use a payment for establishment of a long-term right to use the parcel; this payment is performed upon the signing of a lease contract (or even before) and is not included in the ground rent. For exam-

ple, in Poland this first payment is **15-25%** of the parcel's value; the rate of ground rent depends upon the investment attractiveness of the parcel (it varies from **0,3** to **3%** per annum).<sup>66</sup>

It is also shall be taken into the consideration that the term of lease is defined by the local council, but it is originally suggested and initiated by a lessee. Our research shows that the most popular terms are **25** and **10** years. Accordingly, cities may apply higher rates for the most popular terms of land lease.

It is also essential to develop a list of *factors* which characterize the investment properties of a parcel and influence the ground rent. The factors shall include desirable properties of the parcel as well as its negative properties (unlucky ecology, absence of infrastructure etc.). In this respect a *legal zoning* is very useful an instrument.

We would point out that the application of our suggestions in respect of ground rent may be difficult in practice. According to the Law of Ukraine "On Lease of Land", the rate of ground rent is set up by mutual agreement of parties of a lease contract.<sup>67</sup> In fact, the rate is defined by the local council (or a major) approving the lease (in percents or in a flat sum). The experience shows that lease of municipal lands requires a different mechanism; a simple civil-law agreement building upon the equality of parties does not fit into these relations. Municipal lands are serving the interests of local community, and therefore proceeds which these lands bring into the local budget cannot be a subject of some negotiations between a major and a lessee. This mechanism is also a ground for corruption and discrimination of business. Therefore the local self-governance shall have a right and competence established by the law to define and apply rates of ground rent unilaterally and on the ground of a table of rates approved by the council in an open and transparent way.

The combination of sale of right of long-term land tenure by lease with the auction form of sale of this right will bring more money into local budget and shall facilitate the development of competition in Ukraine's cities.

The main drawback of the long-term lease is a limited ability of a landowner to react to changes of economic conditions and perform re-planning of the area of a settlement. This phenomenon is usually called "*dead are governing alive from the grave*". In our opinion, these words



were said first of all about the countries applying a very long term of a land lease like Poland, Germany and the USA (**50-99** years). In Ukraine, the longest term for lease of land is **50** years, thus the long-term lease shall not scare away Ukraine' cities and towns by the unpredictability of outcomes. Moreover, the process of town-planning is quite time-consuming, therefore **25**-year lease contract is not capable of seriously obstructing plans of local self-governance in the field of town-planning and formation of full-fledged living environment of a city. A thorough designing of general plans of cities will also reduce the need for reviewing them too often. For example, general plans of Dnepropetrovsk were approved in 1932, 1941, 1947, 1956, 1967, 1992 and 2002 (periods of **9, 6, 9, 11, 25** and **10** years).

In the context of duration of a lease contract we would underline that that current law of Ukraine provides the *minimum term of lease* for agricultural lands only. In our opinion, it may have unfavorable consequences, for the lessees of urban lands first of all. Conclusion of a lease contract for **1** or **2** years instead of **15-25** upon which a lessee is insisting may be used as a way to compel the lessee to buy the parcel or go away (because the realization of medium- and long-term investments will become impossible or very costly under these unpredictable conditions). It is clear that for local council it is a way to manipulate the lessee, to perform some influence over him. Therefore it is possible that with the development of business and sharpening of competition the absence of a minimum term for lease may be used for latent violation of competition rules (the authorities have the possibility to favor certain businesses on account and to the prejudice of others).

We think that the solution is the inclusion into the Law of Ukraine "On Lease of Land" of a rule on minimum term of lease of lands of municipal property. This term (for instance, **3** years) may be shortened only upon the written request of a lessee. It would reduce the ground for abuses in this sphere.

This idea may be supported by the fact that other laws of Ukraine provide for a minimum term of use of the state property. For example, concession contracts are concluded for the term of at least **10** years.<sup>68</sup> The concession regime is very close to a lease regime, therefore the application of similar rules shall be considered possible.



## Management of urban land resources: municipal experience

### 2.1. Kyiv

Kyiv is the capital of Ukraine, its legal status is established by the special Law of Ukraine “On Capital of Ukraine – Hero City Kyiv” and this fact causes certain specific in functioning of local self-governance in Kyiv. It has its bearing on land resources management as well. The executive body of the City Rada (City Council) is the Kyiv City State Administration (KCSA), and the head of the city council is the head of the KCSA. That means that executive competence of local self-governance is discharged by the state body.

#### 2.1.1. Land stock of Kyiv

The total area of the city is **83538** ha. This figure is quite provisional because since the last time the city line was officially approved – in 1936 the territory of Kyiv has grown, but this growth is still not having a proper legal nature and confirmation (see below for more detailed overview of the “border conflicts” between Kyiv and Kyiv Oblast which now officially declared to be over but according to others have assumed a latent form). The structure of land resources of Ukraine’s capital is shown in Table 17 below.

We are pointing out that Kyiv has not yet completed the inventory of land resources. As of January 2004 the inventory works were finished on **36082,6** ha or **43,2%** of the city area (**81,5%** without lands with forests, waters, open swamp lands and lands without vegetation). Accordingly, one must keep in mind this fact while assessing the structure of the land stock and changes thereof in Kyiv.

Land stock of Kyiv as of January 1, 2004

#	Category/Function	Area, ha	Proportion, %	
1	<b>Building-up</b>	<b>33734,00</b>	<b>40,38</b>	
	including:		Share of built-up territory	Share of the total area
1.1	Housing and public building-up	11368,36	33,7	13,61
	including:			
1.1.1	Low (individual) housing stock (3)	2637,00	7,82	3,16
1.1.2	Multi-storey housing stock	5300,00	15,71	6,34
1.1.3	<b>Public building-up</b>	3431,36	30,18	4,11
1.2	Industrial building-up	5296,24	15,7	6,34
1.3	Commercial building-up	1990,31	5,9	2,38
1.4	Lands used for resting (1)	11975,57	35,5	14,34
1.5	Transport and communications	2395,11	7,1	2,87
	Other use	708,41	2,1	0,85
2	<b>Lands with perennial vegetation</b>	<b>36406,00</b>	<b>43,58</b>	
	including lands of health-improving, recreation and environment protection use	35600,00	42,62	
3	<b>Lands of water stock</b>	<b>6680,00</b>	<b>7,99</b>	
4	<b>Agricultural lands</b>	<b>5894,10</b>	<b>7,06</b>	
5	<b>Of historical and cultural use</b>	<b>600,00</b>	<b>0,72</b>	
6	<b>Other uses (2)</b>	<b>223,90</b>	<b>0,27</b>	
	<b>TOTAL</b>	<b>83538,00</b>	<b>100</b>	

Table 17

**Notes:** (1) lands used for resting are territories allocated for dacha building and servicing. Kyiv has a common to all Ukraine's large cities problem – on its highly valuable lands parcels with dachas are situated. In total, there are **500** thousand parcels with dachas within the boundaries of settlements consuming **30** thousand ha; **1100** ha of these lands are in Kyiv.

(2) According to the data available, as of January 1, 2001, organizations, enterprises, establishments and military units of the Ministry of Defense had in use **1600** ha of Kyiv area.

(3) According to another source, low (individual) housing building-up occupies **1200** ha.

It is quite interesting to follow the trend of changing of the city

land stock. The Table 18 below reproduces these changes for the period of 2001-2006:

*Current and perspective changes of the land stock of Kyiv*

Category/Use	As of 01.01.01	As of 01.01.04	Plan for 01.01.05	Plan for 01.01.06
Lands with building-up	33900	33734	34000	36500
Forests and perennial vegetation	36100	36406	36300	36100
Waters	6700	6700	6700	6700
Agricultural lands	5700	5894,1	5800	4000
Open swamp lands	300	300	300	200
Open lands without vegetation or with insignificant vegetation	900		600	100

*Table 18*

By pattern of proprietorship the land stock has the following structure:

*Structure of the land stock of Kyiv by patterns of proprietorship, 2004*

#	Pattern of proprietorship	Share, %	Area, thsnd ha
1	<b>State</b>	<b>97,13</b>	<b>81,1</b>
1.1	including lands not allocated for use, reserve land stock	20,84	17,4
2	<b>Municipal</b>	<b>0</b>	<b>0</b>
3	<b>Private</b>	<b>2,87</b>	<b>2,4</b>
3.1	natural persons	2,83	2,367
3.2	legal persons	0,04	0,0328
	<b>TOTAL</b>	<b>100</b>	<b>83,5</b>

*Table 19*

Such odd category as lands not allocated for use is steadily decreasing. As of January 2001 the area of such lands amounted to **18,6** thousand ha, and as of January 1, 2004 – **17,4** thousand ha.

According to the local Program for social and economic development, upon the delimitation of lands of state and municipal property

the state will have **20** thousand ha, and **59** thousand ha will become a property of the territorial community (by the way, the same area was allocated in *permanent use* to natural persons and legal entities).

It is worth mentioning that the share of land in private property and in lease is very small:

*Structure of private land ownership and land use in Kyiv, 2004*

#	Category	Share of private lands	Share of the city area	Area, ha
1	In property of citizens	3,58	2,83	2367,2
2	In property of legal entities	0,05	0,039	32,8
2.1	including legal entities set up with the participation of non-residents	0,02	0,015	12,442
3	In use of legal entities	93,04	73,65	61500
3.1	in permanent use	90,17	71,38	59600
3.2	in short-term and long-term lease	2,87	2,28	1900
4	In use of natural persons	3,33	2,64	2200
	TOTAL:	100	79,16	66100

*Table 20*

**Notes:** (1) in plans of local administration there is privatization of lands in use of citizens; by the end of 2005 the area of land in property of citizens might reach **4567,2** ha. (2) There is again a big problem of lands in permanent use; the worse is that the significant share of lands attractive for investors and capable of bringing into the budget huge revenues is in the permanent use of state authorities (there is no chance of them moving away, of course) and state enterprises not subject to privatization (there are **276** state enterprises in Kyiv which are not subject to privatization and they will retain the right of permanent use after it cease for many other land users, i.e. after January 1, 2008).

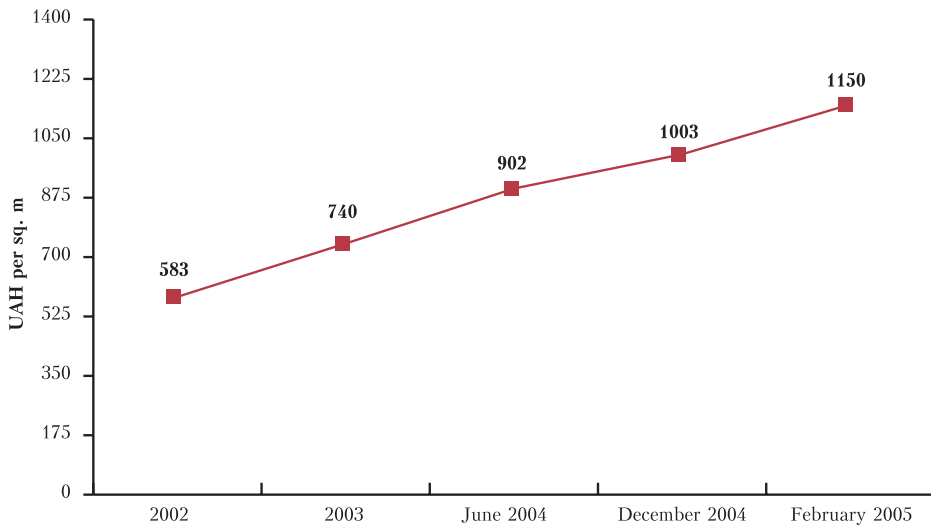
### **2.1.2. The role of land resources in Kyiv's budget**

As it was stated above, in continental Europe the lease of urban lands brings into local budgets up to **50%** of the total revenues, and in cities with lack of land – up to **70%**. In Kyiv in 2003 the lease of urban lands brought in the budget only **15%** of the annual revenues. Sale of land parcels in 2003 raised UAH **166** million; this source of

income exceeded the revenues from the lease of land. The city sold **31,6** ha of non-agricultural lands, or **1/2** of Ukraine's annual sales.

The current situation facilitates rapid price growth on the primary as well as on the secondary land market. According to the information of the KCSA, the average price of 1 sq. m at the primary market in 2002 was UAH **583**, in 2003 – UAH **740**, in the first six months of 2004 – UAH **902**, on January 1, 2005 – UAH **1003** and in February 2005 the prices reached UAH **1150**. The lowest price in 2004 was UAH **74**, and the highest – UAH **2506,75**. This tendency shows that even current level of lease and sale of urban lands in Kyiv will allow for the growth of land related revenues of Kyiv's budget.

*Trend of average land prices in Kyiv, 2002-2005 (primary market)*



*Chart 7*

We would point out that certain influence upon prices had the review (actualization) of the monetary valuation of lands. The city council is refreshing and reviewing the valuation on a regular basis.

On February 17, 1994 the City Council passed the decision on payment for land in Kyiv. That decision was building upon the complex economic valuation of the territory of Kyiv adopted by the local council on April 4, 1988. The complex valuation provided for 5 eco-

conomic and planning zones (EPZ) of Kyiv: *central zone, including the kernel of the downtown, medium zone, peripheral zone, zone of settlements and industry and zone of forests and parks.*

Now city has **190** EPZs. Well, this number of EPZ allows for more precise and detailed zoning. But we would point out that other cities are using less number of EPZs (Minsk – **5**, Khmelnytsky – **3**, Vladivostok – **6**, Khabarovsk – **29**, Ekaterinburg – **4**, Donetsk – **21**). We think that too much detailed structuring of the territory of the city may well lead to considerable additional cost of collecting, processing, using and storing the information on every EPZ. Secondly, it may build upon insignificant fine details and slim differences and therefore influence the value of land and land tax without a sufficient ground. On the other hand, other cities have even more EPZs. For instance, there are **1500** planning districts in Moscow. But the latter has bigger a territory (**109** thousand ha) and **4** times bigger population (**10,4** millions); higher intensiveness of building-up and density of population.

In July 1997 the Kyiv City Council passed a new decision on payments for land (decision # 216). It was again reviewed in April 2000. Moreover, the City Council adopted a decision on approval of the monetary valuation of land of April 27, 2000 # 104/825. For more precise valuation a list of local factors is used, the influence of which upon the value of a parcels has been established by a special decision of February 12, 2004 # 63/1273. The rates of ground rent are defined on the basis of the decision of the City Council of December 2000 # 118/1095.

Most of the decisions of Kyiv City Council and the KCSA are available on Internet; that brings elements of openness and transparency into the sphere of land management the access to which is usually quite restricted.

Active work of local self-governance in the field of development of legislation as well as in realization of the land reform has become one of the factors which facilitated the significant growth of land related payments: from UAH **31,3** million in 1994 they reached UAH **375,3** million in 2004 (they grew by **12** times).

The following Table 21 and Chart 8 are illustrative of the role which land resources plays in the forming of city's budget:

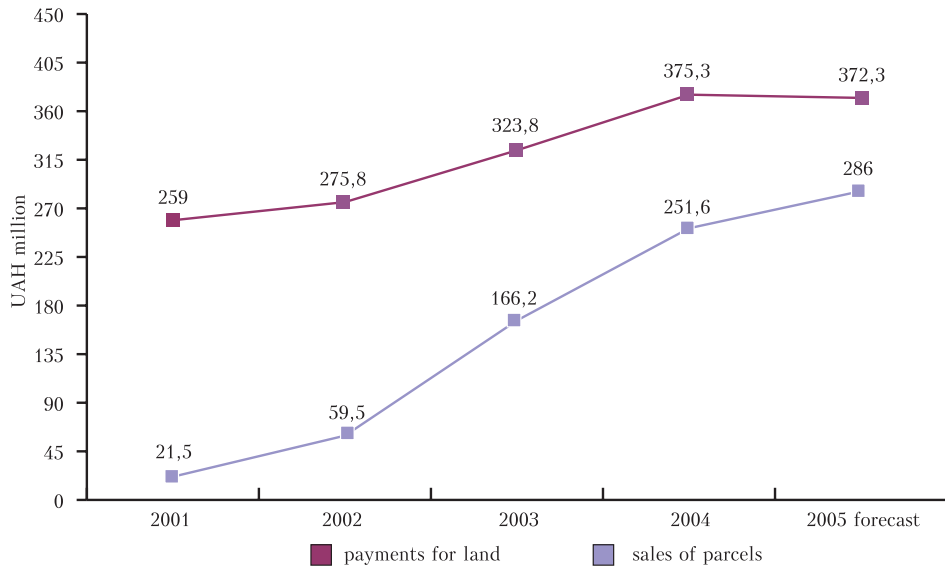


*Land resources in the budget of Kyiv, 1999-2005*

Category of payment	1999	2000	2001	2002	2003	2004	2005 plan
<b>Payment for land</b>	-	-	-	56,4	81,3	124	156,958
ground rent	-	-	-	219,4	242,5	251,3	215,342
land tax	-	-	259	275,8	323,813	375,3	372,3
<b>Sale of parcels</b>	1,2	8,4	21,5	59,5	166,2	251,6	286
<b>Reservation of parcels</b>	0	0	3,7	9,77	18,2	-	-
<b>Sale of land lease right</b>	1,45						10
<b>TOTAL:</b>	-	-	284,2	341,57	508,013	626,9	668,3

*Table 21*

*Dynamics of payments for land and sales of land, Kyiv, 2001-2005*



*Chart 8*

**Note:** a the moment when this book has almost been prepared for publishing it was announced by the KCSA that there was drastic downfall of local budget proceeds from the sale of parcels; as of September 1, 2005 the city collected only **15%** of the plan for 2005. The downfall is explained by the protests of the local population against excessive building-up of the downtown; the protests scared away investors and devel-

opers. On the other hand, it also revealed that city authorities were not even thinking about sale of parcels in less attractive areas on the outskirts; the whole city-planning and budget policy was built upon one simple idea of quick selling of the most attractive parcels downtown. The City hall has not only lost its public rating, it has also shown its neglect and indifference towards complex development of the city.

These data are also proving the *attractiveness of land lease compared with the sale of land*. The proceeds from sales are very impressive, they have — so far — high dynamics of growth, but they are of one-time nature, and at a certain moment this source of funds will disappear. Proceeds from land lease are stable and protected from inflation source of revenues of the local budget which allows for effective use of municipal land resources. From this point of view, the sale of land is exhausting land resources as a source of replenishment of the local budget.

The advantages of land lease are better understood when proceeds from the ground rent and proceeds from the land tax are compared in their relation to areas covered with the ground rent (parcels in lease) and land tax (parcels in property and in permanent use). The following Table 22 and Chart 9 are reproducing this comparison as of January 1, 2005. We would note that the results of the comparison for Kyiv are in line with the national trend (ground rent is much more budget-effective than the land tax).

We would also add that against the background of significant growth of sale of lands in 2003-2004 the proceeds from the *land tax* are decreasing (though the share of land covered with the land tax and number of taxpayers are increasing): from UAH **242,5** million in 2003 to UAH **215,342** million in 2005 (according to the budget). This is an unexpected trend because during 2004 the area of lands in private property grew by **25** ha.

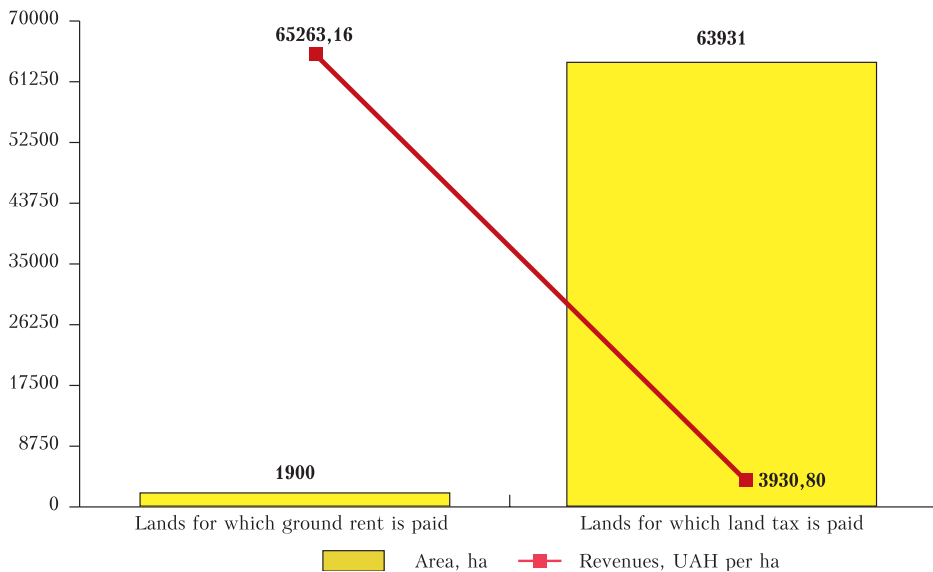
In 2005 the sales of municipal lands “unexpectedly” dropped, and the budget lost quite a part of its revenues. We hope that losses of 2005 on sale of lands will convince the City Council that land lease is in fact a better form of land resources management, especially under conditions of unstable land rights which in Ukraine are still without adequate protection. In general, investors are interested in property rights in land; but when these rights are under threats, it is better to have land in leasehold. The level of protection of leasehold rights is still weak but losses are clearly less than in case of deprivation of property rights in land.

*Ground rent and land tax, Kyiv, 2004: use and effectiveness*

#	Category	Area, ha	Share, %	Proceeds, UAH million	Share of land related payments, %	Revenue per 1 ha, UAH
1	Lands for use of which the ground rent is paid	1900	2,28	124	33,04	65263,16
2	Lands for use of which the land tax is paid	63931	76,529	251,3	66,96	3930,80

*Table 22*

*Ground rent and land tax, Kyiv, 2004: use and effectiveness*



*Chart 9*

The use of competitive forms of land acquisition and allocation is still relatively weak; it is even more disturbing in view of growing sales of municipal lands. Out of **74** parcels sold in 2003 only **3** were alienated through the auction procedure (sale of these **3** parcels raised UAH **10,5** million). In 2004 this ratio was preserved: only **3** parcels were sold at the auction out of **78** parcels. According to the estimation of the Main Control and Revision Department of Ukraine, Kyiv could have raised additional UAH **10** million in 2003 had it used auction pro-

cedures more actively. Well, the results of auctions are always hard to predict but if the sale through the auction is taking place it always raises more money than the buy-out.

It is also interesting that the action procedure is used exclusively in respect of parcels without building-up, though the current laws of Ukraine do not prohibit the auction sale of parcels with building-up (except for the sale of parcels to owners of building-up).

During 2000-2004 Kyiv resorted to the practice of *reservation of land parcels*.<sup>69</sup> The practice was established by the Order of City Major of August 17, 2000 # 514-MG. The reservation provided for conclusion in the future, within **3**-year term, of contract of sale or lease of a parcel (before that moment persons in favor of whom parcels were reserved could not use them). City undertook not to sell the reserved parcel to anyone. The reservation had also raised some funds for the city. In 2001 it raised UAH **3,7** million, in 2002 — UAH **9,77** million, in 2003 — UAH **18,2** million. In 2004 the Main Control and Revision Department of Ukraine recommended the City Council to give up the practice of reservation because this practice was not provided for by the law and, secondly, the payment for reservation was collected at the rate of **0,5%** of the monetary valuation of a parcel; it was much lower than the possible rate of the ground rent.<sup>70</sup> Moreover, quite often persons in favor of whom the parcels were reserved, actually performed the use of them. According to the estimation of the Main Control and Revision Department of Ukraine, the capital lost UAH **54,6** million in 2003 only because of the reservation. The practice was abandoned on the ground of the City Major Order of March 12, 2004 # 73-MG.

In our opinion the institute of reservation could be used in respect of parcels which are not allocated for use during the period of development of necessary land surveying and urban-planning documentation (i.e. during the time which passes between the decision of the City Council to allocate a parcel and signing of the lease (sale) contract by the City Major; sometime over two years lapse between these two events); it is essential not to allow for the land use in this period and also to establish a precise term for all procedures. The Ukrainian practice is evidencing that cities are losing serious money due to the long duration of all procedures in the sphere of land allocation and urban-planning. On the other hand, the reservation practice is not in line with idea of selling all parcels without building-up through the auction

procedures (in case of auction sale the land parcel is bidden with all the necessary documentation). Thus, the reservation could be applied to parcels which were not sold at auctions provided there is an interest towards them.

One of the important aspects of active development of urban lands in Kyiv is the *growing pressure at and additional burden on the infrastructure of the city*. The erection of new buildings of different use requires the rapid development of transport, social and engineering services, and communication lines. Taking into account that the interest towards the development of the infrastructure is mutual – investors as well as the city are interested in it – there is a wide-spread practice of collecting from investors of new construction projects of special contributions for the development of social, transport and engineering infrastructure of the city. The collection is regulated by the decision of the City Council of February 27, 2003 # 271/431.

### 2.1.3. Factors influencing the land relations in Kyiv

#### 1) *Natural deficit of land resources*

According to the Table 17, Kyiv has the biggest area among all pilot cities of the Project, in total **83538** ha, out of which **43086** ha (**51,58%**) is occupied with forests, perennial vegetation, waters, swamp lands. So, the city may use for placing urban-planning objects only **40452** ha or **48,42%** of its area. **33734** ha had already been built-up; therefore Kyiv has quite a limited space for the new construction, and among the most promising directions of Kyiv development are the reconstruction and renovation of districts of obsolete building-up, reclamation of new areas and extension of the city' area.

The natural lack of land resources is supplemented by drawbacks of construction projects of **50ties-80ties** of the last century. First of all, the norms of building-up provided for extensive use of land; secondly, considerable areas of the city are occupied by low (individual) housing building-up. **32000** of private houses (usually one-floor or two-floor)<sup>71</sup> occupy the area of **2637** ha. At the same time districts Obolon and Troeschina occupy respectively **850** and **873** ha and have aggregated population of **600** thousand persons. Kyiv is certain that under current conditions all private manors shall be situated beyond

the city line; only in 2003 the City Council rejected **32000** petitions on allocation of parcels for private houses construction. It averted the doubling of areas under low (individual) housing stock.

Sizeable areas — **1100** ha — are occupied by parcels allocated for private gardening; **74,6** ha was allocated for dacha construction. In our opinion, parcels for these purposes shall be allocated beyond the city line.

Considerable areas are consumed by one-floor garages. There are more than **400** garage cooperatives in the city; **3,7** ha are under private garages. As of January 1, 2003 in Kyiv were reported **297** one-level parking lots which occupied **112** ha of highly valuable urban lands. Under conditions of the average annual growth of the number of vehicles in Kyiv by **60** thousand units at the least, it is impossible to retain the use of one-floor garages. The city is planning to build multi-storey and underground garages. In August 2005 the KCSA announced about its plans to erect at least two multi-storey garages in every district of Kyiv.

## *2) Absence of demarked city boundaries*

The boundaries of Kyiv just like boundaries of any Ukraine' city is approved by the Parliament of Ukraine. Kyiv has a special status but it does not have boundaries. The last time its boundaries were officially approved in **1936**. Nowadays **1880** ha on the outskirts of Kyiv are disputed; accordingly, it is impossible to draw the city line.

The “border conflicts” between Kyiv and Kyiv Oblast have been smouldering for a long time already. Certain territories (Bortnychi), the transfer of which was decided upon back in the 80ties, are considered to be “disputable”, and the Oblast did not want to give up on them in favor of the city. It is possible that such position was rooted in fiscal considerations. Placement of commercial objects exactly behind the city line — on more affordable lands — is convenient for the business, for Kyiv is the bulkiest local market of the goods, works and services. The Oblast expects additional pecuniary incomings, including land payments. Moreover, local budgets are receiving additional revenues as local taxes and duties. Kyiv authorities could not find a common ground with the former Head of the Oblast State Administration Mr. Zasuha. Upon the appointment of the new Head of the State Oblast Administration, Mr. Evgen Zhovtyak, the Mayor of

Kyiv Mr. Omelchenko expressed his confidence in the swift solution of the problem. Recent statements of the City and the Oblast are proving that confidence. Moreover, the issue of Kyiv boundaries has received the attention of the Government. In August 2005 the Vice-Prime-minister of Ukraine on issues of administrative and political division Roman Bezsmertnyy hold a meeting with representatives of the KCSA, Kyiv Oblast State Administration, Ministry of Justice, Ministry of Economics, Ministry of Finances, State Statistics Department and State Committee on Land Resources. At this meeting a principal decision on Kyiv border line was taken. At the meeting it was stressed that “all the muddle and corruption in land relations begin with the absence of boundaries and general plans of settlements. The absence of the simple at first look things is becoming the root of all evil and of humiliation of people”.

There are also certain territories outside the city but in fact they are being actively used by Kyiv (Velyky Isle, village Kozyn).

The current laws of Ukraine provide for quite complex a scheme for the establishment and modification of city boundaries; may be that is the reason why Kyiv has not done this yet. Kyiv City Council shall submit its proposals to the Parliament of Ukraine. The Oblast also has the right to submit such proposals to the Parliament. Accordingly, there is a necessity to agree, to coordinate the proposals. Moreover, local state administrations — i.e. administrations of districts — submit their conclusions in respect of the establishment and modification of the boundaries. Therefore in order to draw that “closed imaginary line on the surface of land” it is necessary to adjust positions of at least three subjects of administrative and territorial relations and to persuade the Parliament. It well may be that the scheme allows for better realization of interests of local territorial communities and the state. But the absence of definite terms laid down by the law for the coordination of positions of local councils and submission of conclusions of state administrations as well as uncertainty of the timeframe for the parliamentary procedure facilitates the unlimited stretching of the consideration of the issue.

### 3) *Demographic situation*

According to the official data, as of January 1, 2005 the population of Kyiv was **2666400** persons, including **2625100** of perma-

ment residents. Only during the period of August 2004 – January 2005 the population of the city grew by **21988** persons (**0,8%**).

Thus on the territory of **43** thousand ha (**0,07%** of Ukraine’s area) dwell **5,5%** of Ukraine’s population. Accordingly, the density of population is quite high, **3141** persons per **1** sq. km (on the basis of the total area) or **6104** persons per **1** sq. km (on the basis of the areas which may be used). The average salary in Kyiv in December 2004 was UAH **1217,2** (the highest in Ukraine) what is **73%** up the average level in the country (UAH **703,77** грн.). It is no surprise that Kyiv demonstrates the stable growth of the population, mostly on account of *migration* (natural growth if negative). These factors support further growth of number and density of the population, as well as demand for land and housing facilities. According to Mr. Andriy Tarnopolsky, a Deputy Head of the Main Department on Land Resources of the KCSA, the ***curves of the growth of prices for housing facilities and on land parcels have recently become parallel***, and this trend will hold during the nearest years.

#### 4) High economic and investment activity in the city

The investment activity in the city is characterized by the following data:

*Major indicators of investment activity in Kyiv, 2003-2005*

Indicator	2003 reported	2004 expected	2005 forecast	2005 to 2004, %
Capital investments on account of all sources, UAH million	9921,7	11285,4	13133,5	110,1
Foreign direct investments (growth), USD million	260,2	390,0	417,3	107,0
Aggregate capital of non-residents, USD million	2123,4	2494,6	2911,9	116,7
Foreign direct investments per capita, USD	807,2	938,9	1086,7	115,7

*Table 23*

The construction activity in Kyiv is the highest in Ukraine. The fourth year in a row the capital puts into operation more than **1** million sq. m of housing facilities.<sup>72</sup> In 2004 in Kyiv there was put into opera-



tion **1050,5** thousand sq. m of housing area, or **13,88%** of Ukraine's result of the year (**7566** thousand sq. m). This level is the highest in Ukraine; it remains the highest even on per capita basis: it is **402** sq. m per **1000** inhabitants of the city.<sup>73</sup>

One must remember that almost all housing facilities erected in Kyiv are multi-storey buildings. According to the official information, in 2004 Ukraine built **5** million sq. m of one-storey housing stock; therefore the multi-storey housing stock accounted for **2,566** million sq. m only. **1,0505** million of sq. m out of that figure was erected in Kyiv. It is almost **41%** of all multi-storey housing stock built in Ukraine in 2004 (!).

This information proves high investment attractiveness of the construction projects in Kyiv, in particular, of the construction of housing stock.

Investors are also attracted by quite a liberal regime of the investment activity in Kyiv. The contribution of investors for the development of social, transport and engineer communications collected by Kyiv upon the putting of objects in operation is not exceeding **10%** of the value of objects; in Moscow this figure is **40%**.

During 2005 in Kyiv a protest movement of citizens grew very strong. The community is protesting against construction of new building downtown and in the park zones, they are blocking the construction sites and picketing the City Hall. Picketeers are claiming that allocation of land parcels for construction and the construction itself are being done contrary to the law, construction rules and with gross violation of civil rights. In any case one must admit that raised protest activity of the population is clearly evidencing the lack (or absence) of effective mechanisms for interaction and dialogue between the community and the local self-governance, between the community and the business.

The City Hall is reacting to civil protests in quite monotonous a way. First there was a idea of a special commission on a land use; then, when protests grew louder, the idea of a special investigation commission came up to check upon the legality of construction in the city. Then the idea of a public committee appeared to let the community to express its opinion. In March 2005 the City Hall declared the creation of the municipal Institute of the General Plan which should give an

additional assessment of allocation of parcels and construction and urban-planning projects.

We think that the effect of the said measures could be minimal. In fact, the City Council is creating its own new departments and bodies to perform additional coordination procedures in respect of land parcels allotment. That means that the stage of coordination of a land parcel allotment will be enriched with new procedures and require more time and money. The final decision in any case rests with the City Council, and therefore any number of coordination bodies and procedures does not improve the situation; the City Council is not bound by the duty to follow the conclusions of communal services in respect of land parcels allotment and objects placement. It may be much more effective to perform control procedures over decisions of the City Council itself. In our legal system such control rests with the judiciary. Accordingly, persons who consider the decision of the City Council on land parcels allotment or objects placement to encroach upon their rights or to violate the building-up norms, should bring the case to the court and appeal the decision.

We would also add that the initiative of the local self-governance of checks upon its own decisions may in fact be a presumption that such decisions were taken not fully in line with the law. To save the face, the local self-governance will be compelled to establish that all the decisions on land allotment are lawful. If a *scapegoat* is found (i.e. a developer who illegally acquired a parcel or placed an object), will the members of the City Councils who voted in favor of a parcel allotment of object placement be brought to justice?

Moreover, one shall take into consideration the *human factor*. The more steps and decisions are taken on the consent and approval of some official, the more risk of corruption is present. Under present conditions it is more effective and corruption-protected to introduce as many as possible automatic approvals, i.e. approvals based upon the multi-layer digital map of the city which has all the necessary information on land parcels and limitation of use thereof. Naturally, for the creation of this map it is necessary to complete the inventory of land, delimit the city line and lands of state and municipal property, but the essential task is the formation of a political will towards these changes, towards reforming of the current ineffective, ill-organized and deeply corrupt system for allocation of land and approval of construction projects.

As regards the issue of the dialogue and interaction between the community and local self-governance, one must admit that under conditions of feverish urban-planning and construction activity it is indeed hard to take into account the public opinion and balance the interests of citizens and investors. The problem is not to give priority to certain interests priority; the problem is to balance the interests. It is essential to create equal opportunities for public unobstructed expression of the positions and opinions of all parties; the expression shall have the form of dialogue, i.e. when one party is expressing its position, others shall listen. The fact that citizens are resorting to the tactics of the last ditch – the public protest actions – is evidencing that rights and interests of citizens are not regarded and respected. This fact is also showing that investors have considerable advantage in lobbying their interests. The community is still badly organized and without effective instruments for influencing the City Council.

The next step is the formalization of the positions of the community and investors. In April 2004 it was reported that **34** construction companies In Kyiv created an association for the protection of their interests. The interests of the community are now currently represented by the public campaign “Forum for Saving Kyiv”, which mainly piqueting the City Council and blocking construction sites. Taking into account the number of NGOs active in the sector, it would be desirable to create a coalition thereof in order to provide for more effective and professional representation of the community. Otherwise there is a danger of one organization being used as a cover by competitors of those 34 companies. Upon the declaration of the positions of the parties it is necessary to formalize the dialogue between them and define the official status of their negotiations in order to ensure the implementation of the common positions into the city urban-planning policy.

Well, the way we are suggesting is not provided by any law of Ukraine, but what is the law towards the interests and needs of citizens? Today our lifeless, obsolete, inefficient, biased and vague law is capable only of complicating the living of citizens; it helps only those who know the loop-holes. Therefore it is essential to look for the forms of local communities living which allow for better embodiment of aspirations and interests of citizens and facilitate social consensus and well-being. In any case, the unconditional and unreserved following of the letter of law cannot

become the top priority of the local self-governance, especially when the transition to a new type of economy and social structure is taking place.

Only upon the formalization and complete disclosure of positions of the community, local self-governance and business are performed, when the common interests and positions revealed and implemented into decisions on urban-planning policy of the capital, only then it is possible to pass decisions and orders on allocation of land parcels and construction of objects, on liability of individuals and companies violating public interests. Before the completion of all these procedures the policy of the City Council in the field of urban-planning will remain built upon the Ancient Roman “*dura lex sed lex*” and Nazi’ principle «*everything for friends and the law for enemies*». Without true partnership and dialogue between the community and business the city will not develop and prosper. Without insisting on any priorities of its development, we think that the modern town-planning in Kyiv shall rest upon the role which the capital of Ukraine has played for 1500 years – the role of “mother of Russian cities”.

#### **2.1.4. Specifics of land resources management in Kyiv**

##### *1) Sale of property rights and of rights of use*

The first land auction in Kyiv took place on July 15, 2003. **10** parcels with the total starting price of UAH **20,8** million were bidden. The city sold **1** parcels of the area of **0,08** ha with the starting price UAH **245** thousand and selling price UAH **300** thousand. The end use of the parcel was the construction of a car service station.

During 2003-2004 **10** land auctions took place, and in total there were sold **6** parcels. Land auctions are still rare thing in Ukraine, and Kyiv simply follows the national trend. Certain influence upon the weak sales through the auctions may have the lack of lands without building-up; it is not easy a task to make investors to compete about parcels with buildings. But with further shortage of parcels without building-up available for sale the competition among investors shall become fierce and auctions will take precedence over the traditional buy-out. It is possible that land contests as a method of improving the quality of town-planning projects will prevail over land auctions which are capable only of raising more funds.

The sale of rights of lease is taking place in Kyiv, but not very

actively. Within **10** years of the existence of this form of land resources management the city raised only UAH **1,45** million from this source. In order to stimulate the use of sale of lease rights the City Council in September 2004 approved the Concept for acquisition of rights for land on a competitive basis. The Concept is providing that rights over parcels free from building-up shall be acquired for construction purposes through the competitive procedure by way of selling through the auctions of property and tenure rights (except for construction on account of local and state budget). The city budget for 2005 envisages the revenues from the sale of lease rights of UAH **10** million.

The Concept also sets up the starting price of the right of use of a parcel at the level of **30%** of its monetary valuation; then the ground rent is paid annually. The right of use of land parcels with building-up is to be also sold but according to the procedure of buy-out, without a contest. The price of the right of lease depends on the term of lease: less than **5** years – **15%**, **5-9** years – **20%**, **10-24** years – **30%** and **25-50** years – **50%** of expert monetary valuation of land.

Another specific feature of the land resources management in Kyiv is active sale of municipal lands. This priority is quite strong, and some investors spent years negotiating the lease and then had to agree and buy land.

Among the reasons for active sale are high attractiveness of Kyiv for investors, deficit of land resources and low rates of ground rent. But we would add that low rates are compensated by high value of land, actually the highest in Ukraine.

Some investors are trying to lease the land in order to save money on buying the parcel; if the city cannot convince the investor to buy, it applies very a short term of lease (**1-2** years instead of **25**). Those investors who borrow the money prefer to buy land; the proprietorship is considered to be good collateral for loans, better than lease contracts.

Besides clearly *fiscal reasons*<sup>74</sup> for suspicious attitude of the city towards a long-term lease, there are also other considerations. There are lessees who concluded lease contracts for **25** and **49** years, but they are not using their parcels. Kyiv tried to cancel the contracts, but even the court proceedings did not help. Therefore the sale of land is a way of making investors to be more responsible in the land use.

## 2) *Leasehold in Kyiv*

As of January 1, 2005 Kyiv concluded land lease contracts in respect of **1,9** thousand ha, including long-term lease (**2,28%** of the city area). This a very small area; in the permanent use natural persons and legal entities have almost **60** thousand ha; thus the city is losing money. Therefore one of the ways to compensate losses on the land tax is active sale of municipal lands.

According to Mr. Andriy Tarnopolsky, a Deputy Head of the Main Department on Land Resources of the KCSA, the city does not like long-term lease. But practice is evidencing that Kyiv has not abandoned the conclusion of long-term lease contracts completely. On the ground of the City Councils decisions, the following number of long-term lease contracts (for the term from **10** to **50** years) were concluded: in 2002 – **267** , in 2003 – **176**, in 2004 – **196** (Table 24).

*Long-term land lease in Kyiv, 2002-2004*

Year	Term of lease/number of parcels									TOTAL of the year
	10	15	20	25	30	35	40	45	49-50	
2002	77	32	0	150	1	0	0	0	7	267
2003	39	9	0	126	0	0	0	0	2	176
2004	57	71	5	63	0	0	0	0	0	196
TOTAL	173	112	5	339	1	0	0	0	9	639

*Table 24*

Therefore, out of **1018** land lease contracts concluded in 2004, **196** were for the term from **6** to **25** years, i.e. **19,25%** of land lease contracts were long-term.

It is quite often that the city provides land parcels for the realization of construction projects in a short-term lease. It is especially wide-spread in case of housing stock construction (though there were cases when parcels were allocated in lease for **10-25** years).

### **3) Management of the real estate property upon the putting of town-planning objects into operation**

Upon the realization of investment project the developer has the following options:

**1)** to buy-out the land parcel used in the project. This way may be used by developers which are proprietors of newly erected building;

2) to conclude a long-term lease contract in respect of the parcel;

2-1) developers of state or communal property may be allotted the parcels in the *permanent use*;

3) developers of tenement house may transfer the property into the management of an exploitation organization or in use (proprietaryship) of the *condominium*.

The last option deserves for the additional comments.

Land parcels of state and municipal property built-up with tenement houses are transferred into the permanent use of enterprises, establishments and organizations which perform the management and servicing of the houses.

Combined reading of this rule along with the rule of the section 2 of Article 92 of the Land Code of Ukraine allows for the conclusion that land parcels with tenement houses are transferred into the permanent use to state and municipal organizations only. Private exploitation organizations (like condominiums) may receive these parcels only in *lease* (or in *property*). In our opinion this is a form of discrimination between the pattern of ownership. Municipal exploitation organizations due to different reasons have dominant position on the market of tenement houses servicing. This dominant position is grossly abused, and traditionally low quality of services is constantly deteriorating. It looks like the current laws are aiming at preservation of this *status quo* and low quality of services.

In case of privatization of a tenement house by its dwellers, the land parcels upon which the house is erected **may** be transferred into *lease* or free-of-charge into the *property* of the condominium.

According to the data available, between 2002 and 2005 the Kyiv City Council gratuitously transferred land parcels into the property of **4** condominiums (in Ukraine **4021** condominiums have been created; they own **2,2%** of housing stock).

It is obvious that the current laws of Ukraine provide for the opportunity of creation of a condominiums and do not make it obligatory, as laws of many European countries do.

In our opinion Ukraine requires urgent reform in this respect. The mandatory formation of condominiums has the following advantages:

1) the management of land parcels surrounding the house is transferred to the owner of the parcels (the condominium); there are more chances that such management will become more effective;

2) commercial use of land and premises will earn additional funds for servicing the house;

3) private ownership of land parcels will facilitate the protection of rights and interests of dwellers of the house (it will reduce the risk of building-up of adjacent areas with violation of construction rules);

4) joint handling of affairs by the members of the condominium will support the formation of a collective of citizens as a primary cell of the territorial community and civil society;

5) the overcoming of the dominance and monopoly of municipal exploitation housing services;

5-1) improvement of servicing of the housing stock due to introduction of competitive basis for contracting providers of necessary services;

6) the cost of servicing and repairing of urban housing stock will shift from the local state administration (local self-governance) to condominiums;

7) combination of the proprietorship over the apartment with the proprietorship over land will increase the value of this complex.

Today privatization of land parcels by condominiums is going quite slowly. Local self-governance does not take necessary steps to stir up this process, and owners of housing stock show indifference towards perspective or even ignorance. We believe that transition to condominiums as a main form for servicing housing stock will increase effectiveness of housing real estate property management and facilitate inclusion thereof into the market circulation. Dynamic and transparent real estate market is capable of significant improving of living standards of Ukraine's cities.

One of the reasons why local self-governance is not in hurry with creation of condominium is the fact that today a city may sell a parcel for the construction of a dwelling house; the land will be paid for in cash. If a city leases a land to a developer which builds a house, a con-



dominium created by inhabitants of the house will be entitled to acquire the parcel in property *free-of-charge*. Therefore local self-governance is not interested in rapid growth of number of condominiums, especially in newly constructed houses.

### **2.1.5. Measures to improve the effectiveness of land resources management**

Kyiv is applying different measures to improve the effectiveness of the land resources management:

1) “**Condensation**” (compression) of land parcels. In the areas of individual housing building-up land parcels with the size of **0,15-0,20** ha are being “condensed” to **0,10** ha for the allocation of new areas to new land users. The size of **0,10** ha is derived from the new Land Code of Ukraine which provides that for individual housing construction in cities more than **0,10** ha is not allocated.

2) *Thorough assessment of projects for land allocation from the point of view of building-up rules and norms.* If for the construction and operation of a petrol filling station **0,15** ha is enough, no investor will be allocated more.

On the other hand, Ukrainian norms of building-up are still not adapted to the free market economy and to the appearance of the category of *value* as one of the properties of land. For example, in European cities petrol filling stations are using less land and working more effectively. A petrol filling station of a major oil company in the heart of the downtown part of Kyiv (on Antonovich street) has spare parts shop, premises of operator, big freezer with beverages, car vacuum cleaner and a compressor, but there is only **1** main component of the station – the gas pump, and there are no A92 and A80 petrol. In Rome on the area three times less there are at least **2** petrol pumps with all marks of petrol, and the payment is automatic.

3) *Experimental construction of housing stock of increased number of floors*

Kyiv is at the top of the list of Ukrainian cities having the highest rates of housing facilities construction. One of the problems of the housing stock construction in Kyiv is that current norms for housing building-up of 1989 are out-dated and do not take into account recent developments of construction technologies, including construction of

housing stock with increased number of floors (higher than **25** floors). These norms provide that the last – **25**th – floor shall be not higher than **67,5** m above the ground. Taking into consideration the deficit and value of land parcels in Kyiv, as well as growing demand for housing facilities, it seems to be necessary to develop and approve new norms to ensure construction of housing stock higher than **67,5** m.

At the moment construction of housing stock with increased number of floors is having the nature of an experiment in Ukraine. On March 19, 2003 the Board of the State Committee of Ukraine on Construction and Architecture approved the experimental program of the Holding Company “KyivMis’kBud“ (KyivCytyConstruction) for the erection of **5** multistoried houses of increased height. As of February 2005, **14** permissions were issued for the experimental construction (all buildings are to be erected in Kyiv). Permission were issued to: HC “KyivMis’kBud“ (**5** buildings, **30** to **36** floors), Construction Company “UkrAsiaBud“ (**6** buildings, **36** floors), Construction Company “Zhytlo-Bud“ (**1** building), company “T.M.M.“ (**2** buildings, **27** floors).

The experience of the said companies shall be used for the development of new norms for housing construction of building higher than **75** meters.

On January 31, 2005 the Moscow Committee on Architecture issued the preliminary approval of the draft city construction norms of Moscow. These norms provides for the erection of housing stock higher than **75** meters (**60** floors). According to the information available, the draft norms are expected to be approved by the Government of Moscow within the nearest months. The experience and tips of Moscow colleagues may be used in Ukraine, taking into account that Ukraine and Russia are both currently applying reviewed and updated norms of 1989. Moreover, it shall be underlined that prior the development and approval of the construction norms the no permissions for erection of buildings higher than **75** meters in Russia were issued. It is not clear why Ukraine chose to make experiments with raising of multistoried buildings without prior development of the respective state norms. The danger of this is that houses of increased height require review not only of construction norms, but also many other rules aiming at servicing of such houses. For example, nowadays fire emergency units cannot provide assistance to citizens living higher than **16**th floor.

4) According to the KCSA, the city has almost exhausted its lands without building-up to allocate them for new construction. The alternative is to perform reconstruction or renovation of obsolete housing stock downtown, of districts and blocks of so-called “khruschov” houses (there are **1530** “khruschov” houses in Kyiv). City favors complex projects comprising of construction of modern dwelling facilities as well as full infrastructure development. Only investors offering such complex projects will be allocated parcels for the “starting houses” construction to accommodate inhabitants of the houses to be demolished and dismantled. Unfortunately, Kyiv being a city suffering from an acute lack of land resources still does not have a concept for accommodating city dwellers during complex reconstruction projects implementation. The absence of the concept may be explained by the absence of respective state policy and legal rules.

The Government of Ukraine formed after the Presidential Campaign of 2004, submitted to the Parliament a draft law on complex reconstruction of obsolete housing stock. The idea was that “khruschov” houses would disappear within **12-15** years. Draft law provides that the investor of complex reconstruction shall be designated at the competitive basis. Realization of investments projects of reconstruction of obsolete housing stock is being carried out provided the preliminary compensation is secured. Preliminary compensation includes provision of owners (renters) of living premises in houses to be demolished on their assent with other living premises with no less number of rooms and with the total area increased by **50%**. Moreover, an owner (renter) may acquire more spacious premises, but he shall pay for additional square meters according to the current market prices. Taking into account small total areas of apartments in “khruschov” houses, one may imagine the situation when a family having a two-room flat of **47** sq. m in a “khruschov” house will face the choice: to move to a one-room apartment of the same area in a new house or to move in a two-room apartment with the total area of **90** sq. m and to pay for additional meters a market price (something like USD **15-20** thousand).

On demand of owners, the investor may reimburse the replacement value of demolished dwelling premises. Dwelling premises as compensation shall be provided in starting houses which shall be erected nearby blocks being reconstructed or on land parcels in adjacent blocks. If more than **75%** of owners (renters) of dwelling (not-

dwelling) premises give their consent for moving from the building, other owners (renters) may be compulsory evicted. «Obstinate» owners in this case will receive other premises equal in area or their premises will be bought out according to the replacement value; renters will receive some other adequate premises. In September 2005 the Parliament struck down the draft pointing out that mandatory eviction was contrary to the constitutional rights of citizens on property and housing. Now the draft is being prepared for the repeated second reading.

On the other hand, it may be possible that there were other reasons for suspending the draft. There is another draft law in the Parliament which provides for less generous compensation for the demolished premises: if Governmental draft sets the ratio for compensation **1** to **1,5**, another draft offer **1** to **1**. It would bring Ukrainians from old low-standard apartments to new low-standard apartments.

The lack of land resources is already felt by the City Council which decided to introduce the acquisition of land in Kyiv exclusively on competitive grounds. On October 18, 2004 the respective concept was passed. The concept is a very general document; among its principal positions there are the following:

- 1)** All free from building-up land parcels in Kyiv is acquired on a competitive basis (except for parcels allocated for the construction purposes if construction is funded on account of the local or state budget);
- 2)** Acquisition of land parcels on a competitive basis is performed through the sale of ownership and the sale of right of use;
- 3)** The prevailing form of the sale of land parcels is a land auction;
- 4)** The sale of property rights and of tenure right through auctions are introduced stage by stage from January 1, 2005.

All the factors listed above may facilitate the creation of prerequisites for development of dynamic real estate market in Kyiv, for implementation of modern techniques and technologies in the field of land resources and real estate management. Realization of these tasks shall support the building of full-fledged living environment of the city and support the well-being of the community. But it requires an adequate legislative basis built upon the new ideology of land resources management, transparency, openness and conscious political will towards changes – and then Kyiv will become an example to follow for all Ukraine's cities.

## The experience of realization of town-planning projects in cities of Ukraine

### Restaurant complex at Park Road, 16 (Kyiv)

Restaurant complex “Zozulya” (*The Cuckoo*) was built as long ago as in Soviet times. The decision on allocation of land parcels at Park Road, 16 in lease to Private Limited Company “PROFIL” (the owner of the complex) was taken by Kyiv City Council on September 30, 2004. According to the decision, the city leased two parcels of *commercial and other use* with the total area **4103** sq. m (including **3649** sq. m for the reconstruction, use and servicing of the restaurant complex and **454** sq. m for the use and servicing of the guest parking lot of the complex).

The lease contracts between PLC “PROFIL” and Kyiv City Council were concluded on December 28, 2004, in particular:

**1)** in respect of the parcel with the area of **3649** sq. m for the reconstruction, use and servicing of the restaurant complex – for the term of **1** year, the rate of ground rent – **3%** of the normative monetary valuation. According to the extract from the technical documentation # U-30349/2004 dated December 7, 2004 the normative monetary valuation of the parcel was UAH **6119379,24**, or UAH **1677** per sq. m. Therefore the annual ground rent amounted to UAH **183581,38** or UAH **15298,45** per month (UAH **51,31** per annum for **1** sq. m);

**2)** in respect of the parcel with the area of **454** sq. m the use and servicing of the guest parking lot of the complex – for the term of **5** year, the rate of ground rent – **3%** of the normative monetary valuation. According to the extract from the technical documentation

# U-30350/2004 dated December 7, 2004 the normative monetary valuation of the parcel was UAH **1969917,41**, or UAH **4339,03** per **1** sq. m. Therefore the annual ground rent amounted to UAH **59097,52** or UAH **4924,79** per month (UAH **130,17** per annum for **1** sq. m).

Therefore the annual ground rent for two parcels amounted to UAH **242678,9**.

Taking into account significant cost of the land use, the lessee asked the City Council to allow the buy-out of the parcel allocated for the reconstruction, use and servicing of the restaurant complex (with the area of **3649** sq. m). On January 27, 2005 the City Council approved the decision on the sale according to the procedure of the buy-out. The sale was performed on March 14, 2005 according to the price defined by the expert monetary valuation of the parcel. The experts set up the value at the level of UAH **10241347,57** or UAH **2806,62** per **1** sq. m. The lessee is sure that the buy-out of land and consequent payment of the land tax at the annual basis instead of the ground rent will facilitate his business. Indeed, the land tax will be paid at the rate of **1%** of the normative monetary valuation of the parcel; the annual sum of the tax will amount to UAH **61190** (or UAH **16,77** per **1** sq. m). This in fact **3** times less than the ground rent.

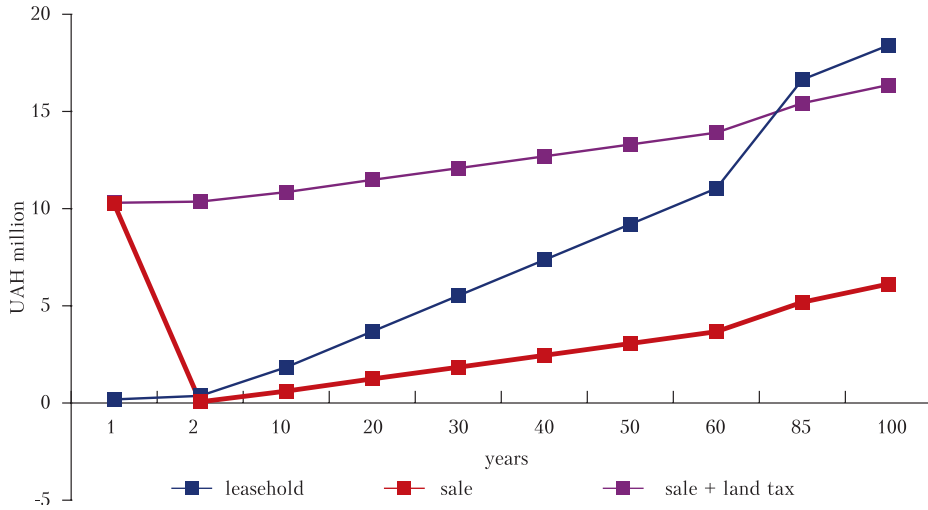
It is clear that the business of the lessee (now — a proud landowner) does not have time limitations; hence the buy-out is appropriate. Let us consider the consequences of the sale for the city and for the lessee (Chart19).

The Chart 19 shows that the buy-out of the parcel will in fact allow for the optimization of the expenditures for the land use, upon the buy-out the current expenses are dropping markedly. But taking into account the cost of buy-out, proprietorship over the parcel will become more cost-effective than the land lease in **85** years. On the other hand it is known that the realization of the investment projects on land parcels of the downtown part of Kyiv multiplies the value of land by *several* times. Therefore the sale of the parcel upon the reconstruction of the restaurant complex may justify the cost of the buy-out.

The financial results of the city are impressive only in the year of the sale of the parcel; in the following years they are looking good only when taken together with the proceeds from the sale. But one shall remember that the unit of the budgetary planning is **1 calendar year**,

thus, the ground rent has considerable advantages for the city (**3** times more effective than the land tax). No doubts that the city has to care about the development of the private businesses; but we would insist on the complex investigation of the way how the development of a business which privatized land and started paying land tax is influencing the local budget.

*Proceeds from the sale and leasehold (aggregate result)*



*Chart 19*

Another aspect of this project which is calling for consideration: why a land parcel under the object the exploitation of which is quite long (the restaurant complex) was transferred into lease for **1** year? Why the local self-governance is not using longer terms or not applying the procedure of land auction? There is an opinion that the short term of lease is a way to make the lessee to buy the land. In the short-term prospective this position of the local self-governance is well understood and clear; the buyer is paying at once the full value of the parcel which is equal to the sum of the ground rent for **56** years (without inflation and actualization). But the sale is significantly decreasing the *regular proceeds*. In cities like Kyiv where the value of land is extremely high (the highest in the state), the lease shall become the main instrument of the land resources management and budget policy of the local self-governance.

We would also underline that another problem shall be considered and receive the attention of the Parliament. This is the problem of the time gap between the decision of the local council on the transfer of a parcel in lease and the moment when the lease contract is signed and registered. In case of “Zozulya” it took only **3** months. But we know that this time gap may last for *years*; the average term necessary for signing the land lease contract is one year after the local council approved the lease. Local budgets are losing money and businesses cannot proceed with their activities (before the contract is signed and registered, it is not allowed to use the parcel, even though the local council allowed for the use). The practice of reservation of land parcels which used to be applied in Kyiv partly solved this problem. But the city had to abandon that practice. It is very important today to find the solution at the legislative level. It may well be that the reservation of parcels is not the solution; it looks like the establishment of precise terms for all stages of the conclusion of a contract for lease of land may help, along with the personal liability of the officials for the violation of terms.

The following project is a very good example of the acute nature of this problem in cities of Ukraine.

### **Office building at 77—79 Vasyl'kivs'ka street (Kyiv)**

The decision on allocation of land parcels at 77—79 Vasyl'kivs'ka street to Private Limited Company “TIKO Construction” was adopted by Kyiv City Council on December 21, 2000. According to this decision, a lessee shall receive two land parcels of the total area of **1618** sq. m (**754** sq. m for the construction, use and servicing of the office complex and **864** sq. m for the organization of the construction works).

The contracts for lease of land were signed between the PLC “TIKO Construction” and the City Council on June 28, 2002; that means that the time gap between the decision of the City Council and signing of the contract was **18** months. The losses of the local budget due to that time gap amounted to UAH **72087,75**. Moreover, during this time the whole construction project could well be completed.

The contracts for lease of land were concluded as follows:

- 1)** in respect of the parcel with the area of **754** sq. m for the



construction, use and servicing of the office complex — for the term of **15** years, the rate of ground rent — **2%** of the normative monetary valuation. According to the Reference of the Main Department on Land Resources of the KCSA # 11 dated June 18, 2002, the normative monetary valuation of the parcel was UAH **2050481,35**, or UAH **2719,47** per **1** sq. m. Therefore the annual ground rent amounted to UAH **41009,63** or UAH **3417,47** per month (UAH **54,39** per annum for **1** sq. m);

**2)** in respect of the parcel with the area of **864** sq. m for the organization of the construction works — for the term of **1,5** year, the rate of ground rent — **1,5%** of the normative monetary valuation. According to the Reference of the Main Department on Land Resources of the KCSA # 12, 13, 14 dated June 18, 2002, the normative monetary valuation of the parcel was UAH **469924,64**, or UAH **543,89** for **1** sq. m. Therefore the annual ground rent amounted to UAH **7048,87** or UAH **587,41** per month (UAH **8,16** per annum for **1** sq. m).

Therefore the annual ground rent for two parcels amounted to UAH **48058,5**.

We would underline that the contract for lease of the parcel for the construction, use and servicing of the office complex for the term of **15** years according to the laws of Ukraine is considered a *long-term lease*. This term is shorter than the term of functioning of the office complex, but anyway it better complies with the nature of the land use and will ensure a stable and protected from the inflation source of revenues for the city for the following **15** years (and the rate of the ground rent exceed by two times the rate of the land tax which would have been paid in case of privatization of the parcel).

### **Office and hotel complex "Stolychnyy" at 5 Khreschatik street (Kyiv)**

Till recently at the address 5, Khreschatik Street, the building of the Supreme Economic Court of Ukraine situated. Nowadays this court is at Kopylenko Street; the building at Khreschatik was demolished. According to the decision of Kyiv City Council, at this and adjacent land parcels a five-star office and hotel complex shall be erected. The

complex is a part of a large-scale project of the reconstruction of European Square. The investor of the reconstruction project was chosen through the investment contest held by Kyiv City Council in 2003.

The complex comprises of a hotel, office premises, trade areas, underground parking lot and (possibly) apartments. The surface part of the complex will have the total area of **40-60** thousand sq. m, and the underground part will have the total area of **18** thousand sq. m.

The investor of the project is Private Limited Company “GRAAL”, the customer of the project — a municipal enterprise “Kyivavtodor”. The estimation of the cost of the project varies between USD **78** and **200** million and depends on the variant of the project chosen for the implementation.

The complex shall become a part of a single architecture ansamble of European Square which includes the National Philharmony (the former merchants assembly, built in 1882 by the architect Nikolaev), the Library of the Parliamnet (the former public library, built in 1911 by the architect Klave), Ukrainian House (the former Kyiv Affiliate of the Central Museum of Lenin, built in 1982 by the architect Gopkalo et al), the building of UNIAN (the former building of a bank, XIXth century), Khreschatyy Park (the former Tsar Garden, since 1882 — the Merchants Garden) and Dnipro Hotel (built in 1964 by the architects Elizarov and Chmutina; the hotel is to be renovated). Therefore the designing of the complex is a highly responsible issue. We would repeat again that the building-up of the historical part of Kyiv shall be guided by the role which Kyiv played during **1500** years — the role of “mother of Russian cities”.

In particular, there are heated discussions in respect of number of floors of the complex. The contests for the best architecture solution for the reconstruction of European Square have already been held twice; no project was chosen.

The construction of the complex required significant investments. Investors were interested in the construction of the complex on a parcel belonging to them on the ground of a property right; it was thought that only proprietorship over the land guaranteed their rights and interests. Moreover, the property right may be used as collateral for loans and credits (and such secure collateral would decrease the interest rate). The purchase of land would also optimize the current cost of

the land use (the land tax at the rate of **1%** would be paid instead of the ground rent, the rate of which may reach **10%**).

The city did not raise any objections in respect of selling the parcel; but it has resorted to its favorite two-tier practice: at the first stage a contract for lease of land is concluded, and later on — a contract for sale of the parcel.

On February 12, 2004 Kyiv City Council passed the decision on approval of the land surveying project on allocation of land parcels to PLC “GRAAL” and on approval of the lease of two parcels of lands for *commercial use* with the total area of **4320** sq. m:

**1)** a parcel with the area of **2030** sq. m — in short-term lease for **1** year for the construction, use and servicing of the office and hotel complex;

**2)** a parcel with the area of **2290** sq. m — in short-term lease for **3** years for the organization of the construction works.

According to the calculation of the Main Department of Land Resources of the KCSA, the normative value of **1** sq. m of the parcels is UAH **4622**; the basis value is UAH **923,16**. For the calculation of the complete value the following factors are applied: of the functional use (**2,5**) and situation in zones: of pedestrian accessibility of downtown (**1,07**), of road of increased city-forming importance (**1,08**), of pedestrian accessibility of high-speed municipal and regional transport (**1,07**), of pedestrian accessibility of national, zoological and dendrology parks (**1,07**) and the factor of location within the boundaries of territories of natural, historic and cultural reserves (**1,11**).

As of September 2005 the contract for lease of land for the implementation of the project has not yet been signed by the City Major. So this project has followed the way of many other projects which got lost in labyrinths of the national and local bureaucracy. In this case **19** months have already been wasted (and from the moment of the investment contest more than **2** years).

The city and investors are losing time and money. From the aesthetical point of view the City, citizens and Khreschatic Street are also losing: the absence of the former building of the Supreme Economic Court of Ukraine creates in the architectural ensemble of the street and European Square an untidy emptiness.

## Conclusions

Upon the completion of our research in four cities (Kyiv, Kharkiv, Lutsk and Odesa) we may conclude that it is necessary to:

**1)** regulate at the legislative level the process of conclusion of contracts for lease of land in settlements in order to precisely define and shorten the terms for the conclusion;

**2)** formulate single conceptual foundations for allocation of land parcels in property and in lease. The choice of methods of land resources management shall build upon the location and function of lands. In particular, it is appropriate to advise the local self-governance to restrain from conclusion of short-term contracts for lease of land for construction of objects with long term of use as well as from the sale of land parcels with high investment attractiveness beyond the contests. It is also necessary to form among the local self-governance in Ukraine an idea of preservation of urban lands in municipal property. The active sale of municipal lands may lead to undesirable outcomes: cities will lose the land as a resource for the replenishment of budgets; institutional investors will be interested in cooperation with private landowners and not with the local self-governance; the center of the power decision making will shift from the local communities towards the owners of resources (including land);

**3)** perform the thorough investigation of the influence which the alienation of municipal lands has at the formation of local budgets and development of businesses acquiring municipal land. According to the results of this investigation cities of Ukraine shall develop and implement socially responsible, transparent, pro-growth and pro-market policy for the formation of land markets in settlements of Ukraine.