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Analyzing of court decisions cancelling zoning applications in implementation boundary

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Abstract

Many zoning applications, parcels that falling within the implementation areas are canceled by the courts due to non-compliance with the relevant laws, regulations and circulars. This situation causes serious grievances for the parcel owners as their development rights are taken away and brings additional time and cost burden. The aim of this study is to evaluation a sample of land readjustments in terms of implementation limit and to examine court decisions regarding zoning applications in order to prevent possible cancellations in the future. In this context, an example of a zoning application was examined and the implementation boundary was created by taking into account the provisions regarding the implementation boundary in the court decisions regarding this application, and the said zoning application process was carried out again. As a result of the examination, in the said zoning application; It has been observed that the DOP rate (Development Readjustment Share), the number of parcels covered by the social spaces have not changed, therefore the development rights of the owners have been taken away. As a result, the fact that some court annulment decisions do not change the result legally and technically creates a burden in terms of time loss and cost.

Introduction

In many countries, the development process plays a critical role in regulating land use and development. However, court decisions regarding the cancellation of zoning applications due to non-compliance with the relevant laws, regulations and circulars can have significant negative effects on the parcel owners. These decisions often result in the loss of some rights and additional time and cost burdens. In addition to the legal and regulatory framework regarding zoning applications, the effect of zoning applications on land use and development has been examined in many studies. For example, Wang and Yin [1] examined the impact of zoning application on housing supply in Massachusetts, while Németh and Lang [2] presented a critical analysis of zoning in Hungary. Kim [3] studied the development of zoning by law in Seoul, South Korea. In a study on the transfer of social spaces to the public; expropriation applications, one of the implementation tools used in our country, in order to transfer these areas to the public and make them available to the citizens of the city; It has been concluded that the real estate taxes, which are intended to contribute to the return of immovable values to the public, remain very symbolic, and therefore only the land regulation application remains as the last option for bringing the urban annuity cost to the public [4]. In a study on the problems of subdivision in land regulations; It has been concluded that one of the biggest problems arising as a result of the implementation of the zoning application is the value-based distribution method, which is also in force and applied in our country, and the necessity of legal regulation in line with a holistic approach has been suggested. In addition, it was concluded that keeping the parcel owners' participation in the process at the highest level before and after the zoning application will contribute to the reduction of the number of disputes that may occur in the future and the number of possible administrative lawsuits [5]. In another study conducted to solve the problems encountered in zoning applications; If the deficiencies are eliminated and necessary arrangements are made, the most appropriate method applied in our country is land regulation, since

all parcels within the implementation limit are included and the areas allocated to the public are created thanks to the participation shares received from all parcels in a fair manner [6]. In a study examining the lawsuits filed against zoning applications; In the process of the Council of State following the domestic court judgment of the lawsuits against land regulations, the annulment decisions were examined in terms of authority, form, reason, subject and purpose, and it was seen that 44% of the decisions made were overturned by the Council of State. For this reason, it has been emphasized that domestic courts should specialize in their subject, otherwise the process may be prolonged or the parcels that did not file a lawsuit in the land regulation subject to the cancellation decision and complete their construction by obtaining the construction permits may lead to difficult or irreparable results [7]. In another study examining the cancellation decisions of the Council of State and administrative courts for land regulation; The new situation as a result of the cancellation decisions made, the suggestions brought to the possible technical and legal problems that the administration will face in the process until the return to the zoning application to be made in the same region, and the ways to be followed were expressed and solutions were presented to protect the acquired rights of the owners. The process flow diagram created in this context is intended to guide practitioners [8].

Within the scope of this study, Istanbul Province Pendik District Kaynarca 4th Region zoning application has been examined in terms of the implementation limit of the reports prepared by the experts and the annulment decisions given by the courts. Application of Article 18 of the Land Development Act No. 3194, the relevant Cadastre Circulars, previous studies on similar issues and related publications were examined. In this context, solutions were sought in the light of the data of the relevant land regulation sample obtained from the Pendik Municipality Real Estate and Expropriation Directorate.

Material and Method

In this section, cadastral parcels belonging to Istanbul city Pendik district Kaynarca 4th Region Zoning Application have been included in the implementation area pursuant to application of article 18 of the Land Development Act No. 3194. In Figure 1, the registered subdivision plan of the region that has been taken into the zoning regulation is shown. After the application of article 18, where there are a total of 67 cadastral parcels included in the regulation, 41 zoning parcels have been created, excluding those that are not subject to registration.

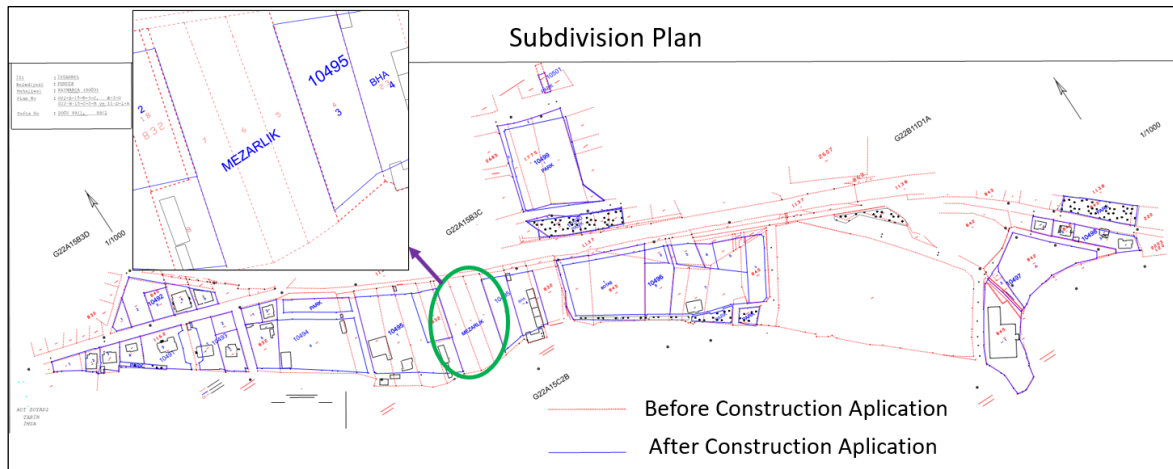


Figure 1. Application of article 18 implemented Subdivision Plan

There are also 3 parcels, which are shown enlarged in the figure and are not included in the implementation boundary for different reasons. There are 4 parcels that are outside the implementation limit. 12 lawsuits have been filed regarding this land regulation. As a result of the lawsuits filed, the zoning application was canceled on the grounds that the parcels included in the implementation area according to the needs of the region were not determined within the framework of the relevant law, regulation and circular principles and the implementation boundary did not provide integrity. In this context, the cancellation of a registered land regulation often leads to irreparable results or non-applicable situations, and these cancellation decisions are the beginning of the problems that will come in series. These problems are; It can be listed as the owners' inability to make license applications, the fact that the parcels remaining in the social space cannot use the development right in the building block, as a result of this, the immovable property owners who remain in the equipment are opened lawsuits against the municipalities for confiscation without expropriation, etc. Considering the provisions regarding the regulation boundary in the court decision regarding the zoning application examined, and including the all parcels that were not included before, a implementation boundary was created and the said zoning application was made again. However, since it is seen that the annulment decisions do not change the legal or technical nature of the parcels in the application area, it is recommended that the courts be divided into specialized units in such cases.

Results and Discussion

In this section, it is seen that the zoning application was canceled due to the disconnection of the implementation limit determined in the application area, regardless of the other problems that are the subject of the case of the relevant court. In such a case, as a result of the implementation of the canceled zoning application by crossing the reimplementation limit, DOP rate, the allocated areas of the parcels in the building block and the number of parcels in which the social spaces were met did not change, so it was seen that the court cancellation decisions caused the owners to suffer by taking away their development rights. Although these studies provide important information on zoning implementations, more research is needed on court decisions regarding zoning applications and their effects on parcel owners. This study aims to fill this gap by examining an example of land regulations and establishing a implementation boundary to prevent future cancellations. In addition, the study aims to examine court decisions regarding zoning applications and to contribute to the prevention of future cancellations. However, by examining the example of land regulation, it is to show how to contribute to the zoning implementation literature and to help parcel owners protect their development rights. In this study, it is thought that the land regulation rules should be interpreted better by the scientists. Preventing the cancellation of the problems that are the subject of the lawsuit in zoning applications has a critical importance in terms of time and finance. In this context, the solution method considered will cause the related cases to be resolved in a short time.

Conclusion

In this study, it was emphasized that in administrative cases filed for the application of article 18 of the Land Development Act No. 3194, experts and courts should not look only at the formal appearance and characteristics of the implementation boundary of the zoning application subject to the lawsuit when making their final decisions. In addition, it has been shown that it is necessary to investigate the cadastral histories of parcels that are not included in the zoning application and cause the implementation boundary to be disconnected. Zoning application in any step of the calculation and the result does not affect (DOP rate, allocated space, modifying etc) and therefore needed to be taken to regulate the zoning plan comply with applicable parcels that are not just editing the implementation boundary to be taken to ensure that there is no unnecessarily regulate, and those parcels which will be released on behalf of the owner of the new deed that creates a burden in terms of both public administrations loaded dysfunction unnecessary workload is obvious. Beyond that, the cancellation of the case and the application causes the development rights of other parcel owners to be taken away from their hands. As a solution to all these situations, It can be considered that an advisory board should be formed, which consists of people who are experts in their field and who know the technical and legal legislation well, where consultative committee can be taken, except for courts, and which will make decisions according to these consultative committee in the courts. Otherwise, our colleagues are left alone with the problems and if there is no precedent decision of the Council of State taken in this direction, they are left alone with the situation of experiencing by living. In this respect, as a solution, it can be considered that the experts have a good command of the legislation technically and legally, and that a commission consisting of experts of this nature can take case law in the decision-making process of the courts. Thus, even if there is no precedent decision regarding the problems faced by the Administration, this commission will be consulted and the right and healthy decision will be made.

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