

# Land Register, Multi-Purpose Cadastre, Land appraisal in the Federal Republic of Germany

Friedrich Rokahr<sup>3</sup>

## A. Laws and Concepts to Legal Estate

### A. 1 INTRODUCTION

Real estate and assets are in the focus of this congress.

I will explain some legal bases and concepts from German view which are of great meaning for our economic

In which kind the real estate is registered? What is about deeds and titles? Where are registered the actual description features of real estate? Which appraisal (taxation value) applies to real estate? Which appraisal applies to agricultural areas? Who carries out this appraisal?

Is there next to the tax benchmark problems still another kind of land valuation?

### A. 2 LAWS

#### A. 2.1 LAW OF PROPERTY

Law of real estate belongs in Germany to the law of property.

The law of property of the Civil Code of the Federal Republic of Germany (BGB) settles the assignment of things, the components, accessories and use.

The difference between the properties and the mobile things is codified into the §§ 94 BGB<sup>4</sup>. Flat propriety, leasehold are full ownership rights.

The real estate ownership can only be limited by the constitution or laws. The right of ownership is absolutely, i. e. it has to be respected by everybody, the state inclusive.

The public register of real estate is called in Germany land register.

---

3) Head of Surveying and Cadastre Administration Geoinformation Agency. Land Surveying, Valuation of Real Properties.

4) § 94.1 [Wesentliche Bestandteile eines Grundstücks oder Gebäudes]

(1) Zu den wesentlichen Bestandteilen eines Grundstücks gehören die mit dem Grund und Boden fest verbundenen Sachen, insbesondere Gebäude, sowie die Erzeugnisse des Grundstücks, solange sie mit dem Boden zusammenhängen. 2 Samen wird mit dem Aussäen, eine Pflanze wird mit dem Einpflanzen wesentlicher Bestandteil des Grundstücks.

(2) Zu den wesentlichen Bestandteilen eines Gebäudes gehören die zur Herstellung des Gebäudes eingefügten Sachen. Quelle: CD-ROM Lexikon der Betriebswirtschaft © 1996 Verlag C. H. Beck.

## A. 2.2 FISCAL LAW AND APPRAISAL LAW

### A. 2.2.1 ECONOMIC UNIT

The laws on taxation don't use the concept of the "law of property" to define a thing for purposes of taxation. The fiscal law uses the concept "asset" (Wirtschaftsgut). Assets are economy units, prepared for taxation. An undeveloped property can be an asset, a bank balance can be an asset, a car can be an asset. Every asset can be an independent economic unit if this asset is of significance for income.

Assets which serve a the same economic purpose are forming an economic unit. This unit is the basis of taxation, that means the obtainable profit or the obtained profit is used as taxation value.

Example: Size of an economic unit.

A Licensed Surveyor is the owner of a real estate with an upstanding building. The building is used by himself as office building. Items of furniture are in the office. His contract awarders owe him money. He uses several vehicles for his measurement activity.

All assets form one economic unit. This unit form the base to calculate the income under section 4.3 EStG.

The appraisal law<sup>5</sup> has basis function for the following kinds of taxation:

Local property tax, death (estate) duty, trade tax, land transfer tax, Sales tax, income tax.

### A. 2.3 PROPERTY LAND REGISTER

The property land register has been established in Germany in the previous century.

Its task originally was to install a just taxation on land. For this request and in regard of the will of politicians a real estate register for the taxation was developed. The tax authorities and the land register management (cadastre) co-operated in the financial administration on government level.

With the introduction of the civil code (01.01.1900) the land register got the additional function of a propriety securing system. The property land register got the legal status of an official list of all properties for use in juridical affairs. The property land register forms the base information system for all data which stand with the property in coherence today.

---

5) Bewertungsgesetz (BewG) i.d. Fassung vom 01.02.1991, BGBl I S. 231 mit späteren Änderungen.

The property land register registers the actual situation and use of land, serves to the order and the protection of real estate and forms the basis for technical and economic planning. Today the land register is a multipurpose cadastre.

#### A. 2.4 PROPERTY MARKET AND PROPERTY APPRAISAL

Land is a restricted resource. Ground is an essential natural resource and of great economic meaning.

The knowing about values for properties and real estate doesn't only lie in the interest of the laws on taxation but also in general interest of the free property market. Transparency of real estate market is demanded by politics and economic management.

Selling and buying of real estate was indicated by limited land prices in Germany to 1952. Later on the operation of the property market followed to the general principles of the relationship between supply and demand.

The principles of a social market economy agree not that no reliable data were available about the size and the worth structure of the real estate market.

In the political discussion it had been recognised that the market value of real estate plays an important role in national economic welfare. Market values of real estate can be used as a specific indicator of the monetary stability.

Therefore a purchase price collection as particular register was installed in 1960 with the introduction of the building civil code. By this register it is possible to derive standardised market values of land. The guideline to this is called *Wertermittlungsverordnung (WertV)*<sup>6</sup>.

#### *Result:*

Estimating fiscal value, security of real estate by registration of absolute title, the multi-purpose cadastre and the special register containing data on purchasing prices are bound together in a legally defined exchange of information.

---

6) § 195 [Kaufpreissammlung]

Zur Führung der Kaufpreissammlung ist jeder Vertrag, durch den sich jemand verpflichtet, Eigentum an einem Grundstück gegen Entgelt, auch im Wege des Tausches zu übertragen oder ein Erbbaurecht zu begründen, von der beurkundenden Stelle in Abschrift dem Gutachterausschuß zu übersenden. ....usw. Die Kaufpreissammlung darf nur dem zuständigen Finanzamt für Zwecke der Besteuerung übermittelt werden. Vorschriften, nach denen Urkunden oder Akten den Gerichten oder Staatsanwaltschaften vorzulegen sind, bleiben unberührt.

Auskünfte aus der Kaufpreissammlung sind bei berechtigtem Interesse nach Maßgabe landesrechtlicher Vorschriften zu erteilen (§199 Abs.2 Nr. 4).

6) Verordnung über Grundsätze für die Ermittlung der Verkehrswerte von Grundstücken vom 06. Dez. 1988 (BGBl. I 1988, S. 2209, geändert durch das Bau- und Raumordnungsgesetz vom 18.08.1997 (BGBl. I 1997, 2081).

## **B. The main tasks of land register, property land register (cadastral data) and property appraisal**

### **B. 1 THE PUBLIC REGISTER "LAND REGISTER"**

#### **B. 1.1 INTRODUCTION**

The land register is a public register. In this system land ownership is recorded. It contains real property rights and restriction on ownership as well as collaterals and easements [Dienstbarkeiten] charges and mortgages. It is always to be kept up to date so that there is transparency of all mutations.

Why a land register?

The propriety at a property is connected to numerous liabilities of the owner. These obligations could be based on civil law (safeguarding of a mortgage) or upon public law (tax paying, liabilities).

Although properties are leased or rented out the owner however is responsible for his ground.

The knowledge of the adjudication of absolute title is of great meaning for economic utilisation of the property or in the case of executing plans e.g. for traffic lines. The public land register gives legal proof of ownership and allows persons who are entitled (e.g. purchaser, tenant) viewing the register to identify the owner or mortgages.

#### **B. 1.2 GUARANTEE OF PROPERTY AND SECURITY OF RIGHTS**

The acquisition and the loss of real estate is codified in the BGB. There are six cases to become a land owner and getting an absolute title:

- a) By a legal matter. You have to make a sales contract which must be certified by a notary. This document is registered at the land registry. The rights agreed into this contract are typed in the land register. (§§ 873, 925 BGB)<sup>7</sup>.
- b) By more than 30 years constant possession of a property. Then the ownership in land then can be officially determined and recorded in the land register.
- c) By surcharge in a public compulsory auction proceedings. The proceedings are carried out by the court.

---

7) § 873.1 2 [Erwerb durch Einigung und Eintragung]

(1) Zur Übertragung des Eigentums an einem Grundstücke, zur Belastung eines Grundstücks mit einem Rechte sowie zur Übertragung oder Belastung eines solchen Rechtes ist die Einigung des Berechtigten und des anderen Teiles über den Eintritt der Rechtsänderung und die Eintragung der Rechtsänderung in das Grundbuch erforderlich, soweit nicht das Gesetz ein anderes vorschreibt.

(2) Vor der Eintragung sind die Beteiligten an die Einigung nur gebunden, wenn die Erklärungen notariell beurkundet oder vor dem Grundbuchamt abgegeben oder bei diesem eingereicht sind oder wenn der Berechtigte dem anderen Teile eine den Vorschriften der Grundbuchordnung entsprechende Eintragungsbewilligung ausgehändigt hat. (Quelle: CD-ROM Lexikon der Betriebswirtschaft © 1996 Verlag C. H. Beck).

- d) By expropriation decision. In an expropriation proceedings the private propriety is deprived in return for complete compensation. Laws form the legal basis for the expropriation.
- e) By legal succession. The inheritance (§ 1922 BGB) is meant, e.g.
- f) By appropriation or use of land, that does not belong to anybody (§ 928 BGB).

The land register exists uniformly in the complete Federal Republic. It is established as public register and covering the complete country.

The land register has three main effects for the economy process:

- The entries in the land register are constitutively.
- The entries in the land register have “public faith” (full confidence to the registered rights, primary evidence)
- The entries in the land register develop a protection effect to any enquirer 8

#### B. 1.2.1 THE CONSTITUTIVE EFFECT OF THE LAND REGISTER

The assignment of the propriety at a property or the adjudication of charges or tenure is performed legally in two steps:

Step 1: Buyers and sellers arrange an agreement in a sales contract about the terms for the assignment of the property. The notary certifies these terms and the settlement to transfer the land.

Step 2: The notarial sales contract is registered at the land register. By this act the change of ownership has been performed.

Both pre-conditions are necessary for the registration of ownership in land. The registration act in the land register has a constitutive status which is fundamentally more than an effect of simple declaration.

#### B. 1.2.2 THE SECURITY OF A LAND REGISTRATION (PUBLIC FAITH)

The registered rights have the assumption of the correctness and primary evidence. The guarantee of ownership of property, loads and confinements means benefits for business and economy and provides security for credits.

The landowner registered in the land register has guarantee of absolute title by civil law, section 891 BGB.

If rights are removed of the register it is suspected that they do not exist anymore, they remain readable.

---

8) “There are two important legal principals: (1) Until otherwise proven, the correctness of all titles recorded on the register is resumed. (2) The land register enjoys the “public faith”, in other words, the details registered may be presumed correct by anyone acquiring a legal title with regard to property unless an appeal against the correctness is recorded or the person acquiring the title is aware of the entry being incorrect.” (Quelle, Vogel in Organisation of Surveying and Mapping in the Federal Republic of Germany, DVW 1993).

This system of land registry produces standardised property. Properties and rights or charges at properties became products in the economic process.

The formal attested property title at the property is guaranteed by the state. A variety of questions would be asked no more: Where do the boundaries of my property go? Are there unknown rights of ownership or loads?

The banks make use of this security documented by the land register at the granting of loans. A land register statement suffices to prove the owner position. The loan award could be signed substantially faster. The ranking of registered loan obligations gives completely information about possible credit risks too.

#### **B. 1.2.3 THE PROTECTION FUNCTION OF THE LAND REGISTER METHOD**

The land register method develops a protection function. This is given in respecting formal rules by sellers and buyers. Independently of the economic strength or power both partners have to apply them. The weaker partner is protected against the violations of law.

Approval reservations with property business under public law are checked in the land register method. (Practice of the option of purchase by a municipality, supervision of the property dividing approval). The protection function becomes controlling function in these cases by the land registry authority.

### **B. 2 The property land register**

#### **B. 2.1 TASK**

The property land register forms the base information system for all data which are concerned with detailed information at the cadastral land parcel . The property land register has to fulfil the following main tasks:

As official list of the properties. It is in permanent agreement with the land register.

As list of the properties in the financial administration for the processing of the property land register for taxation

As proof of the results of the land utilisation quality of the agricultural and foresting economic areas (soil fertility, arable land quality, wine-growing, waters)

As proof of the real use of built on areas (municipal areas, municipality areas, residential building areas, traffic areas, parks)

As basicmap for legally binding plans, environmental protection and conservation.

As retrieval system for the citizen and other entitled persons giving data from the situation and size of property.

The property land register is used today as a base information system for "geodata" in the scale area of 1:250 to 1:5000<sup>th</sup>. This system can provide one reference system for georeferenced data of all manner. The objects of cadastre are vectored and file recorded in a database.

## B. 2.2 CONTENTS OF THE PROPERTY LAND REGISTER

The property land register consists of:

- record of describing data (text record)
- record of numerical data
- record of geometric data.

These records are without contradiction and always actual. They are updated at each change at properties and each surveying act of property.

There are no value declarations in the cadastral records neither for the taxation nor for investments. It doesn't contain any legal details on the property with exception to the details on the owner. It doesn't contain any statements about planning aspects.

### B. 2.2.1 RECORD OF DESCRIBING DATA

The record of describing data contains:

Details on the owner (name, Christian name, date of birth, address, share in the property)

Situation name (street name, street number)

Municipality (town) district (land register district) (sub-district, Flur ) lot or parcel number

Area size, agricultural use quality

Actual use (detached house, traffic area, playground)

Internal processing remark of the land register: Time of the genesis, allusion to the date of surveying

Connection to the land register, land register reference number

Connection to the tax office, reference number of the rateable value (Einheitswert)

Specifications under public law, consolidation remark, redevelopment remark

The co-ordinates of the lot number.

### B. 2.2.2 RECORD OF NUMERICAL DATA

The land surveying results for every property surveying act are numerically registered in a protocol by a land register engineer or a licensed land surveyor. The owner and the neighbours must sign the boundary protocol also. The surveying points are linked to a network of co-ordinated points.

The documents of surveying are archived in the land property register and are of actual disposal. The archives are presence archives. All archives documents are kept safety on microfilm. All surveying points have co-ordinates and are stored in a database.

#### B. 2.2.3 CONTENTS OF THE LAND REGISTER MAPS

The land register map are so called frame maps. These maps have the format 50 cm of X 100 cm, in the scale 1:1000 (1:2.500) in areas with open kind of buildings, in closed municipal areas 1:250 or 1:500.

The land register map contains the boundaries of the lots, the lot numbers, the network of main surveying points, the buildings with street number, the number of the floors, the street name, signatures, meadows, garden, woods, fences, hedges.

The contents of the land register map are standardised by ministerial regulation. The map is recorded as a vector file.

#### B. 2.3 TOPICALITY OF THE PROPERTY LAND REGISTER

It is not difficult to install a property land register. The most difficulty is to keep the property land register in a continuous actuality. By law every landowner is obliged to inform the cadastral administration about geometric changes buildings. In the case of dividing a lot the new fixed boundary has to be surveyed by the cadastral office or by a licensed surveyor. There has to be made a surveying document for evidence of the boundary and defines the legal status of the boundary for the land register. Existing local boundaries are checked in comparison with the land property documents. The civil court decides on boundary disputes and requests land register documents as evidences.

The property land register works in regard of the principle of application. Applicant can be the owner or the future owner (buyers). The State and private people are treated equal and have put applications on surveying also.

All surveying of property are connected to a co-ordinate system. The property areas are calculated faultlessly geometrically. The lots as object of the cadastre, could be identified without fault in the local are, exactly in the cadastral map and as real estate object in the land register.

The evidence of the boundaries location is so strong that I only know very little cases in long-standing practice at which a court has raised the boundaries proof of the land property register.



## **B. 2.4 INFORMATION EXCHANGE BETWEEN PROPERTY LAND REGISTER, LAND REGISTER AND TAX AUTHORITY**

The land register, the property land register and the tax authority (rateable value list) correspond each other. The data interchange is stipulated legally about communication methods.

Changes in the stock of the property land register are given as communication to the tax authorities, for example if areas used agriculturally become building land.

Changes in ownership cause communications between the cadastral administration, the tax authority and the land registry authority.

## **B. 3 Property assessment**

### **B. 4 Assessment for tax purposes**

Above I had pointed to the law of assessment for taxation

The assessment systematic includes

- The assessment object
- The assessment scale
- The assessment method
- The assessment time.

The same taxation bases are valid for different taxes in Germany. For these taxes the rateable value forms a suitable method for the basis inquiry. The unity assessment forms the starting point for the local property tax, the death duty, the trade tax, the land transfer tax and parts of the income tax for the assessment.

#### **B. 4.1 OBSERVATION OF RATEABLE VALUES FOR PROPERTY**

Assessment object is the economic unity which can e.g. form a property together with other assets. A subtly differentiated consideration is therefore necessary, however cannot be done here.

Three categories in principle must be distinguished at the real property:

- (a) agricultural and foresting economic fortune
- (b) land properties
- (c) business fortune

The economic unity to a) is the agricultural business.

The economic unity to b) is the property.

The economic unity to c) is the commercial enterprise.

I will explain the landed properties (real estate) in the fiscal sense briefly.

It is subdivided in :

- (a) Undeveloped properties
- (b) Built on properties
- (c) Properties in the condition of construction
- (d) Leasehold
- (e) Flat property (condominium)
- (f) Buildings not including real property.

(b) is subdivided further into

- (ba) apartment properties
- (bb) properties for business affairs
- (bc) Properties used mixedly
- (bd) Detached houses
- (be) Two family houses
- (bf) Other properties with buildings

The assessment scale is in regard of the assessment object. There are three assessment scales:

1. The market value
2. The subdivided value
3. The capitalised value of potential yield, income value

The financial administration is responsible for calculating the rateable value in according with the methods mentioned.

## B. 4.2 MARKET VALUE INQUIRY

### B. 4.2.1 STANDARDISED MARKET VALUE

The standardised market value is defined as the price which would be achieved in an ordinary transaction at the time when the assessment is made, taking into account the existing legal circumstances and the actual characteristics, general condition and location of the property or other object of assessment, without consideration being given to any extraordinary or personal circumstances.

#### *Valuation Experts*

The Committee of Valuation Experts has to determine property values and the valuation of other types. It is a Committee of autonomous and independent experts. It consists of a chairperson and of other experts (Architects, fiscal experts of taxation e.g. ) working in an honorary capacity.

#### *The Duties of Valuation Experts* <sup>9)</sup>.

---

9) Translation of Section 193 of the Federal Building Code, translated by David and Graham.

The Committee of experts shall produce expert opinions on the current market values of properties both with and without buildings, and of rights to property, where this is requested by

1. the authorities charged with enforcing the Federal Building Code in the execution of their duties under this Act,
2. the authorities responsible for assessing the Value of a property, or level of compensation due in respect of a property or a right to a property on the basis of other statutory provisions,
3. the owners or persons with equivalent rights, holders of other rights to the property and persons entitled to a compulsory portion, where the value of the property is significant for assessing the value of the portion, or
4. courts and judicial authorities.

(2) In addition to producing expert opinions on the level of compensation due in the case of loss of a right, the Committee of experts may produce opinions on level of compensation in respect of property loss of other types.

(3) The Committee of experts shall compile data on purchasing prices , which it shall analyse to establish standard ground values and other data required in valuation.

This Committee of experts applicants valuation law and standards.

#### B. 4.3 THE MODEL OF THE MARKET VALUE INQUIRY

The market value is a function of the obtained selling prices. These selling prices are subject to influences which are independent of the property. These depend on the market. And there are influences these are specific property.

Market influences are e.g.

- Supply situation
- View of return
- Worth securing against inflation
- expectation of profit from sale
- expectation of profit by development
- Tax concessions

Influences from the property are:

- Property size, property form
- situation, situation, situation
- kind of the structural usability
- scale of the structural usability

##### B. 4.3.1 PROCEEDINGS OF VALUATION

There are three predominant proceedings in use for getting the market value:

1. Reference value method (Sales Comparison)

2. Capitalised cash flow of income (Income Capitalisation)
3. Real value method (Cost Approach)

The choice of the methods depends on the assessment case.

For the assessment of the land the reference value method is fitting.

Renting properties, shopping centres are calculated usually by cash flow. The real value method gets applied at the assessment of properties for the own use. Property objects like hospitals, which serve a charitable purpose e.g. are calculated after the real value method.

A combination of the three methods is possible.

#### B. 4.3.2 OPEN MARKET VALUE AND STANDARDISED MARKET VALUE

Open market value<sup>10</sup> means the best price at which the sale of interest in property might reasonably be expected to have been completed unconditionally for each consideration on the date of valuation assuming:

- a) a willing seller
- b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of interest, for the agreement of price and terms and for the completion of the sale;
- c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation.
- d) that no account is taken of any additional bid by a purchaser with a special interest.

The Standardised Market Value in Germany is a statistical average or mean value. The open market value is the highest value of the same statistical quantity of comparable values.

#### B. 4.3.3 INCOME CAPITALISATION APPROACH

In Germany the income capitalisation approach consists of two parts. One part is defined by the value of the land and the other part by the income approach of the land inclusive building.

The reason therefore is, that you can use the land theoretically for ever and that you can not destroy it. The building however has only a certain life time. During this time the investor anticipates a specific return on the investment.

For getting the whole income approach you have to add the value of the land and the discounted cash-flow over the duration of the set of periodic incomes.

---

<sup>10</sup>) zit. nach Kleiber/Simon/Weyers: Verkehrswertermittlung von Grundstücken, 1998, aus VAS 4.2 RICS Statement of Valuation: London 1996).

In other systems the value of land is a "quantité négligable" and the income is directly the discounted-cash-flow of the investment.

In most cases the investor keeps the value of land as calculated residuum in his cash flow analysis very small, with the trend to zero.

## **C. Administration and management of land register property, land registers and property assessment**

### **C. 1 ADMINISTRATION**

The system of land ownership and deeds and title registration is under the control of the government on federal state level. It is organised within the local courts.

The cadastral surveying, which guarantees the boundary of lots and real property and administrates the land parcel information system is under control of the government on federal state level too. It is organised within the regional federal state administration or under control of the regional state administration within the county or Municipal administration.

The valuation of land for fiscal taxation is done by the taxation office under government control. It is organised within the federal state administration.

The valuation of land for other purposes than taxation is done by licensed persons, for example surveyors or architects or by the independent Committee of valuation experts.

It is organised in strong connection with the cadastral administration.

### **C. 2 USE OF REGISTER'S INFORMATION**

The multipurpose Cadastre is handling the property related data in an electronic database, named ALB and ALK.

There is a data standard for exchanging cadastral data to extern customers, and private sector, i.e. gas, water and electricity provider. These customers pay a lot of money for using the cadastral information and getting the information updates via electronic mail.

The purchasing price data of average local ground values are published yearly by the Committee of valuation experts. There are maps on compact discs containing the values of land. We are working to publish them in the Internet.

The land registry will be opened for notaries via electronic mail too. There is no exchange of data between the land registry and cadastral data by electronic process neither with the tax office.

## **Concluding Remark**

Europe is unifying. Immense efforts have been done in our countries to fulfil the criteria of Maastricht. Our uniform currency, the EURO, becomes reality. The global competition arena changes the property market.

Problems of valuation and laws on taxation are in a narrow context. Manner and limit of taxes on real estate influence the competition site. The legislation of a nation state will become stronger than replaced till now through European supranational law. The contract of Amsterdam will look after change. This contract influenced of the climate of economy and this one strengthens the supranational customers interests.

The tremendous progress in the information technology and in the data base design modernises the management. The development of object-oriented information memories influences modern retrieval system.

We must use these external strengths and influences for a good real estate politic and an excellent real estate management. Today's convention forms a good base for this. I thank the organiser and the committee for invitation.