

02_Construction on Unregulated Land Properties_july_2011_GI

Over the recent years, the plots of land in the vicinity of big cities in Bulgaria have become particularly attractive for investors as they are the preferred locations for shopping malls, logistic centres and production facilities. These lands, however, often remain outside the consolidated boundaries laid down for regulation purposes.

This article is focused on the specific case in which the investment involves an unregulated land property (i.e. a property for which no detailed development plan has entered into force) and on the overview of the terms and conditions for the commencement of construction works thereon.

The Spatial Planning Act builds on the principle that construction works are allowed on the basis of an enforceable detailed development plan and an approved investment project.

An exception to this rule is set out in Article 133 of the said Act, making it possible for construction works to commence also on a unregulated land property by means of drawing up a transcription plan.

What is a transcription plan?

This is a stand-alone detailed development plan for a specific land property, which is approved prior to the completion of the consolidation procedure for the entire area. In other words, there is a pending procedure to approve the plan for the initial regulation of the whole area, whereas the transcription plan makes it possible for construction works to start on one or several land properties before the whole plan is approved.

The application for permission to draw up a transcription plan is to be filed by the land owner, the person holding the right to build, and the person who is entitled to build on another person's property as prescribed by law.

The permission is granted by the Mayor of the municipality, the Regional Governor, or the Minister of Regional Development and Public Works, depending on the scope of the plan which is in the process of approval.

When filing the application, the investor has to comply with the following two conditions:

- to coordinate the transcription plan with the designer of the plan for the whole area; and
- to wait for the adoption of the preliminary draft plan for the area by the competent expert board.

On the other hand, a specific feature of the plan drawn up for the initial regulation of the area is that it designates the plots needed for greenery and construction of social and technical infrastructure, giving the right to the municipality to acquire free of charge up to 25 percent of the private properties so that to realize these forecasts.

Another essential difference between the initial regulation plan and the detailed development plan is the effect of the former for the existing property rights. The ownership right is transferred from the private owners to the municipality with regard to the ceded parts upon the entry into force of the initial regulation plan.

This effect of the initial regulation plan often motivates the administration to refuse to proceed with the transcription plan or to enter the specific property into the cadaster.

The cadaster is the set of basic data on the location, boundaries and size, the ownership rights and the other rights in rem to real estate within the territory of Bulgaria. All land properties within the territory of the country are subject to entry into the cadaster. The cadaster is maintained by the specialized agency, the Geodesy, Cartography and Cadaster Agency and its regional subdivisions, the Geodesy, Cartography and Cadaster Offices.

The refusal of the Geodesy, Cartography and Cadaster Agency to enter a specific property, for which a transcription plan has been approved, cannot invoke any statutory provision and is unjustified. The time as from which the transcription plan can be drawn up, i.e. the time of its adoption of the initial regulation plan by the expert board, gives guarantees that the transcription plan is in full compliance with the forecasts of the initial regulation plan. Therefore any possible refusal to enter the property into the cadaster on the ground that the property consolidation procedure is not completed will be unjustified.

It is sufficient for the transcription plan to have been adopted in compliance with the above conditions and then the investment project and the permit to build can be worked out and

approved even before the plan for the whole area is adopted.