

Summary

REZONING IN SPATIAL PLANNING PRACTICE

Over the decades, the land use plan has been established as a central instrument of municipal land use planning in Austrian spatial planning. The Constitutional Court, as the highest supervisory authority, has clarified the constitutional framework for the creation and amendment of land use plans by its decisions on controversial cases. Amendments cannot be made arbitrarily but require a reason for amendment and a carefully conducted procedure with sufficient basic research and a weighing of interests.

A special case of a land use plan amendment is the rezoning of building land to green/open space. Since such a change restricts the development potential of individual plots of land, it constitutes a property intervention. The market value of affected properties usually decreases many times over during such a change. Accordingly, rezoning is not a trivial change to land use plans. At the same time, it often makes sense and is necessary from a planning perspective to rezone land that was previously designated as building land and has not yet been developed as open/green space. In most Federal States (Länder), there are even obligations to rezone particularly hazardous areas as open/green space, especially in connection with natural hazards.

In the course of drafting the "Soil strategy for Austria", an action plan for concrete further steps to be taken by 2030 was also formulated. This action plan now serves as the basis for the work on the topic of soil and land management in the Committee Spatial Development (A/RE). In autumn 2024, the committee decided to commission a legal opinion on rezoning to green/open spaces in order to present both the status quo and new areas of application. In addition to evaluating and classifying the case law, an overview of actual rezoning practice was also planned.

In spring 2025, the contract for the legal opinion and the preparation of accompanying materials was awarded to em. O. Univ.-Prof. Dr. Karl Weber and Dipl.-Ing. Dr. Arthur Schindelegger, who, together with the working group set up at ÖROK, comprehensively reviewed rezoning in two specialist workshops.

This publication summarises the results of this work. The legal opinion at the beginning provides an overview of the case law and the framework conditions for carrying out rezoning. It presents both the existing legal framework in the federal states and the principles derived from case law. Particular attention is paid to new challenges in connection with the rezoning of undeveloped building land. This applies in particular to areas that are to be kept free of development in the long term for the purposes of climate protection or climate change adaptation.

The legal opinion is supplemented by a summary of the key findings in a brief information sheet (guideline) and an explanation with classification of the practice.

The key statements of the legal opinion are based on the case law of the supreme courts, which over the last three decades has largely clarified important framework conditions for rezoning. For permissible rezoning, there must be legitimate objectives that serve the public interest. A factual basis can be established here with sufficient basic research on the decision-making criteria and a weighing of interests that also includes the land-owners affected.

There are many reasons for rezoning building land. Serious threats from natural hazards, immission control or the wishes of the owners themselves are largely unproblematic because they can be clearly demarcated, not least in spatial terms. However, rezoning to reduce the yet undeveloped building land or to keep green spaces with special functions free requires a solid spatial-analytical basis.

A sticking point in rezoning is compensation, which is sometimes required due to property restrictions. There is a divergence in the case law of the Constitutional Court and the Civil Supreme Court on this issue. However, legal principles are now so clear that compensation obligations can be easily assessed. Municipalities can also use private law agreements during rezoning to agree on framework conditions.

This volume of materials is therefore intended primarily as an aid for practitioners.

Rezoning to green/open space is generally permissible for many different purposes in the Austrian planning system but requires particular care in basic research and weighing up of interests, as they ultimately constitute a property intervention. Such property interventions can be made constitutionally compliant through compensation, and corresponding compensation provisions exist in all federal states. In some special cases, however, rezoning without compensation is also possible.

The frequently expressed concern of municipalities about the unexpectedly high costs due to compensation claims for rezoning is no longer valid. Both existing legal provisions and case law now provide a clear line, and the estimation of costs is possible.

The material collection is a building block in the implementation of the action plan of the “Soil strategy for Austria” and in answering the question of whether and how building land reserves in outer areas can be reduced.