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URBAN PLANNING AND DEVELOPMENT AND THE NEED FOR BALANCING PUBLIC AND PRIVATE INTEREST**

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Abstract: *Urban planning and development are processes which can be observed from many different aspects. One of the most essential issues regarding urban planning and development concerns creating a system that provides sustainable urban development. The functionality of such a system is measured primarily by its capacity to provide urban development that is in line with the environmental, social and economic requirements of modern living. Meeting such requirements calls for balancing public and private interests, which more often than not tend to collide. Although there are many factors that contribute to the system's functionality, this paper focuses on the regulation concerning urban planning and development, and its role in sustainable urban development. The focal point of research in this paper is the regulation of urban planning and development in the Macedonian legal system and its capacity to create a fair balance between public and private interests in pursuit of sustainable urban development.*

Keywords: *property law, construction, urban planning, public interest.*

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1. Introduction

Urban planning and development can potentially provide great benefits for the human population. When the process of urban planning and development is aimed at providing humane and sustainable living conditions, economic growth and environmental protection, it can lead to a positive effect for the entire society (Heberle, 2008: 2; Pinderhughes, 2008:11-12). Societal problems such as poverty, inequity, inequality, segregation, discrimination, insecurity, affordable housing, and demographic issues are some of the problems that a well-structured urban planning and development process can help in addressing and resolving (Bomfim, 2024: 86; Gorzým-Wilkowski, Trykacz, 2022: 3; Wu, Liu, 2022: 2-3).

Considering the impact that the urban planning and development process has on society and its capacity to contribute to social and economic development, it is not surprising that it has drawn global interest. The United Nations, as an international organisation, has considered the importance of urban planning and development as an instrument for combating global issues (Bustos-Peñafiel, 2022: 165; Colic Markovic, Nedovic-Budic, 2021: 4). In an effort to direct the process of urban planning and development towards resolving global issues, the United Nations have adopted documents underlining core objectives for future planning and development. In October 2016, in Quito, Ecuador, an international conference was held on housing and sustainable urban development (Habitat III).¹ During the conference, the New Urban Agenda was adopted,² which is one of the many documents addressing sustainable urban development (Teklemariam, 2022: 1-2). The New Urban Agenda consists of the Declaration on Sustainable Cities and Human Settlements for All and the Implementation Plan for the New Urban Agenda. This Agenda aims to promote the concept that urban development can be used as an effective instrument to resolve social issues in both developed and developing countries across the world (Teklemariam, 2022: 5-6; Imlund, et al., 2018: 166; Bustos-Peñafiel, 2022:165). It sets up standards and principles that need to be observed during the process of urban planning and development, and also in the construction and management of urban areas. These standards and principles are set to promote social involvement, environmental protection and economic growth, while combating poverty and inequality. Social involvement includes civic engagement in the use and the enjoyment of cities and other types of settle-

1 United Nations (2017). *The Conference, Habitat III – 2016*, The United Nations Conference on Housing and Sustainable Urban Development (Habitat III), UN, 2017, Retrieved 15 July 2025 from <https://habitat3.org/wp-content/uploads/Habitat-III-the-conference.pdf>

2 The New Urban Agenda (2017) A/RES/71/256. Retrieved 15 July 2025 from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_256.pdf

ments, diversity and participation at all levels of the decision-making process regarding urban planning and development and enacting the social function in land use. Protection of natural resources, minimising environmental impact and protecting ecological functions of the land are standards and principles set to ensure environmental protection in urban planning and development. Sustainable economic growth throughout territorial development at all levels is also promoted. Investing in safe, sustainable and accessible urban mobility is encouraged. The New Urban Agenda calls for inclusivity and equality in all aspects of urban planning and development. It points out to the need for establishing gender equality by enabling full and effective participation of women and girls in all aspects of urban planning and development, but particularly in the decision-making process. Addressing the issue of poverty and inequality, it promotes inclusive economic growth, safe and accessible urban mobility and overall territorial development.

At the EU level, there have also been efforts to create a base for a coordinated and integrative approach to policies and legislation pertaining to urban planning and development. The idea of creating the Urban Agenda for the EU was promoted with the Pact of Amsterdam,³ signed at an informal meeting of EU ministers responsible for urban matters in Amsterdam on 30th May 2016. In 2021, the Urban Agenda for the EU was reaffirmed with the Ljubljana Agreement,⁴ signed at the informal meeting of ministers responsible for urban matters in Brdo pri Kranju (Slovenia) on 26th November 2021. The Urban Agenda for the EU does not create new institutions or legislation on the EU level regarding urban planning and development, and it does not interfere with existing competencies of current decision-making structures. It also does not transfer competencies from member states onto the EU, nor does it create additional administrative or financial burdens for the member states. The main goal of the Urban Agenda for the EU is to increase the effectiveness of the existing policies and legislative acts affecting urban planning and development. It focuses on the implementation of existing policies, legislation and other instruments concerning urban planning and development. The Urban Agenda for the EU also focuses on improving the funding of urban planning and development, not by creating new sources of funding, but rather by finding, integrating and supporting existing sources created for financing various types of urban planning and development activities. Cooperation among member states and EU authorities is supported by the sharing of knowledge, tailor-made solutions

3 Pact of Amsterdam (2016). Retrieved 15 July 2025 from https://ec.europa.eu/regional_policy/sources/policy/themes/urban-development/agenda/pact-of-amsterdam.pdf

4 Ljubljana Agreement (2021). Retrieved 15 July 2025 from https://ec.europa.eu/regional_policy/sources/brochure/ljubljana_agreement_2021_en.pdf

to major challenges in urban areas and best practices concerning urban planning and development. The Urban Agenda of the EU creates a list of priority themes pinpointing major issues in urban planning and development processes concerning environmental protection, economic growth and improving living standards. Notably, the pinpointed priority themes in the Urban Agenda for the EU are very similar to the United Nations' New Urban Agenda. The Urban Agenda of the EU promotes environmental protection by focusing on climate adaptation, energy transition, nature-based solutions regarding the use of land and air quality improvement. Regarding economic growth, the Urban Agenda for the EU promotes digital transition, circular economy, development of jobs and skills in the local economy and urban mobility. Improving living standards entails combating urban poverty, resolving housing issues and the inclusion of migrants and refugees. The priorities listed in the Urban Agenda for the EU are to be addressed by establishing partnerships, each focusing on a specific issue listed in the priority themes. The partnerships are to investigate and identify the issues that need to be addressed in a particular theme. These partnerships are created voluntarily by representatives from the European Commission, member states, local authorities, city networks and others.

Preceding these documents, the United Nations Economic Commission for Europe of (UNECE) published a paper on spatial planning. This paper was an effort to raise awareness of the significant impact that urban planning and development have on the quality of life for the human population across the world, and especially in countries in transition. The paper called "Spatial Planning: Key Instrument for Development and Effective Governance, with Special Reference to Countries in Transition" (2008)⁵ examines topics such as: defining different aspects of spatial planning, identifying challenges and goals for spatial planning, determining principles of spatial planning, shedding light on the roles and responsibilities of authorities and other entities, analyzing the structure of the system of spatial planning, accenting the need for protecting individual rights along with stakeholder interest and finding pathways to building more effective spatial planning system. In the paper, six fundamental principles of spatial planning are determined: democratic principle, subsidiarity principle, participation principle, integration principle, proportionality principle and the precautionary principle. The democratic principle requires all important decisions regarding urban planning and development to be made by elected representatives in a democratic process that ensures fairness, respect of human rights and accountability while taking into consideration recommendations

5 UNECE (2008). Spatial Planning: Key Instrument for Development and Effective Governance with Special Reference to Countries in Transition, United Nations Economic Commission for Europe (UNECE), New York, Geneva, 2008, https://unece.org/sites/default/files/2022-01/spatial_planning_e.pdf

made by relevant experts. The subsidiarity principle refers to the decision-making process, which may require some decisions to be made at the state level instead of the local level due to their overall impact. The participation principle, also known as the inclusion principle, requires creating an opportunity for community involvement in the decision-making process and ensuring transparency. The integration principle calls for a collaborative and cohesive spatial planning process. The proportionality principle refers to creating a system for urban planning and development that balances between commitment and flexibility in policy making. The precautionary principle underlines the need for setting up fail-safe mechanisms in case the urban planning and development process turns harmful, so that an effective corrective action can be taken immediately (UNECE, 2008:11-12). These principles are meant to be guidelines for government authorities responsible for creating laws and other regulations pertaining to urban planning and development

As we can see from these international documents and publications, the urban planning and development process is envisioned as an instrument for resolving issues that fall under the category of public interest, while simultaneously respecting the interests and needs of individuals. This requires balancing between public and private interests. Providing a fair balance between the two requires rules and regulations that will ensure inclusion of all interested parties at all levels of the decision-making process regarding urban planning and development (Bäcklund, Mäntysalo, 2010: 334; Slaev et al., 2019: 3; Maričić et al., 2018: 3; Koglin, Pettersson, 2017: 6; Bomfim, 2024: 86-87). The process of urban planning and development needs to be lawful and transparent. Urban planning and development acts need to be made available to the public and subjected to scrutiny before they are passed and enforced. The laws and regulations also need to provide all interested parties with effective legal instruments to challenge the urban planning and development acts. Considering that individual and public interests will unavoidably collide, the laws regulating urban planning and development need to establish principles and priorities to guide authorities in resolving the conflicting issues.

2. The Regulation of Urban Planning and Development in the Republic of North Macedonia

In the legal system of the Republic of North Macedonia, urban planning and development are regulated by the Urban Planning Act of 2020.⁶ This Act regulates the system for urban planning, principles of urban planning, the types and content of spatial and zoning plans, as well as the procedure for drafting, passing and enforcing zoning plans. It replaced the previous Spatial and Urban

6 Urban Planning Act, *Official Gazette of the Republic of North Macedonia*, 32/2020.

Planning Act of 2014,⁷ aiming to offer new modern solutions regarding urban planning and development in line with EU regulations.

The Urban Planning Act (2020), to a certain extent, does exhibit an orientation towards contemporary approaches in urban planning and development. This is primarily reflected in the listed objectives of the Act. As stated in Article 9 of the Urban Planning Act, the process of drafting passing and enforcing zoning plans must adhere to the following goals: balanced spatial development, rational arrangement and use of space, creating and promoting conditions for humane living and work of citizens, overcoming barriers for persons with disabilities, sustainable spatial development, preserving and improving the quality of the environment and nature, dealing with climate change, preservation and protection of cultural heritage and security from natural and technological disasters and accidents.

Judging from the goals set forth by the Urban Planning Act, it can be concluded that the Act focuses on some of the priorities set in the New Urban Agenda of the United Nations and the Urban Agenda for the EU. The Act is oriented towards environmental protection while improving living conditions. It calls for preserving and protecting the environment, as well as dealing with climate change as a global issue. It also promotes improving the working and living conditions of people and accessibility for persons with disabilities. The Act also promotes balanced and sustainable spatial development along with rational use of space, which is conducive to enabling economic growth. Considering the devastating effects of natural or technological disasters or accidents, the Act underlines the need for planning protection measures against such occurrences. This is in line with the United Nations' New Urban Agenda, which also addresses the issue of providing a safe living environment by creating urban development designs that offer safety against all types of disasters, natural or man-made. In light of the rapid technological growth and the environmental changes due to global warming and other factors, planning for disaster prevention has become a pressing issue. This issue prompted a global resilience project run by the World Health Organisation. The project aims to support legislators and local authorities in developing urban planning and development projects that will create safe, sustainable cities. Among the primary activities of this project was the assessment of city safety. The first report on protecting environments and health by building urban resilience, "Urban Planning Design and Management Approaches to Building Resilience", published in 2022,⁸

7 Space and Urban Planning Act, *Official Gazette of the Republic of North Macedonia*, 199/2014.

8 World Health Organization/WHO (2022). Urban Planning, Design and Management Approaches to Building Resilience, an Evidence Review: first report on protecting environments and health by building urban resilience WHO Regional office for Europe, Retrieved 15 July 2025 from <https://iris.who.int/handle/10665/355761>

stated that inadequate urbanisation has significantly contributed to cities being vulnerable to disasters. These findings should be taken into consideration by authorities at all levels. The regulations pertaining to urban planning and development, as well as the acts resulting from that regulation (zoning plans, for example), need to plan, not just for future safe urbanisation, but also for measures that need to be taken for existing vulnerabilities to be removed. With that in mind, the Urban Planning Act should do more than merely proclaim the need for safe urbanisation.

The Urban Planning Act also contributes to the global effort for the preservation of cultural heritage. Preservation and protection of cultural heritage is one of its core objectives. Planning around the protection and preservation of the cultural heritage is considered to be a crucial part of creating sustainable urban development (Perry et al., 2020: 605; Nocca, 2017: 4-5; LaGro Jr., 2013: 216). As the Urban Planning Act recognises this, drafting zoning plans for areas where cultural heritage is located require obtaining data, reports and opinions from institutions tasked with the protection of cultural heritage.⁹ This type of information is necessary in the process of drafting zoning plans because all plans need to incorporate measures for the protection of cultural heritage.¹⁰

Overall, the goals set forth by the Urban Planning Act are concentrated around protecting the public interest in the process of urban planning and development. The Urban Planning Act does not go into detail on how these goals are to be operationalised. That is left up to the by-laws, primarily the Rulebook for Urban Planning. The Rulebook is intended to regulate the norms and standards for urban planning, principles and methods for rational planning of sustainable settlements, rules for management and use of space, methods and techniques for urban planning and other matters.¹¹

According to the Urban Planning Act, the system of urban planning consists of: the Spatial Plan of the Republic of North Macedonia, the spatial plans for its implementation, zoning plans and the acts for their implementation.¹² The spatial plans for implementation of the Spatial Plan of the Republic of North Macedonia consist of regional spatial plans, spatial plans for areas of specific interest and spatial plans for municipalities.¹³ The spatial plans are by hierarchy above the zoning plans, which means that the zoning plans must be in line with the spatial plans.¹⁴ Content-wise, the spatial plans offer more gene-

9 Article 47, Urban Planning Act, *Official Gazette of the Republic of North Macedonia*, 32/2020.

10 Articles 11,13,15,16, 17, Urban Planning Act.

11 Article 24, Urban Planning Act.

12 Article 3, Urban Planning Act.

13 Article 6, Urban Planning Act.

14 Article 4, Urban Planning Act.

ral urbanisation solutions. Zoning plans are the type of plans that regulate the limits of settlements, and the organisation and use of the space and the land. Zoning plans also regulate construction conditions, infrastructure sustainability, etc. These plans are categorised into five categories: general zoning plans, detailed zoning plans, zoning plans for villages, zoning plans for rural areas, and zoning plans for areas and structures relevant to the State.¹⁵ The first four categories of zoning plans are plans of local significance. The zoning plan in the fifth category has state-wide significance. Urbanisation of cities is regulated by general zoning plans. Detailed zoning plans regulate the urbanisation of a particular area within a city. Urbanisation of villages is regulated by zoning plans for villages, while zoning plans for rural areas regulate the urbanisation of areas out of the scope of the zoning plans for villages. The zoning plans for areas and structures relevant to the State regulate the urbanisation of areas that cannot be regulated by any other zoning plan of local significance. Generally, the zoning plans do not overlap regarding the area they regulate. However, this does not apply to the general zoning plans and the detailed zoning plans because the detailed zoning plans refer to an area within the general zoning plans. This is why the detailed zoning plans are subordinate to the general zoning plans and must be in accordance with them.

Passing and enforcing zoning plans of local significance is in the purview of municipalities. The zoning plans for areas and structures relevant to the State are passed and enforced by the Government of the Republic of North Macedonia.¹⁶

3. Balancing Public and Private Interests in Urban Planning and Development in the Republic of North Macedonia

Urban planning and development in modern legal systems is more than regulating the use of land and space. As shown, it has evolved into a process with higher social functions, with one of these functions being the protection of the so-called public interest (Alexender, 2002: 227). The question is: what represents public interest in modern democratic societies?

Nowadays, scholars struggle to give a single definition of what constitutes public interest in general, and in particular, in urban planning and development. According to scholars, the idea of observing and protecting public interest in the area of urban planning and development has gained momentum after the Second World War (Colic Markovic, Nedovic-Budic, 2021:2). In the post-war period, one of the important issues that countries across Europe struggled with was to rebuild the areas that had been destroyed in the war. Rebuilding

¹⁵ Article 10, Urban Planning Act.

¹⁶ Article 20, Urban Planning Act.

required state authorities to take a proactive approach in securing the welfare of the country and its people. This was a period when urban planning and development were focused on creating the necessary base for further economic and social development. In socialist countries, the involvement of the State was even more prominent (Colic Markovic, Nedovic-Budic, 2021:4). It penetrated not only the public but also the private domain to the point that land use and development were fully managed by state authorities (Hirt, 2007: 757-758). Socialist states were focused on promoting a type of public interest subservient to the socialist ideology. This led to urbanisation and development that was state-operated. All issues, from economic activities to housing, became the purview of the State. Under those conditions, public and private interests became intertwined to the point that a clear distinction between the two was not evident. However, after the socialist system was abandoned and democracy, free market economy, individualism and personal rights were embraced, the public and the private interests started to disentangle. The Republic of North Macedonia went through this process of transformation, and building a democratic society starting in 1991.

Modern democratic societies also face challenges in defining what constitutes public interest in general and in the area of urban planning and development (Puustinen, et al., 2017: 87). Some scholars use the objective concept in the pursuit of defining public interest. According to the objective concept, public interest is reflected in the objective interest of the nation. As such, the public interest is determined by rational consideration of what is universally beneficial for the nation – the common good (Nagy, 2015: 117-118; Puustinen, et al., 2017: 84; Bäcklund, Mäntysalo, 2010: 338). In common law countries like the United States and the United Kingdom, the dialogical concept is used for defining public interest. This dialogical concept is greatly influenced by liberalism and utilitarianism. As a result, it perceives public interest as plural and subjective, meaning that there is not one public interest but many. The many groups that share the same interests fight with other groups with diverse interests, all trying to accomplish their objectives, presenting them as a public interest. The role of the authorities is to assess which of these group interests will prevail, to what extent and for how long (Richardson, White, 2021: 575). Both concepts seem to have a common thread, which is that public interest is what we determine it to be at a certain point in time, either by rational assessment or by competitive selection. This means that public interest is not a constant and can change over time depending on various factors (political, economic, social, etc.) (Lloyd, 2011:2-3; Bakunowitsch et al., 2024:307). Another important issue is how one approaches assessing or selecting what constitutes public interest at a given time. Some consider that the best way is to use the deontological approach, which entails introducing moral evaluation (Machakaire, Mokhele,

2024: 6; Chiodelli, 2012: 115-116; Lennon, 2016: 11-12; Dadashpoor, Sheydayi, 2021: 547). Others consider that the teleological approach is better equipped to determine public interest because it focuses on evaluating consequences of policies and regulations as a more tangible criterion (Machakaire, Mokhele, 2024: 6; Chiodelli, 2012: 115-116; Lennon, 2016: 15-16; Dadashpoor, Sheydayi, 2021: 549; Lazarević-Bajec, 2009: 86). However, using only one approach in determining what public interest is can be limiting. Focusing solely on moral principles without assessing the long-term consequences of certain actions and policies could have an adverse effect on equity in enjoying the benefits of urban development. On the other hand, extracting morality in the evaluation of the long-term consequences of certain actions and policies could lead to infringement of rights and exacerbate the inequalities based on social status, race, ethnicity, gender and other factors. When one overemphasizes rationality over morality in evaluating long-term consequences of urban planning and development, it usually leads to viewing public interest through the prism of the so-called 'market rationality' that prioritises economic growth above all other indicators of sustainable urban planning and development (Machakaire, Mokhele, 2024: 7; Colic Markovic, Nedovic-Budic, 2021: 2; Boland, Bronte, Muir, 2017: 117). This is a very justifiable concern that is backed by empirical data from studies conducted in several states on the African continent where infrastructural projects have been prioritized as public interest based on the expectation of economic growth via urban development. Placing economic growth as the top priority justified the displacement of vulnerable communities and limiting individual rights in favour of the political and business elite, among other negative byproducts (Kamete, 2018: 266-267; Machakaire, Mokhele, 2024: 7). The same is more or less happening in North Macedonia at the moment.

The advantage that continental legal systems have regarding the determination of public interest lies in their ability to define it in laws and regulations. The expression of the public interest in the area of urban planning and development is done throughout policymaking and enforcing the regulations pertaining to land use (Machakaire, Mokhele, 2024: 4; Dadashpoor, Sheydayi, 2021: 545-546; Colic Markovic, Nedovic-Budic, 2021: 5). The policies usually consist of general statements and ambiguous principles that, according to scholars, rarely translate to tangible results even in a legislative sense (Machakaire, Mokhele, 2024: 4). The regulation of land use primarily by zoning plans is the other plane where public interest is promoted and protected. Regarding the legislation, scholars note that zoning plans and other regulations on land use should focus on providing a fair balance between public and private interests, while some argue that prevailing private interests should be considered as public due to their prevalence (Machakaire, Mokhele, 2024: 4). When private interests of individuals happen to collide, thus creating a social conflict, that conflict is

to be resolved by identifying what is in the best interest of all, also known as the common good expressed as public interest (Machakaire, Mokhele, 2024: 4). Scholars also warned against weaponising public interest for political purposes by creating conditions for marginalising political opponents, activist groups, communities, etc., all under the veil of public interest (Kamete, 2018: 253-254; Machakaire, Mokhele, 2024: 4). These concerns are completely justified and represent a test for democracies around the world.

That being said, in the Macedonian legal system, the Urban Planning Act determines the public interest in the area of urban planning and development for all intents and purposes. According to its provisions, public interest is creating a humane environment, environmental protection and preservation of natural and cultural resources and space.¹⁷ The defined public interest must be observed in all stages of urban planning and development. In the process of drafting, passing and enforcing zoning plans, there is a mandatory obligation for authorities to determine the areas and structures that are considered to be of public interest, detailing their intended purpose and manner of use. It refers to determining the areas where public infrastructure, public institutions and other structures relevant for the performance of state functions and defence are to be constructed. Thus-determined public interest prevails over the private interest when they happen to collide.

The Urban Planning Act proclaims commitment to realize the public interest while protecting private interests as one of the basic principles for urban planning and development. This principle is to be followed in all stages of urban planning and development, starting from drafting, passing and enforcing spatial and zoning plans.¹⁸ By adopting this principle, the Urban Planning Act demonstrates an intention to balance between public and private interests in urban planning and development. The balancing is to be carried out by collaborative planning (Bomfim, 2024: 86-88; Lazarević-Bajec, 2009: 91; Booher, 2004: 34; Horelli, Wallin, 2024: 2-5; Li, et al., 2020: 59-61), which entails the inclusion of interest groups, cooperation, and transparency in the process of drafting zoning plans.

Interest groups are included in the process of drafting zoning plans by taking part in participation committees, by directly instigating the drafting or amending of zoning plans, or by participating in the public assessment of the drafted zoning plans.

Taking part in participation committees is one way that interest groups can engage in the urban planning and development process. Participation committees are established at the local level by municipalities. They are to ensure

¹⁷ Article 5, Urban Planning Act.

¹⁸ Article 9, Urban Planning Act.

the inclusion of interested parties in the urban planning and development process conducted by municipalities. According to the Urban Planning Act, establishing participation committees (hereinafter: committees) is mandatory for municipalities. Formally, the municipalities' mayors give the initiative for establishing the committees. The committees need to be representative. They need to include diverse interest groups within the local community, paired up with experts and municipality officials. According to the Urban Planning Act, the committees should consist of members of the municipality's Urbanisation Commission, planners authorised to draft zoning plans, representatives from urban communities, non-government organisations, civil associations, local activists and experts well versed in different areas of urban planning and development.¹⁹ The municipal officials who are to take part in the committees are selected by the mayor. They participate in an official capacity, which means that their participation is mandatory. Other members of the committees are selected from volunteers who have responded to a public announcement for committee member selection. There is no limit on how many voluntary members can be chosen for the committees. The main function of the committees is to enable cooperation between interest groups and municipal authorities by: exchanging ideas, communicating needs and positions of interest groups regarding urban planning and development solutions, giving initiatives, offering suggestions regarding laws and regulations, etc. Even though the committees have a broad purview to discuss any issue connected to urban planning and development policies at a local level, it needs to be noted that they hold no authority over the process. Given that the role of the committees is strictly consultative, we estimate that their effectiveness as an instrument for inclusion and participation of interest groups in the urban planning and development process is limited.

Interest groups or individuals can also participate in the urban planning and development process by initiating a draft or amendments to zoning plans. This is an opportunity for individuals or groups to lobby for the private interest to be reflected in the zoning plans.²⁰ The initiative is first assessed by the Urbanisation Commission of the municipality. It decides whether the initiative will be accepted or rejected. If the Urbanisation Commission decides to accept the initiative, then the initiative is passed on to the mayor or the minister, depending on who is authorised to pass the proposed draft or amendments to the zoning plan. The initiative needs to be voted on by the municipal Council or the Government. If the initiative is voted on, it will be incorporated into a program for passing zoning plans. It is obvious that the process of examining, accepting and then voting on incorporating the initiative into the program for

¹⁹ Article 46, Urban Planning Act.

²⁰ Article 39, Urban Planning Act.

passing zoning plans is lengthy and complicated. That might discourage groups and individuals from taking initiative, especially considering that there is no guarantee that the proposed urban solution in the initiative will be integrated into the zoning plan. The uncertainty remains even if the initiative is incorporated into the program for passing zoning plans. Not only is there a high level of uncertainty regarding the outcome of the initiative, but there is also a financial burden involved. The group or the individual giving the initiative first has to bear the costs of preparing an elaborate proposal of an urban solution, and then they will be obligated to bear the costs of passing the zoning plan that the initiative refers to. Although this is presented as an inclusive approach in balancing public and private interests, in reality, this approach would mainly benefit the interests of wealthy private investors who push lucrative construction projects. There is also a risk that this approach could lead to favouring corporate interests at the expense of the public interest and/or the interests of vulnerable groups and marginalised communities. Local authorities could resort to catering to investors so that, in return, they can alleviate their financial burden of complying with the duty to continuously promote and plan for urban development at a local level (Wargent, et al., 2020: 193). In this scheme, the needs and interests of vulnerable groups and marginalised communities would be set aside as not being affordable, or in corporate terms, not cost-efficient and lucrative.

We estimate that this approach in balancing public and private interests is not fully inclusive and truly accessible for all groups and individuals. Having this type of initiative opportunity does not necessarily mean inclusion (Ringholm et al., 2018: 7). If the regulation imposes conditions and standards that are not achievable for the vast majority of persons, then it might turn into a tool for discrimination and marginalisation of certain social groups. This leads to infringement of individual rights, suppression and even displacement of marginalised communities (Lemaire, Kerr, 2017: 3-4; Wu, Liu, 2022:15-16; Bustos-Peñafiel, 2022: 162). The public interest will be harmed as well by the uneven urban development as a by-product of prioritising corporate interests. Whenever the laws and regulations leave room for corporate interests to be prioritised in urban planning and development, there is a real risk of it dominating the field (Ringholm et al., 2018: 13). This is what we see nowadays in the Republic of North Macedonia. Urban development is focused in major cities where real estate prices are rising by the day, while rural areas and less popular locations are left unattended to the point that they lack basic infrastructure. This is not conducive to the overall economic development, raising living standards and creating a humane living environment for the population (Ye, et al., 2017: 2-3).

Interest groups can participate in the urban planning and development process by involving themselves in the public assessment of drafted zoning

plans. The Urban Planning Act adheres to the requirement of transparency during the urban planning and development process by mandating that drafted zoning plans be made publicly available. At the stage of draft version, the zoning plans are publicly presented and discussed by experts, as well as by the general public. They can give remarks and suggestions for the improvement of the draft. The remarks are examined by authorised commissions, who prepare a report on the matter, determining which remarks and suggestions have been accepted and which rejected. The persons whose remarks and suggestions have been rejected are personally informed about the reason for their rejection. However, the entire procedure is more performative than functional because, in practice, there is very little chance for individuals or communities to have their remarks and suggestions addressed. Attesting to this fact is the public outrage and protest that have taken place because local authorities have ignored concerns about zoning plans not providing solutions for the preservation of green areas, creating humane living conditions and ensuring environmental protection.

The approaches of balancing public and private interests by including different interest groups and individuals as active participants in the urban planning and development process, be it by committee membership, by introducing urban solutions via initiatives, or by involvement in the assessment of zoning plans, are not necessarily a misstep. However, they need to be refined. The Urban Planning Act needs to regulate a checks and balances system to avoid the negative outcomes. There needs to be higher accountability of the authorities for their involvement in the urban planning and development process, not just regarding drafting, passing and enforcing zoning plans, but also regarding the positions they take when resolving conflicts between public and private interests.

The pursuit for a fair balance between public and private interest in urban planning and development that ensures equitable inclusion of different interest groups has occupied both legislators and scholars worldwide (Bomfim, 2024: 88-89). Addressing this issue, some scholars suggest including public-private partnerships and incentive measures and policies (Payne, 2000: 6; Fiorentini et. al., 2025: 2; Khululekani, Sijekula, 2020: 3; Bomfim, 2024: 93).

Public-private partnerships can be used as a valuable instrument for satisfying corporate interests and financing social programs by way of cooperation, thus ensuring that all interests will be proportionately protected. For such an endeavour to be successful, trust needs to be established between government authorities, investors, and communities. If any party gets sidelined in the process, the result could be an unrealised project. Creating successful public-private partnerships also requires authorities to be well versed in identifying the public needs, estimating the financial requirements and the desired

profit expectations of investors. In other words, authorities need to have the capacity to meet the professional and financial requirements on their part and also make the partnership attractive for investors.

Land sharing is proposed as a measure to balance the interests of low-income communities and investors (Payne, 2000: 7-8). This measure aims to incentivise investors to offer affordable housing to low-income households. It is implemented by authorities who, through urban planning and development, provide investors with the opportunity to build taller buildings with more floor space. In return, investors are expected to deliver affordable housing.

4. Conclusion

Urban planning and development are processes with a capacity to contribute to social and economic development, which is why they have drawn global interest. In an effort to raise awareness and to direct the process of urban planning and development towards resolving global issues, the United Nations and the EU have adopted documents underlining core objectives for future planning and development. The urban planning and development process is envisioned as an instrument for resolving issues that fall under the category of public interest, while simultaneously respecting the interests and needs of individuals. This requires balancing between public and private interests.

In the Republic of North Macedonia, the system for urban planning is regulated by the Urban Planning Act. The Act constructs an urban planning system pursuing several core goals: balanced spatial development, rational arrangement and use of space, creating and promoting conditions for humane living and work of citizens, overcoming barriers for persons with disabilities, sustainable spatial development, preserving and improving the quality of the environment and nature, dealing with climate change, preservation and protection of cultural heritage and security from natural and technological disasters and accidents. The goals set forth by the Urban Planning Act are concentrated around protecting the public interest while balancing between public and private interests. Balancing is carried out by the inclusion of interest groups, cooperation, and transparency in the process of drafting zoning plans. Interest groups are included in the process of drafting zoning plans by taking part in participation committees, by directly instigating the drafting or amending of zoning plans, or by participating in the public assessment of the drafted zoning plans.

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Др Тина Пржеска*

Урбанистичко планирање и развој и потреба за балансирањем јавног и приватног интереса

Резиме

Процес урбанистичког планирања и развоја значајно утиче на различите области као што су економски раст, очување животне средине, креирање одрживих и хуманих животних услова, заштита културног наслеђа, превенција катастрофа, итд. С обзиром на значај и утицај који процес урбанистичког планирања и развоја има на друштво, ова материја се ближе уређује националним законима. Урбанистичко планирање и развој привукли су и међународну пажњу због могућности решавања проблема на глобалном нивоу. Правни акти организација попут Уједињених нација и ЕУ баве се основним циљевима будућег планирања и развоја у Европи и широм света.

За остваривање основних циљева урбаног планирања и развоја неопходна је равнотежа између јавног и приватног интереса. Ова равнотежа се постиже давањем приоритета јавном интересу, у циљу обезбеђивања општег благостања грађана и друштва, али се истовремено оставља простор и могућност појединцима да задовоље своје приватне потребе и интересе.

У Републици Северној Македонији, законодавство о урбаном планирању и развоју предвиђа основне циљеве: уравнотежени просторни развој, рационално уређење коришћења простора, стварање и промоција услова за хуман живот и рад грађана, превазилажење препрека за особе са инвалидитетом, одрживи просторни развој, очување и унапређење квалитета животне средине и природе, заштита од климатских промена, очување и заштита културног наслеђа, и заштита од природних и технолошких катастрофа и несрећа. Према македонском Закону о урбанизму, постављени циљеви треба да се постигну успостављањем равнотеже између јавних и приватних интереса, а та равнотежа се остварује укључивањем интересних група у процес израде, измене и евалуације квалитета урбанистичких планова. Сарадња између институција, стручњака и интересних група се подстиче у свим фазама процеса урбанистичког планирања и развоја. Транспарентност целог процеса урбаног планирања и развоја гарантована је Законом о урбанизму.

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Инструменти које предвиђа Закон о урбанизму Северне Македоније за остваривање равнотеже између јавних и приватних интереса у процесу урбанистичког планирања и развоја представљају корак у правом смеру. Међутим, да би били ефикасни и сврсисходни, ови инструменти се морају непрекидно усавршавати, што је био предмет анализе и разматрања и у овом раду.

Кључне речи: *стварно право, грађење, урбанизам, јавни интерес.*