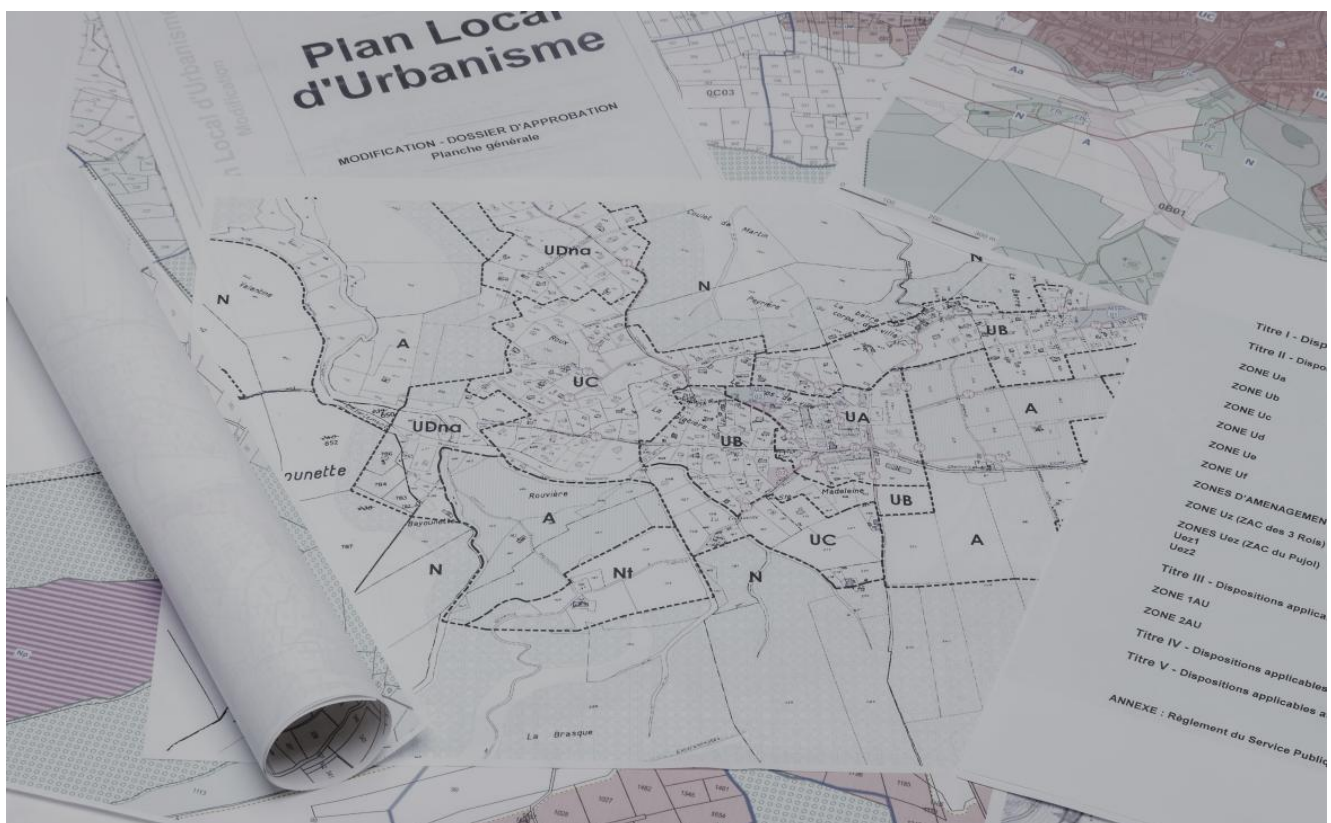


# Creeping changes are stalling developments and making investing in real estate unpredictable

It is known that the value of a real estate is determined by three conditions: location, location and location. The local government plays an extremely important role in shaping the spatial conditions of its territory – it carries out spatial planning (comprehensive and detailed planning) and building permit procedures. According to the Estonian case law, the comprehensive plan is the most important factor in determining the conditions for land use and construction, as it serves as the basis for the detailed plan and determines the development of the local government as a whole.



## Freedom and limits of the local government in spatial planning

All planning and building permit procedures end with the adoption of a discretionary decision. When making such a decision, the administrative body has been empowered by law to choose between different decisions, for example, to consider different planning solutions. When contesting an adopted special plan, the court verifies compliance with the rules of discretion by the local government but does not assess the expediency of the decision and cannot exercise discretion on behalf of the local government. Thus, discretion must be exercised following the limits of the authorization, the purpose of the discretion, and the general principles of law, taking into account the circumstances and weighing legitimate interests.

In addition to the discretionary powers and the requirements normally applicable to administrative acts, the decision of a local government is limited by other valid spatial plans. The building design documentation must also comply with the spatial plans in force and failure to comply may be the basis for refusal to grant a permit in the building permit procedure. This means, however, that the local government cannot impose new conditions for the preparation of the detailed plan or the design specifications to be issued, which are not previously prescribed in the comprehensive plan.

For example, if a comprehensive plan defines an area of cultural value, but no conditions have been set for adjacent areas that would contribute to the preservation of cultural values, then despite the possible need to protect an area of cultural value from external influences, such conditions may not be imposed in subsequent detailed planning procedures. The restrictions imposed on the immovable property by a detailed plan must be foreseeable and be based on legislation or a comprehensive plan.

**The cases of change of the adopted detailed plan and comprehensive plan are limited**

Spatial planning creates preconditions for the design and construction of the living environment, and public procedure allows for broad-based involvement. The adopted plan is valid until it is repealed, even if it is not suitable in unexpectedly changed circumstances after its adoption or the adopted planning solution has proved to be too rigid. The options for changing the plans are very narrow and, as a general rule, this can be done by adopting another plan for the same planning area.

For example, under certain conditions, a detailed plan can only be specified in the design specifications which is an opportunity given to the local government and therefore cannot be immediately presumed by the landowner. As a rule, a new detailed plan has to be established to amend the existing detailed plan. To amend the comprehensive plan, a private owner can apply for the initiation of a detailed plan, but the preparation of such a detailed plan differs extensively from the usual detailed plan procedure.

**Can the implementation of the plan be required?**

According to case law, implementing a spatial plan (construction of the planned objects) cannot be required. Although a planning solution has been agreed upon with the public, after adoption the developer cannot be forced to implement the planning solution - the developer may refuse to implement the planning solution. However, if a detailed spatial plan is being implemented, the local government must ensure that the solutions of the detailed plan are implemented as determined by the plan, including the conditions protecting the rights of neighbors or the public interest.

**What went wrong?**

Based on the current plans, it is possible to predict the construction volumes and spatial conditions (including restrictions) quite precisely. For example, the developer can assess whether the necessary buildings can be erected on an immovable he already owns, or which interests him. The real estate investor can assess the future construction volumes and the income from them, and the home buyer will receive answers about the surrounding living environment. Case law has confirmed that different parties have a certain legitimate expectation for the implementation of the plan in the adopted form. All solutions under the comprehensive plans should be implemented quickly and with little bureaucracy.

However, all legal certainty may be undermined by the wish of the local government to add conditions to the detailed plan being prepared or to the design specifications to be issued, which should have been agreed upon in the preparation of the comprehensive plan. It has also happened that the local government is trying to legalize spatial conditions with legislation that is not a spatial plan. The Tallinn City Council adopted the norms for the number of parking spaces by a decision that is legally dubious. However, the practical development of this example becomes relatively grotesque, as the city itself does not consider it important to comply with this act either. In practice, however, it is difficult to understand when green targets suddenly become so important that the city applies the minimum number of parking spaces as the maximum.

How should the developer be reasonably able to adapt in such circumstances and in a rapidly changing economic environment, or should the investor who made the investment be able to take such a risk into account? If a lawyer is finally consulted, the client usually has the question of whether there is a legal basis for making such demands? Poor administrative practice is supported by the choice of following such practice. The alternative is to be forgotten in a bureaucracy corridor. Not to mention that confusing situations where a lot is at stake are often increasing the risk of corruption.

To achieve sustainable development that takes into account the needs and interests of the members of society, democratic, long-term, balanced spatial development, land use, high-quality living environment, and promotes environmentally friendly and economically, culturally and socially sustainable development, it must be understood that spatial solutions agreed with public involvement can only be changed through legitimate processes. No matter how noble the goal of changes without public involvement is, they end up halting spatial development and making the investment in real estate unpredictable - for home buyers, real estate developers, and investors. Noble goals are worth it to achieve them legitimately.

•

in

•

•

f

•

•

•



**RAIMO KLESMENT**  
ASSOCIATE

(+372) 66 76 440

RAIMO.KLESMENT@NJORDLAW.EE