

Justified v. Groundless Charge of the Zoning Fee

Acceptance of a new local master plan or amending an existing plan is most often interpreted as enhancement of the property value. Therefore, owner or perpetual usufructory is obliged upon sale to pay a zoning fee to the local municipality.

The legislation in this area is clear and evident, however in practice it brings about many misunderstandings and problems. Their main reason are incorrect calculations and groundless collection of the fee, which result in the town/municipality baseless claim against the property owner.

Bases for Calculation of the Zoning Fee

If acceptance of a new local master plan or changes made to an existing plan resulted in increased value of the property, then upon sale of the property its owner or the perpetual usufructory pays a one-off fee expressed as a percentage of the property value enhancement. The amount of such fee, called the zoning fee, must not be higher than 30% of the property value enhancement.

In order for the fee to be charged, all the following conditions must be met:

1. the value of the property increased as a result of acceptance of a new plan or changes to an existing local master plan;
2. the local master plan includes a percentage of the property value enhancement which serves as base for calculating the fee;
3. the owner or the perpetual usufructory sells the property or part thereof;
4. the claim for the zoning fee is filed within five years from the date when the plan or its changes came into life.

Procedure of Establishing the Market Value of the Property Needed for Calculation of the Zoning Fee

When establishing the Market Value of the property for the purpose of setting the fee for value enhancement resulting from acceptance of a new local development plan or changes to an existing plan, the following should be taken into consideration:

1. zoning of the property before acceptance of the plan or before its changes;
2. zoning of the property after acceptance of the plan or after its changes;
3. state of the property as of the date of acceptance of the new plan or its changes;
4. prices from the date of sale.

Components of the property (buildings, improvements fixed to the ground, plants) are not taken into account when setting the amount of the zoning fee.

The value enhancement is the difference between the value of the property established for a zoning binding after acceptance of the plan or after its changes and the value of the property established for a zoning binding before its alterations or actual use of the property before acceptance of the plan.

Example of Changes in the Local Plan

The zoning fee may be levied and subsequently collected if the zoning of the property in the new plan or after changes of the existing plan brought about increase in the value of the property through permitting a more attractive use from a development point of view terms than before. Let us consider a case when changes to the local plan bring a potential for the property to increase in value.

Changes in local master plans may have diverse effects on the Market Value of different properties, even if they are located in an area with homogenous zoning both before and after alterations to the plan. Viable uses of different properties change in a different degree and it is possible for planning changes not to have any effect on the value of the property.

Let us take a real life example of two properties located in an area with a homogenous zoning, denoted in the local plan by a letter U. The U zone includes only the two subject properties. One property is developed and practically its whole area is improved with buildings and hardstands, the other one is undeveloped and unimproved. The size of the developed property accounts for 50% of the total U zone. The amended local master plan required that in the U zone all properties have a certain percentage of biologically active area. Below is a brief reasoning how the subject properties can be improved depending on the provisions in the plan before and after alterations.

Requirements for the U zone before changes to the local master plan

Before changes the local master plan required that at least 60% of the area of **planned project** must be biologically active.

Requirements for the U zone after changes to the local plan

After changes, the local plan required that on average at least 40% of the **whole U zone** must be biologically active.

Impact of Changes of the Local Plan on Values of the Properties

The change in the local master plan decreasing by 20% the necessary biologically active area to be maintained in the U zone at first sight may allow to improve a larger area. However, the results for the two properties are quite different. Below is an analysis of the impact of changes to the plan on the two properties: the developed one, whose whole area is practically improved and the other property, which is undeveloped and unimproved.

Developed property

The local master plan after changes reduces its requirements regarding the minimum biologically active area, which provides a base for a conclusion that it gives a potential to put up new developments. However, the subject property was fully developed when the plan was amended and it is physically infeasible to increase the size of the developed area. It is impossible to make use of new opportunities offered by the plan and increase the size of developed land. Therefore the modification of the plan changing the required percentage of biologically active area does not affect the value of the land of the fully improved property. The Market Value of the developed property as zoned before, after changes to the plan is exactly the same. Hence, there are no grounds to levy the zoning fee, as the criterion of value enhancement is not met.

Undeveloped property

Changes in the local master plan have a very different effect on the value of the undeveloped and unimproved property. Decrease in the percentage of the minimum required biologically active area allows to improve 20% more of the property area. As a result, the change in the local plan may be translated into the growth of land value of the subject property. Hence, there is a

base to levy a one-off fee due in case when changes in the plan result in a higher value of the property. But not in this particular case, since the developed property, whose area make up 50% of the U zone is improved and thus only 20% of the undeveloped property is available for development (i.e. 10% of the whole U zone). It is 20% less than before the plan was changed. The final conclusion is that there are no premises justifying the zoning fee, as the criterion of property value enhancement was not met. The result of the changes are adverse to the owner/perpetual usufruct, so he/she may claim indemnity from the municipality for a reduction of the Market Value of the property.

Summary

Acceptance or change of the local master plans may cause increase or decrease of values of land under the plan or may have no such effect on land values. Zoning provisions allowing specific type of development in a particular area have different impact on values of particular properties. Based on the example using the required percentage of minimum biologically active area two extreme cases were discussed, where changes to the plan did not affect the value of the land and did not contribute to its enhancement. It is likely there are more similar cases on the market and sometimes in cases incorrect assessment of the situation and mistaken interpretation of regulation the zoning fee is charged without sufficient justification. To cure such situation, local government officials should gain better understanding of the matter.