

Legal Issues on Land Use Planning for Tourism Real Estate Projects in Vietnam: The Situation and Solutions to Complete



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ABSTRACT: Land use planning is the basic legal issue for all real estate investment projects in general and tourism real estate in particular; However, the legal framework for tourism real estate in Vietnam is not complete, and the issue of identification of tourism real estate as well as the type of land for tourism real estate is still controversial. This makes the process of building as well as implementing land use planning for tourism real estate projects in practice encounter many problems. Therefore, the issue of perfecting the law and improving the efficiency of law enforcement on land use planning for tourism real estate projects in the coming time is necessary. The article will clarify the legal barriers to land use planning of tourism real estate projects and offer some solutions to complete and improve the efficiency of law enforcement on that.

KEYWORDS: land-use planning, real estate, tourism real estate, investment projects, People's Committee.

I. INTRODUCTION

The land is limited while people's needs are an extremely diverse and increasing trend. Therefore, the State needs to have schedules and plans to adjust to suit its socio-economic development goals and orientations of theirs. To realize those goals, a national master plan is needed; provincial planning; sector planning; planning has technical and specialized nature to ensure suitability, efficiency, and practical feasibility.

Clause 2, Clause 3, Article 3 of the 2013 Land Law stipulates: “*Land use planning is the allocation and zoning of land according to space used for socio-economic development, national defense, security, environmental protection, and climate change adaptation based on land potential and land use needs of sectors and fields for each socio-economic region and administrative unit within a certain period of definite time*”; “*Land use plan is the division of land use planning over time for implementation in the planning period*”[1]. Planning is always associated with land use planning.

Tourism real estate in recent years is a potential market with great potential for development, so many domestic and foreign investors and corporations have invested in real estate to provide many high-quality tourism real estate products. This segment is growing strongly in localities with strong tourism development such as coastal areas, areas with potential and strengths in forest tourism, traditional cultural tourism, spiritual culture, and tourism real and there are amusement parks, and adventure. It is forecasted that in the next time, tourism real estate will continue to develop strongly along with socio-economic development and especially the growth of the tourism industry [2]. However, the rapid development of tourism REAL ESTATE has made the regulations of the land law not keep up, making it difficult for the state management in general and the effectiveness of the regulation land use planning in particular. The land-use planning in some localities still has contents not suitable with the strategy of economic development, tourism development, low feasibility; the relationship between them has not been thoroughly dealt with; The quality of local land use planning and plans is not high enough to keep up with socio-economic development [3]. Therefore, it is necessary to improve the law and improve the efficiency of law enforcement on land use planning for tourism real estate projects in the coming time.

II. LEGAL STATUS OF LAND USE PLANNING FOR TOURISM REAL ESTATE PROJECTS AND BARRIERS IN PRACTICE

Currently, the feasibility and effectiveness of land use planning for tourism real estate projects are not high [2]. This comes from the negative impacts of the overheating development of the real estate market in general and the tourism real estate market in particular. The land phenomenon speculation and sudden price increase create pressure on on-site clearance and settlement arrangements for people who need it, as well as environmental and people's problems. Within the scope of the article, the author points out some shortcomings in land use planning for tourism real estate projects as follows:

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A. The planning of land use is still limited

Principles of planning and planning on land use are specified in Article 6 of the Law amending and supplementing several articles of the 37 Laws related to planning in 2018 which regulates the amendment of Article 35 of the Land Law 2013. This is an important basis for competent authorities to make land-use planning to implement tourism real estate projects. However, in practice, when applying the principles of land use planning, there are still many limitations, the current land use planning is still lacking in systematicity, making it difficult to be feasible in practice because of conflicts with local authorities. planning of other branches, especially construction planning. This comes from the inconsistency and consistency of legal provisions, such as:

(i) The planning time between the land use planning and some other planning is not consistent, typically urban planning. If the land-use planning has a planning period of 10 years, the urban planning has a term of 20-25 years. [4]

(ii) Regarding space and planning types and levels: Land-use planning is made according to administrative-territorial units and land use purposes, but in contrast to urban planning, it is not entirely based on administrative units. (Clause 1, Article 18 of the 2009 Law on Urban Planning lists different types of planning, in which zoning and detailed planning are not based on administrative units)

(iii) Regarding planning management and implementation: For land use planning, the supervision and inspection mechanism and implementation organization are uniformly prescribed for planning levels by legal documents;

iv) The way to classify land when developing land-use planning for tourism real estate projects has not been synchronized and unified. Specifically: according to the provisions of the Land Law 2013, land use planning applies a land classification system, including agricultural land, non-agricultural land, and unused land [2]. Accordingly, each locality has very specific planning on the use of land in each area and cannot arbitrarily change master plans and plans on land use. According to the Law on Construction, the construction planning applies a system of land classification according to the useful functions of construction works, including: civil, industrial; traffic; agriculture, and rural development; Infrastructure; national defense, and security, and each type of land is also classified into different types as civil land, including Housing; Public works (education, health, sports...). The classification of land in the land use planning is done according to the purpose of use; while in construction planning, it is done according to the purpose of use (according to the planning) and the function of the construction work. This also creates difficulties in comparing the criteria on the area of land types between the land use planning and construction planning to determine the appropriateness when implementing the project, changing the project's purpose. When tourism real estate is not currently "identified" by law, each locality has a different way of implementing it.

Currently, tourism real estate products on the real estate market are very diverse, such as hotels, resort villas, shopvilla, shoptel, shophouses, condotels, boutique hotels, homestays, service apartments, and farmstay, etc. However, the "identification" of specific tourism real estate has not been provided for in the Law; As a result, the determination of the land type of these projects also varies from place to place, typically with condotel projects.

In the past time, Resort villa is a thriving and active real estate in the market, but there are no specific legal regulations, so each locality applies different legal regulations to developers investing in this product. For example, some local people think that a resort villa is a type of villa house combined with tourism, so there is "flexibility" in establishing land use rights in the form of "allocation of land for residential construction without forming a dwelling unit" and establishing permanent ownership over the owner of this real estate – the same applies to land used for residential construction. Some provinces in the past time have implemented this method such as Nha Trang - Khanh Hoa, and Quy Nhon - Binh Dinh. While most other localities perceive Resort villas/condotels as tourist apartments to serve the relaxation and accommodation of tourists. The purpose of using the land to create this real estate product is non-agricultural service business land, corresponding to the method of establishing land use rights, which is leased by the State, and the resort villa/condotel is being built on planned land areas with commercial and service functions for a limited time. Therefore, in the investment process, most investors want to convert this type of land into land for stable and long-term use. Some provinces have introduced attractive and flexible policies to attract investors and mobilize capital from the people to develop resort tourism, therefore, a new type of residential land has been developed to limit the rights of buyers are not be civil status registration, do not establish residential groups to avoid creating pressure on infrastructure, not affect tourism exploitation, and do not disrupt planning.

B. The people's opinions are not unified and there is no mechanism to control the consultation process

The collection of people's opinions will help them understand the situation of projects that can directly affect their rights and obligations so that they can provide the most realistic comments, thus solving the problem of "hanging planning" is making people angry. However, at present, the Law amending and supplementing 37 Laws related to planning in 2018 has removed the provisions on the issue of collecting people's opinions on land use plans to ensure conformity and consistency with the Law on Planning 2017. But in the author's opinion, the ignoring issue of getting people's opinions on land use plans is a rather serious omission because land use plans are "the planning division of land use planning by the time", expressing the detail and concretization of land use planning.

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In addition, the 2017 Law on Planning, the Law amending and supplementing 37 Laws related to planning in 2018 very specifically stipulates that the collection of people's opinions is carried out during the formulation and adjustment of the planning using the land. But in the implementation process, the inspection and supervision are not regulated by the people, the organization collects residents' opinions on how the competent state agencies organize this implementation, the progress, and performance level.

C. The subject and cost of making land-use planning for tourism real estate projects still have many problems

Based on the provisions in Clauses 3, 4, 5, and Article 10 of the Law on Planning in 2017, the issue of "socialization" when making land use planning is being applied quite effectively by localities, through two popular methods: (i) "funding" planning (all funding and partial funding possible); through which the donor can submit a grant to the budget and the planning is done in the same order as using the budget; (ii) assign private economic organizations to participate in land use planning. Thereby, solving difficulties in budget balance and human resources involved in planning. Currently, many provinces and cities across the country such as Quang Ninh, Hoa Binh, Nghe An, Ninh Thuan, Binh Thuan, Hai Duong, Phu Yen, etc. have implemented the method of mobilizing social resources to participate in planning.

However, so far, the specific mechanisms and policies mentioned above have not been issued; Therefore, the determination and assignment of land use planning subjects depends on the subjective will of that local government and leads to a long delay in the process of making land-use planning. That situation has directly affected land use activities of land users within the intended scope of land use planning for tourism real estate projects.

In addition, an issue that is also a 'barrier' in the work of 'socializing' land use planning is the issue of whether or not the interests of investors' groups, the influence on national defense, security while tourism real estate projects are located in key political and security positions.

D. The adjustment of the content of land use planning has not been specified and detailed

In the process of implementing land use planning, to ensure the effectiveness of the land use process, the local economic development strategy also meets the land use needs of the investor implementing the real estate project. In real estate in general and tourist real estate in particular, the adjustment of land use planning is necessary and regulated by law. However, the law has not specified in each case what specific content can be adjusted in the mainland use planning, therefore, it may lead to arbitrariness in planning adjustment.

E. Regulations on supervision and sanctions for public activities of land use planning are still not effective and feasible.

The law stipulates the publication of land use planning, but in fact, the public announcement of land use planning only stipulates that it stops at the headquarters of the district-level People's Committee, the People's Committee of the district commune-level People's Committees, and on the web portal of the district-level People's Committees. The places where workers and secondary investors want to buy land are really difficult to access. The headquarters of the district-level People's Committee, even the commune-level People's Committee, without a legitimate reason or with the consent of the security forces, is difficult for people to enter. In addition, at present, the website of the People's Committee is still unfamiliar to the people. Meanwhile, the Land Law 2013 and even the sub-law documents do not have regulations or guidelines that are mandatory for People's Committees at all levels to make public land-use master plans and plans. Therefore, there is no clear sanction to handle formulas that violate regulations on public planning and land use planning.

III. SOME SOLUTIONS TO IMPROVE THE LAW AND IMPROVE THE EFFICIENCY OF LAW ENFORCEMENT ON LAND USE PLANNING FOR TOURISM REAL ESTATE PROJECTS IN THE COMING TIME

A. Complete legal solution

The provisions of the Law on Planning 2007 and the Law amending and supplementing several articles of 37 laws related to planning in 2018 on land use planning have also partly shown consistency, appropriateness, and relevance feasible in practice. However, the quality and feasibility of land use planning to meet the development of tourism real estate projects in the past time are still low, not yet highly effective, and many regulations of law revealed many shortcomings. Therefore, it is necessary to amend, supplement and guide in detail the implementation of these contents to ensure the compatibility between theory and practice.

Firstly, continue to review overlapping issues from land-use planning under the Amendment Law, Planning Law 2017, and other relevant specialized laws, especially related to construction planning. Especially the uniform regulations on the planning period, on space and types and levels of planning, on the management and implementation of land use planning.

Second, on how to classify land when developing land-use planning for tourism real estate projects. In there:

(i) The law on real estate business needs an official "identification" to regulate tourism real estate, tourism real estate projects, and types of tourist real estate.

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(ii) It is necessary to clearly define the type of land used in business for each specific type of real estate. Researching the types of tourism real estate on the market in the past time, with the main useful features, the author proposes the purposes of using business land by specific types of tourism real estate.

- For tourism real estates such as Hotel, Resort, resort villas, shopvilla, and Condotel will belong to the group of non-agricultural land and be specifically identified as tourism service business land. In each project, there should be a part of the area that is long-term owned, but only tourism business so as not to disrupt the planning, thus attracting cash flow for infrastructure development.

- For other tourism real estates such as shoptel, shophouse, homestay, and farmstay, it is residential land or commercial and service land depending on each specific case.

With the above proposal, it will overcome the ambiguity in the process of making land-use planning in the past time for tourism real estate projects; while ensuring the right to be proactive and flexible for enterprises in business investment activities. Accordingly, tourism real estate enterprises have the right to decide on investment purposes and flexibly change investment purposes to improve land-use efficiency and meet market demands in each period. However, this conversion must be based on the permission of the competent state agency. In particular, these proposals aim to improve land-use efficiency, create a flexible mechanism for businesses and investors, and still comply with land use master plans and plans. The conversion of land use purposes and project objectives must comply with the correct procedures and be permitted by the agency competent to approve the investment project; ensure the adjustment of the difference of such conversion activities to ensure an increase in revenue for the state budget from land use and business investment activities [5].

Third, on the issue of collecting people's opinions.

In the author's opinion, to improve the feasibility of the planning, the land use plan should have more specific regulations on the activities of collecting people's opinions in both planning and planning use land. The collection of opinions must be carried out in the form of conferences, direct collection of opinions, and publicity on the website of the competent authority for each level; subject to comments. This ensures that the law on land use planning is strictly enforced in practice, enhances transparency and publicity, and ensures that people exercise their democratic rights "people know, people do, people debate, people check".

In addition, the content of land use planning for tourism real estate projects must pay special attention to the combination of industry interests and investors' interests with the interests of the community.

Fourth, on the issue of "socialization" when making land-use planning.

The law needs to set out specific conditions and criteria for determining who can participate in land use planning activities; implementation methods as well as benefits for stakeholders when participating in planning activities.

Fifth, on the adjustment of land use planning

It is necessary to add cases where land use planning is adjusted, such as there is an adjustment of socio-economic development, defense, and security goals that has been permitted by a competent state agency, but such adjustment is not necessary; change the structure of land use; due to the impact of nature, changing the area, structure, and purpose of land use; there is an adjustment to the land use planning of the immediate superior that affects the land use planning of his or her level.

In addition, in fact, in many cases, agencies and organizations make land-use planning when there is a request for adjustment but do not implement it or implement it very slowly, resulting in no adaptation or slow adaptation to land use planning conditions. Therefore, it is necessary to stipulate a legal mechanism to ensure the adjustment of land use planning by competent state agencies so that the adjustment can be timely, quickly, and meet the needs.

Sixth, about publicizing land use planning

There should be regulations obliging the competent People's Committee to fully and promptly publicize information on land use master plans and plans (immediately after they are approved by competent authorities) without limitation in scope, place, method, and form of publication, ensuring all subjects can conveniently access. If the competent People's Committee fails to comply with the publicity of land use master plans and plans, the leader shall be subject to legal sanctions, including criminal liability. Public contents include the time of disclosure, the time limit for disclosure, location, scope, form, and specific criminal, administrative, civil, or disciplinary sanctions.

B. Solutions to improve the efficiency of law enforcement on land use planning for tourism real estate projects

Recently, the National Assembly approved the National Land Use Plan, period 2021-2030, vision to 2050, and a 5-year land use plan (2021-2025) in which the prominent spatial orientation is Land use focuses on developing tourism suitable for the characteristics of each territory. On that basis, localities need to review and evaluate the actual planning situation in a specific and detailed way on tourism real estate, clarifying "how many accommodation facilities are currently available, how are the quality, how many types of products are enough to meet the number of customers and how many more products need to be built to prepare to receive the number of customers as set out goals" [2]. To plan and publicize the planning of projects in developed tourist areas, scenic, ecological and cultural areas with potential but not yet exploited throughout the country, especially coastal. It is necessary

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to clearly define prohibited areas belonging to national security and defense; areas that need to be protected in terms of the environment and natural landscapes because if they are violated, they cannot be recreated.

CONCLUSIONS

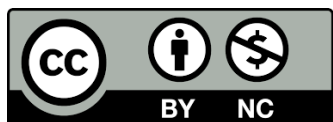
Although the regulations related to land use planning have just been revised in the Law amending and supplementing several articles of 37 laws related to planning in 2018, many shortcomings have been revealed right in the contents of the law; The provisions of the Amendment Law and the Law on Planning in 2017, as well as several specialized legal documents, still have many conflicting contents and inadequacies in the process of implementing tourism real estate projects. This affects the feasibility and practical effectiveness of land use planning and plans in recent times. On that basis, the author has proposed several solutions the basis of studying the provisions of the law and the actual situation to ensure the compatibility between theory and practice.

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