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Research paper



Change in the Category of Land for Agricultural Purposes

Viktor Aleksandrovich Mayboroda[1]*

[1]*The North-West Institute of Management, branch of RANEPA, Sredniy Avenue, 57/43, Vasilyevsky Island, Saint Petersburg, 199178, Russia*

**Corresponding author E-mail: mayboroda.v.a@list.ru*

Abstract

This article is based on the comparative analysis of civil, land and urban planning legislation. It reveals inconsistency in the regulatory planning of agricultural land use in case of changing its category. As a rule, the subsequent use of agricultural land for different purposes usually leads to fertility loss. This reproduction method has no price and is not expressed in monetary terms. The criteria for determining the value of land used by the Russian legislation are off-market surrogates. In this regard, they are used to transform the value of the land without market turnover into the value of land plots that are characterized by certain market conditions and high demand. Thus, the author of the article suggests supplementing the revealed shortcomings of established regulatory practices with the SEEA accounting system developed by the United Nations Organization to evaluate natural-ecological objects. SEEA (or a similar tool) is used for changing the category of agricultural land as a means of saving land fertility for future generations.

Keywords: *land category; agricultural land; land rezoning; cadastral value of a land plot.*

1. Problem Statement

Article 7 of the Federal Law No. 172-FZ of 21.12.2004 "On the transfer of lands or land plots from one category to another" establishes the specific features of rezoning agricultural lands or land plots within these lands. In fact, this law and the norm on land rezoning peculiarities list grounds for transferring land and do not provide requirements established by other laws.

The division of land into several categories according to the designated purpose is one of the main principles of the land legislation of the Russian Federation. This principle is enshrined in Paragraph 8 Part 1 Article 1 of the Land Code of the Russian Federation that serves as the basis for other land laws. According to the Russian Land Code, the legal regime of land depends on their category and type of permitted use in conformity with territory zoning and legal requirements.

The division of all lands into categories was designated as an approach to ensure the effectiveness of land management in the Decree "On Land" of 1917.

The unification of land division was further realized in the Soviet Law No. 3401-VII of 13.12.1968 "Approval of the fundamentals of land legislation of the USSR and the union republics". According to its Article 4, all land in the USSR constituted a single state land fund divided into six categories for the designated purpose. The basic land legislation of the USSR and union republics of 1990 distinguished seven land categories in Article 2. This law divided the wholesome object of legal regulation (land) into two semantic groups. Article 3 established that land is the endowment of the peoples living in the given territory and indicated that every Soviet citizen had the right to own a land plot. The Land Code of the Russian Federation of 2001 establishes seven categories of lands divided by their designated purpose. Paragraph 3 Article 6 indicates the object of land relations – land as a natural object and a natural resource; land plots; some parts of land plots.

The doctrine repeatedly stated that the division of land into categories is non-systemic and does not prove that all the lands of the Russian Federation are classified [1]. These days it is proposed to abolish the division of land into categories and define the legal regime of a land plot through the parameters of territory zoning and appropriate regulations [2].

At the same time, the division of agricultural and industrial lands is problematic for establishing the legal regime of lands and land plots and forming the surplus value of a land plot as a real estate object according to Paragraph 1 Article 130 of the Civil Code of the Russian Federation. T.Ya. Khabrieva notes that "...legislation forms the normative equivalent of economic relations and is a universal management tool..." [3].

The formation of a surplus value in agricultural production is carried out through the exploitation of a fertile layer of land (soil) capable of reproducing vegetation (plantatio) [4]. This kind of reproduction (harvest) has a market price. However, the formation of this price is subject to the influence of many external factors and can be unstable, poorly predictable. Moreover, the market also affects prices. Abundant harvest due to the redundancy of a particular agricultural culture in the market loses the price needed for covering production costs and forming profits. On the contrary, poor harvest due to its smallness cannot bring incomes to cover costs [5].

The surplus value received from the use of a land plot suitable for building (inaedfflcatio) in accordance with the Russian law is formed through realizing a capital construction project which is designed to meet any of the following needs: housing, entertainment, business, industrial production, etc. [4]

Such a surplus value is no longer dependent on a short-term economic situation and is of a permanent nature determined by the well-developed infrastructure of some built-up area [6].

This difference in the formation of a surplus value with the use of the same object (land plot) determines the difference in the formation of market prices [7].

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However, a built-up area loses (sometimes irretrievably) its fertility and ability to reproduce plant life. Therefore, the Russian legislation restricts the market turnover of agricultural lands in an ultimatum form. In this case, reforming the sector includes the establishment of agricultural regulations similar to town-planning regulations but has no success.

In this regard, the present paper considers legal grounds for changing the category of agricultural lands through the comparative analysis of land, civil and urban planning legislation. This approach is possible since land-use planning schemes belong to documents on strategic planning. Furthermore, the existing land and civil legislation does not state mandatory conditions of the title period concerning land plots and land lease. There is an obvious discord between the normative consolidation of the lease period and legally stipulated conditions for the strategic location of federal and regional facilities as an element of state policy for ensuring ecological security [8]. The aforementioned causes legal uncertainties in regulating the turnover of the most valuable lands, which are agricultural lands (from the viewpoint of their value for future generations, regardless of their market price). One cannot but notice that the above-mentioned form of legal regulation lacks justice in the context of distributive (providing each subject with the necessary resources) and commutative (accounting for the interests of other persons) concepts [9].

2. Various Planning Time-Frames

According to Paragraph 1 Article 9 of the Town Planning Code of the Russian Federation, land-use planning documents are those papers that determine the designation of territories using a complex of social, economic, ecological and other factors to ensure the sustainable development of these territories, their engineering, transport and social infrastructures, cater to the needs of citizens and their associations, the Russian Federation, its subjects and municipalities.

Paragraphs 10 and 11 of the same article stipulate that land-use planning schemes of the Russian Federation, land-use planning schemes of two or more subjects of the Russian Federation, land-use planning schemes of a subject of the Russian Federation and land-use planning schemes of municipal districts suitable for allocating objects of federal significance, linear objects of regional significance and linear objects of local significance are approved for a period of not less than twenty years. In other cases, these land-use planning schemes are approved for a period of not less than ten years. General locality plans and general plans of city districts are approved for a period of not less than twenty years.

Thus, the above-mentioned documents determine the development of some territory for the following 10-20 years.

Table 1: The Ratio of Spheres That Must Adopt Land-Use Planning Schemes [10]

Federal Level	Regional Level	Municipal Level
1	2	3
Federal transport (railroad, air, sea, inland water, pipeline), federal highways	Regional transport (railroad, water, air), regional or intermunicipal highways, the power industry	Local highways in the non-urban environment of a municipal district
Higher education	Education	Education
Health care	Health care	Health care
National defense and security		
Power industry	Power industry	
	Physical training and sports	Physical training and sports
	Other spheres in accordance with powers of the RF subjects	Other spheres in accordance with local problems of a municipal district
	Prevention of emergency situations on the inter-municipal and regional level, natural calamities, epidemics and the remediation of their consequences	
		Gas and electricity supply of settlements

Although Article 11 of the Federal Law of 28.06.2014 No. 172-FZ "On the strategic planning in the Russian Federation" does not include all of the schemes presented in the table above (except for municipal and general land-use planning schemes), the unification of land-use planning schemes in the sphere of normative regulation presents all these documents as documents of strategic planning.

Article 7 of the Federal Law of 21.12.2004 No. 172-FZ "On the transfer of lands or land plots from one category to another" establishes an exhaustive list of grounds for changing the category of agricultural lands: in connection with the conservation of lands; in connection with the creation of specially protected natural areas or the assignment of the existing lands to the lands used for nature protection, recreational, historical, cultural and other purposes; in connection with the establishment or alteration of limits of population centers; in connection with the deployment of industrial facilities; in connection with the inclusion of lands unsuitable for agricultural purposes into forestry fund lands, water fund lands or reserve lands; in connection with the construction of roads, power transmission lines, communication lines (including cable line infrastructures), oil pipelines, gas pipelines and other pipelines, railroad lines and similar structures; in connection with the fulfillment of international obligations of the Russian Federation, the guarantee of the state defense and security in the absence of other options for locating the relevant facilities; in connection with mining operations with the availability of an approved land reclamation project; in connection with the placement of social, community and household facilities, health care facilities or education facilities in the absence of other options for locating these facilities.

Thus, agricultural lands can be transferred to other categories in the presence of an appropriate land-use planning scheme in respect to linear-type facilities – twenty years before the transfer; in respect to territorial changes of settlements – twenty years before the transfer; in other cases ten years before the category change.

At the same time, the cadastral valuation of agricultural lands is an extremely important factor that influences the possibility of such a transfer. According to Article 3 of the Federal Law of 03.07.2016 No. 237-FZ "On state cadastral valuation", it is a procedure to determine the state cadastral value of any given object, namely a land plot used for agricultural purposes. The cadastral value is an off-market surrogate intended for the evolutionary institutionalization of real estate taxation at a price comparable to a market price defined without a selling transaction [11]. The market price and cadastral value are legislatively correlated in Article 66 of the Land Code of the Russian Federation. The cadastral value cannot exceed the market price determined in conformity with provisions of the Federal Law No. 135-FZ of 29.07.1998 "On evaluation activity in the Russian Federation". Agricultural lands can be in public, private or joint shared ownership. The form of ownership is not the cause for differentiating the cadastral valuation but it serves as an indisputable indicator of the market price of a particular land plot [12].

However, the form of ownership determines land leasing terms. For instance, agricultural and public lands have legally fixed terms: from three to forty-nine years [13]. Private lands (including jointly shared lands) do not have regulatory deadlines for lease terms [14].

Thus, it should be concluded that the market price of an agricultural land plot corresponds to the upper parameter of its cadastral value, depends on the strategic development of some particular territory, affects its lease term and determines rental payments.

3. Change in the Category of Land Due to One's Initiative

The only criterion established by the Russian law that distinguishes the procedure for changing the category of agricultural lands is their cadastral value. As noted above, the form of ownership is not a factor affecting the value (cadastral or market) of a land plot. One's land title (including rental rights) does not influence the formation of value.

The change in the category of land can be conducted for two reasons: on the application and in connection with the seizure of a land plot for state or municipal (public) needs.

Grounds for the withdrawal of one's land plot for public needs are established in Article 49 of the Land Code of the Russian Federation and are as follows: the implementation of international treaties of the Russian Federation and the withdrawal for the construction of named objects of federal or regional significance corresponding to the objects stated in the land-use planning schemes in Table 1 above [15]. Thus, the withdrawal of land for public needs and its subsequent transfer to another category is based on a previously approved land-use planning scheme. The transfer planned ten or twenty years before allows minimizing losses caused by the reclassification of an agricultural land plot.

At the same time, the land transfer planned ahead is also a significant factor affecting the market value of this plot, thereby reducing its cadastral valuation, tax burdens in relation to private lands and rental payments in relation to public lands. Under such circumstances, the legislator prefers withdrawing lands with the individual regulation of pricing for seized lands. For example, the Federal Law No. 310-FZ of 01.12.2007 "On organization and holding of the XXII Olympic Games and XI Paralympic Games of 2014 in the city of Sochi, on development of the mountain resort of the city of Sochi and on introducing amendments to a number of legal acts of the Russian Federation" was adopted in relation to the territories of Greater Sochi during preparations for the 2014 Winter Olympics. The Federal Law No. 93-FZ of 08.05.2009 "About the organization of meeting of heads of state and government of the countries-participants of the forum "Asia-Pacific Economic Cooperation" in 2012, about development of the city of Vladivostok as center of international cooperation in the Pacific Rim and about modification of separate legal acts of the Russian Federation" was adopted in relation to the city of Vladivostok.

The main mechanism for changing the category of lands is an individual petition that should be considered and satisfied by the relevant executive authority. As a rule, agricultural lands are rarely owned by the federal government and are transferred by the decision of regional executive authorities. The unpredictability of such petitions and their individual resolution are sufficient grounds for legal uncertainties in the regulation of such relations.

However, a special role is played by the transfer of agricultural lands in connection with the changing limits of a population center determined by general locality plans.

As noted above, general plans (the municipal level) considering planning time-frames and land-use planning schemes of Russia and its subjects should become documents of strategic planning. Technically, those are not included in the list of strategic planning documents defined by the specified strategic planning law.

This role of general plans makes them the main tool for changing the category of agricultural lands. However, they also combine shortcomings of transfer mechanisms, i.e. legal uncertainties connected with the transfer and limited powers of the executive body resolving the issue of transfer in an individual, non-normal manner. The adoption (alteration) of a general plan is not a simple procedure. It starts with a draft plan (or its part), goes through public hearings, is approved by executive authorities at the appropriate level and the supreme government organ of a subject of the Russian Federation and only then is adopted by local government bodies. However, this procedure is of a sudden nature for the land user whose lands should be transferred to another category and for its market value after transferring lands from a category with a limited turnover to a category with market conditions of the turnover of land plots.

4. Conclusion

The research conducted by the author has brought the following results. Firstly, the procedure of changing the category of agricultural lands is not legally associated with land-use planning schemes. Land-use planning schemes in respect to agricultural lands are based only on crop rotation or the life cycle of permanent crops, while land-use planning for other land categories has a one-decade (two-decade) planning time-frame. Secondly, the criterion for such a transfer is that the cadastral value of a land plot is not an indicator of its market price for agricultural or industrial use. Thirdly, titles to land plots during the transfer procedure have no legal effect on the decision to change the category of a land plot. Fourthly, land transfers connected with the establishment or alteration of population center limits is a vicious practice since these documents are not classified as strategic planning documents and are characterized by the sudden nature of a request to change the limits of some population center.

The circumstances presented above and based on the presumed value of lands as an asset of future generations prove that a different valuation tool should be used for changing the category of an agricultural land except for their cadastral value.

The System of Integrated Environmental and Economic Accounting (SEEA) developed by the Statistics Division of the UN Secretariat in 1993 can become such a tool [16]. This system has modules expressing the value of interrelated natural assets (including land) in both monetary and non-monetary terms [17]. Indicators of this accounting system can be compared with the results of town-planning and ecological audits that should be mandatory for changing the category of agricultural lands.

The new assessment of agricultural lands developed by the United Nations Organization will harmonize the regulation of agricultural lands. This evaluation can separate agricultural lands from other lands with a real market value. The SEEA assessment will enable land users to obtain fair compensation for the land that is being seized and/or transferred to another category. The implementation of the SEEA assessment into the Russian legislation will be a step towards the establishment of the legal regime of agricultural lands as a natural resource rather than a real estate object. Finally, the SEEA assessment will act as a legal instrument to prevent the satisfaction of one-off and immediate needs in changing the category of agricultural lands.

References

[1] Narysheva NG (2015), Perekhod ot deleniya zemel po tselevomu naznacheniyu na kategorii k territorialnomu zonirovaniyu: za i protiv [Transition from land division into categories in accordance with the designated purpose to zoning: pros and cons]. *Ekologicheskoe pravo* 5, pp: 42-49.

[2] Mayboroda VA (2016), Otmena deleniya zemel na kategorii kak sushchnostnoe izmenenie doktriny zemelnogo prava Rossii [Cancellation of land division into categories as an essential change of the Russian land legislation]. *Pravovye voprosy nedvizhimosti* 1, pp: 27-30.

[3] Khabrieva TYa (2010), Ekonomiko-pravovoi analiz: Metodologicheskii podkhod [Economic-legal analysis: methodological approach]. *Zhurnal rossiiskogo prava* 12, pp: 5.

[4] Bartoshek M (1989), *Rimskoe pravo (ponyatiya, terminy, opredeleniya)* [The Roman law (concepts, terms, definitions)]. Moscow, 147 p.

[5] Garrett TA, Marsh TL, Marshall MI (2006). Political Allocation of Agriculture Disaster Payments in the 1990s. *International Review of Law and Economics* 26(2), pp: 143-161.

[6] Lipski SA (2015), Pravovoi rezhim zemel kak vazhnyi faktor pri stroitelstve: novye resheniya zakonodatelya [The legal regime of

lands as a significant factor of building: the legislator's new solutions]. *Pravovye voprosy stroitelstva* 2, pp: 26-30.
[7] Holdsworth SW (1927), *An Historical Introduction to the Land Law*. London: Oxford University Press, 339 p.
[8] Bogolyubov SA (2018), Potentsial ekologicheskikh norm Konstitutsii Rossii [Potential of ecological norms in the Russian Constitution]. *Zhurnal rossiiskogo prava* 5, pp: 16-25.
[9] Gordly J (2006), *Foundation of Private Law: Property, Tort, Contract, Unjust Enrichment.* Oxford University Press, 496 p.
[10] Amelin RV, Belyaev MA, Borisov AA, Vorobev NI, Vorobeva LV, Gempik EA, Ivanov AV, Kalinin AA, Konovalchikova SS, Kotukhov SA, Maiboroda VA, Makarov OV, Melnikov NN, Nachichko ZhA, Povarov YuS, Sultanov RS (2017), *Comments to the Town Planning Code of the Russian Federation No. 190-FZ of 29.12.2004* (clause-by-clause) / edited by N.N. Melnikov. SPS KonsultantPlyus.
[11] Mayboroda VA, Mayboroda ET (2014), Gosudarstvennaya kadastrovaya otsenka zemel kak pravovoi mem [State cadastral valuation of lands as a legal meme]. *Vlast* 4, pp: 108-113.
[12] Carter MR., Yao Y (1999), *Market versus administrative reallocation of agricultural land in a period of rapid industrialization*. Washington, World Bank, Policy Research Working Paper, No. 2203.
[13] Mayboroda VA (2018), *Regulirovanie oborota zemel selskokhozyaistvennogo naznacheniya* [Regulating agricultural land transactions]. Moscow, 296 pp.
[14] Mayboroda VA (2015), Normativnoe zakreplenie dogovornykh srokov predostavleniya zemel publichnoi sobstvennosti v arendu i bezvozmezdnoe polzovanie kak forma realizatsii printsipa opredelennosti [Normative consolidation of a contract period for leasing public lands and uncompensated use as a means to realize the principle of objectivity]. *Yuridicheskii mir* 10, pp: 36-40.
[15] Mayboroda VA (2015), Izyatie zemelnykh uchastkov dlya publichnykh nuzhd [Sequestration of land plots for public needs]. *Pravovye voprosy nedvizhimosti* 1, pp: 28-32.
[16] System of Environmental Economic Accounting 2012 – Central Framework. New York, United Nations, (2014), 378 pp.
[17] Ivanov E (2015), *Land accounts and ecosystem extent, supporting document to the Advancing the SEEA Experimental Ecosystem Accounting project*. New York, United Nations.