

FORMATION AND INSTALLATION OF RESTRICTIONS (ENCUMBRANCES) IN LAND USE

Dorosh Y.M., doctor of Economics

Director of "Kyiv Research and Design Institute of Land Management"

The peculiarities of the formation and establishment of restrictions (encumbrances) of land use are elucidated. Concept of territorial restrictions (encumbrances) and restrictions (encumbrances) in land plots use are differentiated.

Keywords: *restrictions (encumbrances) of land use, territorial restrictions (encumbrances), restrictions (encumbrances) in land plots, land management, intended purpose, legal regime of land use.*

Problem statement

The main purpose of imposing restrictions and encumbrances in land use is an implementation of the human right to favorable to his health and well-being of the environment through the provision of sustainable socio-economic development, preservation of environmental quality and sustainable use of land resources. It should be emphasized that it is about the process of forming areas of sustainable land use. Theoretical understanding of the functional properties of the restrictions of land use and social role of land as a multifunctional social and natural resource is critical to the methodological foundations of sustainable development in the context of sustainable development. The most important for the formation of land use restrictions is a comprehensive research objective (natural) and subjective characteristics

(socio-economic) characteristics of land use.

However, the nature of restrictions and encumbrances in land use is to align the interests of land and land needs that arise in the process of regulation of land relations on different hierarchical levels.

Therefore, the formation of restrictions and encumbrances in land use should adhere to the following principles:

1. Ensure the safety of the state;
2. Combine state and local interests;
3. Scientific justification of the use of land;
4. Achieve a balanced ratio of economic and environmental interests of society;
5. Ensure the rational use and protection of land.

Objectivity of land interests is caused by human interaction with the natural environment.

Analysis of recent research and publications

Works of scholars such as D. Babmindra [1] D. Dobryak, A. Martin, A. Miroshnichenko, V. Spout, A. Tretiak are devoted to the issue of forming restrictions (encumbrances) of land use. At the same time many aspects of the problem require more detailed research and scientific study. First of all it concerns restrictions (encumbrances), which relate to lands in general and particularly to a specific land plot.

The purpose of the article is to justify the demarcation of such concepts: territorial restrictions (encumbrances) in land use and restrictions (encumbrances) in use of land plot.

The main material

Reform of relations of land ownership in Ukraine led to a sharp increase in the number of land owners and land users whose activities affect the condition and quality of land resources.

Constitution of Ukraine stipulates that land is a major national wealth, which is under special state protection. Land ownership is guaranteed. With this land ownership imposes certain obligations on the person and should not be used to the detriment of the person and society.

Article 41 of the Constitution envisages that use of property shall not prejudice the interests of citizens, society, aggravate the ecological situation and the natural qualities of the land. Everyone is obliged not to harm nature, cultural heritage and compensate for damage he made (Article 66). Thus

there can be no absolute rights without obligations. From obligations arise restriction of property rights which are provided by applicable law [5].

Possession, use and disposal of land is carried out freely and must ensure reproduction and improvement of soil fertility, create environment favorable to the human life and health, create the necessary conditions for economic activities on the ground, operation of industrial, transport and other facilities and engineering communications, not violate the rights and interests of citizens, legal entities, which are protected by law.

Land plot is acquired or is transmitted to the owner, the user and the lessee on the relevant law with an established designated purpose and legal regime, and only in this capacity belongs to its holder (user).

Specificity of land relations consists in presence of a significant number of restrictions on the rights of the land owner and user of land. The law distinguishes four types of restrictions:

- Intended purpose;
- Regime of use;
- Land servitudes;
- Environmental, sanitary and other requirements for land use and protection.

The fundamental concepts of land laws that determine the order and limits the use land plots is a intended purpose and legal status of the land. Depending on the destination, according to the current land law, Ukrainian lands are divided into the following categories:

1. Agricultural lands;
2. Lands for residential and public buildings;
3. Lands for industry, transport, communication, defense and other purposes;
4. Lands environmental protection and nature reserve designation;

5. Land for health improvement purposes;
6. Recreational lands;
7. Lands of historical and cultural significance;
8. Forest lands;
9. Lands of water fund.

The legal regime includes a set of rules for land use.

Land use restrictions as a result of the establishment of servitudes oblige the owner of land plot or the land user to give others the opportunity, without owner's permission, perform some actions on the territory of land plot (use part of it for the passage, laying communications, etc.) [3].

Environmental, sanitary and epidemiological, building, fire and other requirements established by a special law. Their failure could cause a pollution of land with toxic substances, loss of topsoil and other negative consequences. The general procedure for establishing and implementing the specified restrictions stipulated in land and other legislation.

Ukraine's legislation and departmental regulations stipulate areas of special treatment of land use: security, safety, sanitary zone. In establishing the areas of special land use those lands from their owners or users are not removed but used with restrictions prescribed by law. Transfer in ownership or granting for use of land plots within the areas of special regime of land use is made on a general basis in accordance with the land legislation with bringing to entities or persons existing restrictions and conditions on the use of land plots.

Security, safety, sanitary zones and bands are set to ensure the preservation of specific objects, create the appropriate conditions for their operation, maintenance and repair, the protection of life and health from the potential

negative impact of these facilities, and the protection and preservation external environment and in particular the land fund of the possible harmful effects of some of these objects.

Ukraine's legislation on the use and protection of land define the procedure and the character of use of lands of different categories.

According to Article 91 of the Land Code of Ukraine landowners and land users are obliged not to violate the rights of holders of other land plots and land users [3]. Accordingly, the legislation provides restrictions concerning the rights of owners business. Land Code of Ukraine envisages that around industrial plants, along the lines of engineering communications, around the objects of conservational, recreational, historical and cultural significance of cultural heritage zones of sanitary protection and security zones are established, and by (87, 88 Articles) Water Code of Ukraine along rivers, seas and around lakes, reservoirs and other water bodies protection zones and coastal protection strips are established [4].

According to Article 39 of the Law of Ukraine "On the Nature Reserve Fund of Ukraine" for providing the desired mode of natural complexes and objects of nature reserves, to prevent the negative impact of economic activities on adjacent territories security areas are established [2].

Law of Ukraine "On Resorts" in Article 27 determines that in order to preserve the natural characteristics of available medical resources, prevent pollution, damage and premature depletion of resources within the health resort sanitary protection zones are set (mountain sanitary protection).

According to Article 32 of the Law of Ukraine "On Protection of Cultural Heritage" to protect traditional nature of indi-

vidual sites, complexes, ensembles around them should be established monuments protection zones: security zone, control zone of building; zones of guarding of landscapes, zones of protection of archeological cultural layer [7].

According to Article 13 of the Law of Ukraine "On hydrometeorological activity" to remove the negative impact of business and other activities on process of conducting of hydrometeorological, heliogeophysical observations and basic observations of environmental pollution that is carried out by hydrometeorological stations and posts, and conservation of representativity around these objects security zones are set.

Law of Ukraine "On the Principles of Urban Development" defines the legal, economic, social and organizational principles of urban development in Ukraine and aimed at creating a living environment, while ensuring the protection of 'the environment and rational land use. Land Code of Ukraine in Articles 63, 164 define objectives and contents of protection of land that should through the legal, institutional, economic and other measures ensure the special regime of land use of conservational, recreational, historical and cultural significance.

According to current Land Code of Ukraine to protect the especially natural areas from adverse human impacts, maintain favorable sanitary and environmental conditions on therapeutic lands and resorts, preserve historical, landscape and urban environment of objects of cultural heritage, ensure public safety and creating the necessary conditions for the operation and maintenance of industrial, energy, transport, communications, water supply sources, various communications and other facilities may be established territorial zone (safety zones or dis-

tricts, sanitary districts (mining and sanitary), zone of protection of objects of cultural heritage with a special legal regime of land use.

Land plots, which are part of such zones, are not removed from land owners, land users and tenants, but within them introduced a special regime of use, which restricts or prohibits those activities that are incompatible with the objectives of established areas.

The most important lands in accordance with Article 150 of the Land Code of Ukraine include lands within the limits of which there are natural objects and objects of cultural heritage that are of particular scientific, historical and cultural value (common or rare landscapes, cultural landscapes, plant community and animal organisms, land plots designated for activities of research organizations) [3]. For owners of such land plots, land users and tenants responsibilities for their conservation are relied.

In addition to the rights set by the Land Code of Ukraine for use, disposal of land, land owners, land users and tenants are obliged in accordance with Article 96 to use the land in accordance with the intended purpose and affiliation with a particular category of lands and permitted ways of use that prevent environmental damage, including land as a natural object.

However, the rights of land owners, land users and tenants of land plot in accordance with Art. 111 of the Land Code of Ukraine may be limited due to the encumbrance of land plots use by certain conditions and obligations, established directly by law, agreement or court order [3]. Limitation of land rights are subjects to state registration and are stored on going the land plot to another owner.

The presence of restrictions on the rights to land leads to restrictions on

the rights of land owners, land users and tenants when they are used in business, and may also provide for granting the right of limited use of this land or part of it for certain authorized people other citizens and legal entities in order of easement [9].

Restricting the rights of land owners, land users and tenants using land plots in business activity and encumbrance their rights of others appear, usually as a result of that land located within or adjacent to the specially protected areas and facilities or are located near hazardous industries or in areas of prospective development, explored minerals, peat and groundwater, the presence of various communications that special objects that define the appropriate legal regime of land plots use.

Limitation of rights to land are established to comply with the rights and interests of land users, environmental requirements, preservation of natural landscapes and protected areas, historical and cultural monuments, provide public safety, proper functioning of industry, transport, communications, engineering infrastructure, protection of water sources and of drinking water supply and other special objects [10]. In this regard, there is need for the establishment of zones of special legal regime of land use: security, health and safety, restraining zones for the land owners.

Based on the above, it is necessary to distinguish territorial restrictions (encumbrances) and restrictions (encumbrances) regarding the use of a particular land plot. Territorial restrictions (encumbrances) related to investigated lands in general, restrictions (encumbrances), the conditions and obligations of land plot use on this particular land plot.

For the formation and establishment of territorial restrictions (encumbrances) design of appropriate land management

documentation must be implemented. This is partly provided by law, in particular Article 83 of the Land Code of Ukraine, where the rule for the implementation of organization of the territory of non-agricultural enterprises is given, which includes the establishment of certain existing restrictions and easements. According to Article 14 of the Law of Ukraine on State Land Cadastre this document shall act in the Council, as the sole land-accounting units and content shall comply with the technical documentation.

The development of technical documentation of land management should identify all existing territorial zones of special legal regime of land use and especially valuable lands, define their location, boundaries and area, set the appropriate mode of use of these lands [8]. Limits of territorial zones defined on the basis of the PDD for the construction of appropriate facilities (special objects) or in accordance with approved standards in the established order. It is recommended to use the available schemes and maps of restrictions and encumbrances in land use of administrative districts, materials of executive surveys for construction of various special objects, land planning projects and planning of settlements, and other materials that contain information about special objects and zones of special legal regime of land use.

To establish the boundaries of territorial zones of special legal regime of land use on the basis of the standards the location of specific objects, their structure, parameters (power), ways of laying, layout, etc. should be determined and considering these factors make the calculation of parameters of zones and establish their limits.

Setting the boundaries of areas of special objects shall be in accordance with the rules established by the relevant regulations.

Location of special objects and their territorial areas are shown on the planning and cartographic material, the area of zones is calculated, a list of special objects and areas of special regime of land use is composed, on the appropriate form explication of land included in the territorial zones of special regime of their use is composed. In the technical documentation indicated list and explication are composed on the checking and forecast periods.

In compiling the technical documentation restrictions and easements in land use that is appropriate mechanism for regulating of land relations, without which it is difficult or impossible to combine the interests of land owners with public interests are counted and set.

Conclusions

Concepts of territorial restrictions (encumbrances) and restrictions (encumbrances) conditions and obligations of a particular land plot while using it are differentiated. For the development and installation of constraints is proposed to develop appropriate land management documentation.

The introduction of the abovementioned restrictions (encumbrances) and their registration will implement the human right to favorable to his health and well-being of the environment through the provision of sustainable socio-economic development and sustainable use of land resources.

References

1. Добряк Д.С., Бамбіндра Д.І. Еколого-економічні засади формування землекористування в ринкових умовах. - К. : Урожай, 2006. - 334 с.
2. Закон України «Про охорону культурної спадщини» // Відомості Верховної Ради України. - 2000. - № 39. - Ст. 333.

3. Земельний кодекс України від 25.10.2001 р., № 2768-III // Відомості Верховної Ради України. - 2002. - № 3. - Ст. 27.
4. Земельні відносини в Україні: Законодавчі акти і нормативні документи / Держкомзем України. - К. : Урожай, 1998. - 816 с.
5. Конституція України // Відомості Верховної Ради України – 1996. - № 30.
6. Новаковський Л.Я., Третяк А.М., Добряк Д.С. Земельна реформа і землеустрій в Україні. - К. : Інститут землеустрою, 2001. - 138 с.
7. Нормативно-правові акти з питань земельних відносин. - К. : Урожай, 2003. - 406 с.
8. Третяк А.М. Наукові основи землеустрою. Навчальний посібник. - К. : ЦЗРУ, 2002. - 342 с.
9. Третяк А.М., Класифікатор прав на чужі земельні ділянки (земельні сервітути). Частина 3. - К. : ЦЗРУ, 2000. - 39 с.
10. Третяк А.М. Класифікатор обмежень прав при використанні земельних ділянок. Частина 4. - К. : ЦЗРУ, 2001. - 127 с.

Розглянуто теоретико-методологічні основи формування та встановлення обмежень (обтяжень) у використанні земель. Розмежовано поняття територіальних обмежень (обтяжень) у використанні земель та обмежень (обтяжень) у використанні земельної ділянки.

Ключові слова: територіальні обмеження, обтяження, обмеження щодо використання земельної ділянки, управління земельними ресурсами, правовий режим землекористування.

Рассмотрены теоретико-методологические основы формирования и установления ограничений (обременений) в использовании земель. Разграничиваются понятия территориальных ограничений (обременений) в использовании земель и ограничений (обременений) в использовании земельного участка.

Ключевые слова: территориальные ограничения, обременения, ограничения по использованию земельного участка, управление земельными ресурсами, правовой режим землепользования.
