

**Problems of estimation of market cost of the rights to the ground areas,
with the account charge (charge) in the Russian Federation**

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The general area of a ground resource of the Russian Federation makes about 1,7 billion in hectares. In this case, it is necessary to take into account that fact, that the given areas should be fixed in the general register of the grounds, and the status has the right.

Further, sharply enough there is a question on rational use and management of this resource. It is necessary to take into account, that the majority of these ground areas belongs to the various Companies, and patterns of ownership on the ground can be various (As constant (termless) using, long-term / short-term rent and other).

During too time, a ground resource is a strategic resource in which it is favourable to invest means. It proves to be true the lead author the analysis of the ground market of the Russian Federation and the following major factors:

1. The Earth has no physical, functional deterioration, and also amortization by virtue of the specific character as a natural resource as term of operation of the ground areas is unlimited.
2. Earth cannot be reproduced freely, as other objects of the real estate.
3. The ground area can be used as multi-purpose or to have, quite, certain functional and resolved by purpose.
4. The ground area acts as means of production of the source of raw materials necessary practically for all branches of economy, and also food stuffs.
5. Earth acts as means for social and economic development. 6. Earth is a basis for accommodation of various objects of the real estate

Participants of ground attitudes are citizens, rightfule persons, the Russian Federation, subjects of the Russian Federation, municipal formations, including owners charge - the persons having the right of limited using by the another's ground areas (charge).

Whereas the market of the ground areas in the Russian Federation is at a stage of formation, there is a question on an estimation of market cost of the ground areas with a view of sale, entering in ustavnij the capital of again created rightfule persons, the mortgage and the other purposes. It is obvious, that the received cost essentially influences cost of actives of the Company, the Enterprise aside their increase or reduction, depending on cost of the rights to the ground areas belonging rightfule or physical persons. It is necessary to note, that the majority of the ground areas are burdened.

Besides leaning on the estimation of market cost of the ground areas belonging lead by the author: Open joint-stock company «Nijnovenergo», Open joint-stock company «Hakasenergo», Open joint-stock company «Amurenergo», Open joint-stock company «Tyumenenergo», «Udmurtenergo», Open joint-stock company «Rostovenergo», Open joint-stock company «Tulenergo», OAO «Samaraenergo», Open joint-stock company «Saratovenergo», Open joint-stock company «Vologdaenergo» it is necessary to note that fact, that the majority of the ground areas are on the right of constant (termless) using. At the same time, many ground areas are burdened.

Defining market cost of the ground areas, the author has collided a number of problems which complicate an estimation of market cost of a ground active. Basically, complexities arose with reception of the information on this or that ground area:

- - In case of an estimation of the ground areas of branches of the Power company,
- - there is no uniform bank under the account of the ground areas, therefore rightful documents on the ground were directly in branches of the power companies, that in turn, increased time of gathering of the initial documentation and essentially complicated an estimation of buildings and the constructions which are taking place on these ground areas,
- rightful documents on the ground areas were on stages of renewal, therefore a rightfule status of the grounds have not been determined,
- Incorrect reflection in rightful documents on the ground areas charge (charge), that complicated allocation of a share itself charges,
- Backwardness of the market of the ground areas in regions and other.

Leaning for the works lead by the author according to market cost of actives of power supply systems of the Russian Federation, the market of the real estate has been analysed Moscow and the Moscow area, St.-Petersburg and Leningrad region, N.-Novgorod and the Nizhniy Novgorod area, Samara and the Samara area, Abakan and resp. Khakassia, Blagoveshchensk and the Amur area, Tyumen and the Tyumen area, Izhevsk and the Udmurt republic, Rostov - na-Donu and the Rostov area, Krasnodar territory, the Tula area, Saratov and the Saratov area, Vologda and the Vologda area and so forth.

In result, it has been determined, that the ground market is at a stage of formation, and not so is advanced, as the market of the real estate. At the same time this segment of the market types essential revolutions in regions Russian Federations. Rights on the ground areas used in an estimation as objects-analogues, are exposed on sale, basically, as the rights of rent, the property. The ground areas with the account charge are not submitted in the ground market.

In particular, the ground market (from vysherechislennyh regions) in Moscow and by the Moscow region, the Leningrad, Nizhniy Novgorod, Rostov areas and Krasnodar territory is most advanced. In these regions, eventually and acceptance of laws of the Russian Federation and local statutory acts, the ground areas only increase in the cost.

Ground charge

Occurrence and development of institute chargeov is in direct dependence with development of a private property institution on the ground. As a rule, the detached ground area has no all those properties and qualities which are necessary for his normal use: for example, on the given site there is no water or this site has no direct output to the general road, etc. That using the given ground area was possible and economic expedient, there is a need for using (in the corresponding attitude) the next ground.

Such questions were easily razreshimy when the ground was in a public property (a tribe, sorts, communities). But with occurrence of the right of the private landed property the proprietor of the ground area has not been obliged to help the neighbour, not having on the ground of water, a pasture, etc. In this connection the

actual need for fastening to the proprietor of one ground area of the right of use for the known attitude the another's ground, usually the ground of the neighbour has come.

The ground areas which have been cut off from public road by the grounds of other proprietors or deprived waters and other natural blessings, it was impossible to use without granting to the proprietor of this ground area of the right to use in the corresponding attitude the another's ground.

Concept and the maintenance charge

Proceeding from the aforesaid, it is possible to define charge as veshchnoe the right of use of an another's thing in this or that attitude. Such right is caused by necessity to smooth inconvenience and the difficulties arising at existence of the right of a private property on the ground owing to non-uniformity of distribution of the natural blessings between the separate ground areas.

Role chargeov the more considerable, than more finely the landed property in the given country. On the contrary, the large landed property provided on the big space with the various natural blessings, doing such property self-sufficient, for example, for conducting an agriculture, gives few bases for development of institute charges.

To define essential problems of an estimation of market cost of the ground areas with the account charge, it is necessary to consider, first of all, the legislation regulating such concept, as charge and an opportunity of definition of his market cost.

The civil Code (part too), from January, 26, 1996 N 14- Federal the law, in edition FZ 26.03.03, clause 553 adjusts rights on the real estate at sale of the ground area. At the conclusion of the contract of rent arendodatel is obliged to warn the tenant about all rights of the third parties to property handed over in rent (chargee, the right of a pledge, etc.). Default arendodatelem gives the tenant the right to demand this duty of reduction of a rent or cancellation of the contract and the indemnification.

In ZK to chapter 4, clause 23 the full characteristic of the right of the limited using by the another's ground area (chargeom) is given. Charge can be Private (charge it is established according to the civil legislation) and Public (charge it is established by the law or other normative rightfule certificate of the Russian Federation, the normative rightfule certificate of the subject of the Russian Federation, the normative rightfule certificate of institutions of local government in cases if it is necessary for maintenance Interests of the state, local self-management or local population, without withdrawal of the ground areas). Besides the establishment public charge is carried out in view of results of public hearings.

Public charges can be established in the following cases: pass or travel through the ground area; uses of the ground area with a view of repair of municipal, engineering, electric and other lines and networks, and also objects of a transport infrastructure; accommodations on the ground area mezhevyh and geodetic signs and entrances to them and so forth.

If the establishment public charge leads to to essential difficulties in use of the ground area his proprietor has the right to demand a proportional payment for him.

Bodies of the government, institutions of local government or public organization which prove necessity of introduction charge, carry out an economic estimation of utility of it charge, and the proprietor of a site, in turn, economically gives reason for the future or present losses from restriction of the rights on natural utility of the ground area. In other words, there is a necessity of an estimation of market cost so-called « a proportional payment » for the caused inconveniences to the proprietor of such ground area.

Essential distinction at private and public charge is registration of their rights to this or that kind charge. Rights of the persons using the ground area on the basis of private charge, are defined by the contract. Rights of the persons using the ground area on the basis of public charge, are defined by the law or other normative rightfule certificate by which it is established public charge.

One of innovations in ZK №136- Federal the law from 25.10.2001y, is that charge can be urgent or constant. That is on charge time frameworks are imposed, that in turn is the big step in ground attitudes.

Realization charge should be the least burdensome for the ground area concerning which it is established. In too time, the Proprietor of the ground area burdened private chargeom, has the right to demand a proportional payment from persons in which interests it is established charge if other is not stipulated by federal laws.

Chargey are subject to the state registration according to the Federal law " About the state registration of the rights to real estate and transactions with it ".

Problems of an estimation of market cost of the ground areas, with the account charge

For definition of market cost of the ground areas in legislative base of the Russian Federation there are following documents:

1. FL About estimated activity in the Russian Federation 135- Federal law, from July, 16, 1998 in editorship Federal laws №27.02.2003 N 29- Federal law).
2. The governmental order About the statement of standards of an estimation ? 519, from July, 6, 2001.
3. The order of the Ministry of Property of the Russian Federation from March, 6, 2002 N 568- Federal law About the statement of methodical recommendations by definition of market cost of the ground areas (in editorship Orders of the Ministry of Property of the Russian Federation from 31.07.2002 N 29 Federal law, in editorship From 06.03.2002 N 568-p).
4. The order of the Ministry of Property of Russia from 10.04.2003y. 1102-r " About the statement of methodical recommendations by definition of market cost of the right of rent of the ground areas "

Definition of market cost of the ground area - the initial stage zatratnogo the approach of an estimation of any object of the real estate. Without it it is impossible to count neither economic interests of the existing owner of property, nor expectation of the prospective investor. The potential of the ground area caused by his site, market conditions, rightfule opportunities and resource parameters, acts as deciding argument for the benefit of decision-making on purchase of this or that object real estate.

According to the ground legislation (66 ZK the Russian Federal law) market cost of the grounds is established by an item according to the Federal law on estimated activity. The ground areas, sites of bowels, concern to real estate (real estate), rights on which are subject to the state registration [1].

Market cost can be determined for the ground areas, which are generated (or can be generated) from the rightfule point of view according to the legislation, that is have rightfule documents.

As a rule, at an estimation of market cost of the ground areas, with the account charge, the opportunity of application of classical approaches to an estimation of the ground areas [2]. Let's consider an opportunity of their application is investigated:

1. Cost approach in estimation of cost of the ground area assumes, that the reasonable investor will not pay for object a big price, than in what purchase of a corresponding site under building and erection on it

similar to destination and will cost for quality of improvement some period of time. In case of an estimation of the burdened ground area, it is difficult to define his cost at a stage of building (under the estimate of expenses) as in this case, the opportunity of use of a share of the ground area, with the account charge is not taken into account. Therefore application Cost the approach is represented inexpedient.

2. Application of the comparative (market) approach probably at presence of enough of analogues in the open, free market of the ground areas, with an obligatory condition: objects analogues should be chosen with the account charge, with other things being equal. Leaning on the practical researches of the market of the ground areas lead by the author and estimations of market cost of the rights to the ground areas in regions, the following has been revealed

The ground areas with charge, made out properly, met, practically in single instances: to Saint Petersburg, and Moscow. Objects-analogues to them to pick up there was no opportunity whereas in the ground market (the data rielterskih agencies of Moscow and Saint Petersburg) such information is closed and becomes transparent only at the moment of the made transaction. The same situation has developed also other surveyed regions Russian Federations

Therefore application of the comparative approach, basically, is possible only from a position of an estimation of other rights of objects-analogues, with the subsequent amendment on a share charge in object of an estimation. The amendment on presence charge can be entered only after allocation of a share charge, falling the estimated ground area. The share charge in the ground area can be defined, leaning to the area borrowed chargeom (it is specified on the plan of the ground area) it agrees rightfule to the document on the estimated ground area.

3. The profitable approach as it has been marked above, reflects a position of the most probable buyer (investor) interested in buying the ground area. It is obvious, that the potential buyer plans reception of the income of the ground area and it is important for it to know, how will affect charge size of this income.

The income approach defines a project cost reduction of expected future incomes an estimation of their cost now. The given approach unites the justified calculations of the future incomes and charges with requirements of the investor to final feedback. The income of any object of the real estate is expressed in factor of capitalization. And the below factor of capitalization of object, the above his market cost. Within the income of the profitable approach the following methods, as a rule, are applied: the Method of capitalization of the ground rent, Technics of the rest of the income of the ground, the Method of prospective use.

For an estimation of the ground area with charge there is a complexity at definition of the income as to allocate that part which will be repaid, it is practically impossible. Therefore, the author suggests to take into account the additional risks connected to conditions, actually, charge which will increase factor of capitalization and will result the income of the similar (not burdened) ground area in cost of the same ground area with the account charge.

Conclusions

Proceeding from the aforesaid, it is possible to describe the general problems of an estimation of market cost of the rights to the ground areas, with the account charge in the Russian Federation:

1. Backwardness of the ground market in the Russian Federation.

2. Backwardness of institute chargeov in the Russian Federation.
3. Absence of methodical recommendations by definition of market cost of the ground areas with the account charge, authorized at the state level.
4. Complexity in an estimation of market cost of the ground areas with the account charge in the Russian Federation at definition of a share of restrictions in a total cost of the ground areas.
5. Complexities at formation and reflection in rightful documents of a share charge and a level of a proportional payment from persons in which interests it is established charge.
6. The ground areas with the account charge are not submitted in the ground market.

The used literature

1. Clause 1-4 FL N 122-FL from July, 21, 1997 About the state registration of the rights to real estate and transactions with it, in editorship Federal laws from 05.03.2001 N 20-FL, from 12.04.2001 N 36-FL, from 11.04.2002 N 36-FL.
2. The order of the Ministry of Property of the Russian Federation from March, 6, 2002 N 568-r About the statement of methodical recommendations by definition of market cost of the ground areas (in editorship Orders of the Ministry of Property of the Russian Federation from 31.07.2002 N 2314-r, in editorship From 06.03.2002 N 568-R).
3. The order of the Ministry of Property of the Russian Federation from March, 6, 2002 N 568-r About the statement of methodical recommendations by definition of market cost of the ground areas (in editorship Orders of the Ministry of Property of the Russian Federation from 31.07.2002 N 2314-?, in editorship From 06.03.2002 N 568-r).
4. Software About the statement of standards of an estimation № 519, from July, 6, 2001y.
5. The order of the Ministry of Property of Russia from 10.04.2003 № 1102-r " About the statement of methodical recommendations by definition of market cost of the right of rent of the ground areas "