

Advising on the Law of Private Land Ownership in Dubna, Russia

PROFESSOR
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In December 1992, while serving as a visiting law professor at the University of San Diego, I received a long-distance call from La Crosse, Wisconsin. It turned out to be very different from the occasional calls I get from Wisconsin lawyers asking questions about real estate law. The caller was Charles E. Hanson, Wisconsin Law Class of 1973, a partner in the Hale, Skemp, Hanson & Skemp firm active in the lively sister-city relationship between La Crosse and Dubna, a Russian city of 70,000 population located about 65 miles north of Moscow. He had recently been in Dubna, and had been asked some good questions by Dubna officials about the possible need for a new legal foundation to support the land privatization process already begun in Russia.

It had occurred to Chuck that maybe his Property and Real Estate professor at the UW might be interested in helping provide advice for Dubna, and participating in activity which conceivably could expand to drafting legislation for consideration by appropriate legislative bodies in Russia. He happened to call at a time when I was considering joining a tour sponsored by the Wisconsin Alumni Association, with the principle feature being nine days on a special "Orient Express" train which would follow the Trans-Siberian route for much of its length, then drop south through Outer and Inner Mongolia, ending at the Great Wall of China near Beijing. We were able to work out an

arrangement by which I would travel to Russia early and spend nine days in Dubna. Dubna's only expense would be to meet me at the Moscow airport, house and support me during my stay, and then get me to St. Petersburg (formerly Leningrad) to join the WAA tour group.

I soon learned that the La Crosse-Dubna sister-city relationship involved far more than the usual exchange of official visits, banquets, and flowery toasts. Dubna was developed from a sleepy village, starting during World War II, as a center for theoretical and nuclear physics in the Soviet Union. During the Cold War, it was not about to be sisterly with any U.S. city. But by the late 1980s, as we know, much had changed. Chuck Hanson had been a principal leader and catalyst in starting and building a sister-city relationship with substance. In the '90s, three La Crosse-area colleges are helping Dubna create a new business college to teach entrepreneurial methods and marketing. During the recent winter of acute food shortage in Russia, the La Crosse organization obtained and arranged for shipment to Dubna of an extraordinary 400 tons of food. While I was in Dubna in early June 1993, three groups from La Crosse totaling about 40 people were also there—including the mayor, city officials, and medical/health experts—meeting with Dubna counterparts, offering help and advice.

Dozens, if not hundreds, of La Crosse people are involved in all this, but Chuck Hanson has been the key. As I learned this, I thought to myself how little we pro-

fessors know of what our graduates do to make a difference in the communities where they live and work.

Dubna welcomed the proposal for my visit. As preparation, for me and for them, I had committed to preparing a fairly extensive memo explaining some of the basic matters which Russian land law ought to cover as a basis for private ownership of land. It was understood that my suggestions would be based primarily on land law in the United States, though other models could be followed.

The memo, addressed to the Dubna City Council, began with a summary of basic property law and went on to discuss possible methods of transferring real property from public to private ownership. One particular focus, because of the 70-year history of publicly owned apartments, were the special problems attached to privatizing these units. While I am not a land economist or land-use planner, I also included some fundamental material on these matters since they will be of importance to Russia in the near future.

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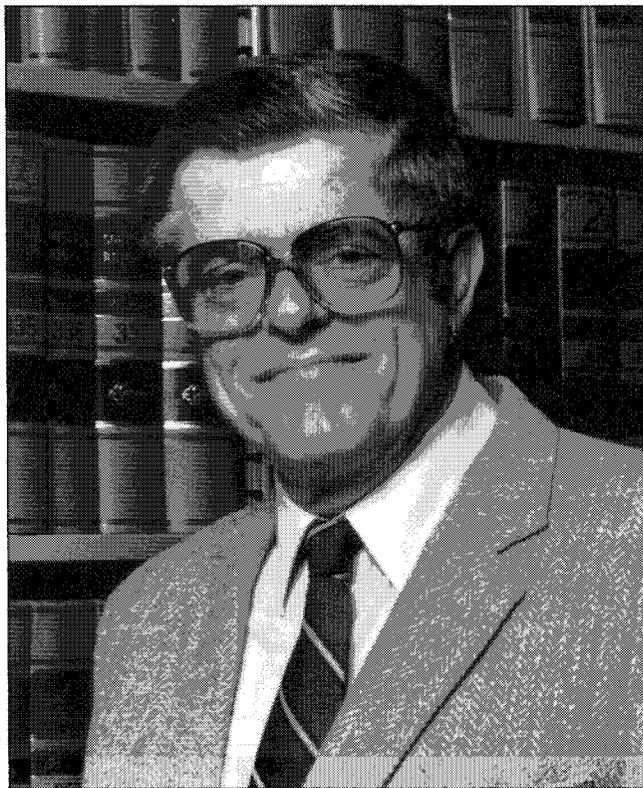
My memo was sent to Dubna in early May. I was there May 29 through June 7, 1993. My host and primary contact was Ernest (Eric) Taghirov, a physics Ph.D. who is a member of the Dubna City Council and Chairman of the city's Commission on Ecology and Land Planning. It was interesting to learn that his role in city government came about because of his political participation in the Green environmental movement, which resulted in

his election to office. I was housed as a guest in his pleasant flat. His attractive and hospitable wife Tamara was persuaded that anytime I was in her home without food in front of me, I must be starving! I still haven't gotten rid of all the weight I gained.

Eric and I met repeatedly for probing discussions which could last several hours. In addition, I met and had brief discussions with the Mayor, Vice-Mayor, Chairman of the City Council, and some Council members. On the last day, I presented a two-hour "seminar" lecture to many (30-35) Dubna city officials. Interest seemed high, and questions were varied and quite good. I also went with Eric to Moscow, and spoke to about ten staff bureaucrats employed by the Moscow Region (roughly equivalent to a U.S. state), the region of which includes Dubna. Also in Moscow, we met for an hour with Prof. Kemer Nordkin, the General Director of a coordinating committee of officials of both Moscow City and the Moscow region. The city of Moscow turns out to be its own region for purposes of governmental power, even though surrounded by the (governmentally separate) Moscow Region.

Nordkin spoke perfect English, and turned out to be a person of considerable sophistication, power and influence who has been much involved in some land development joint ventures in and near Moscow. He indicated that various visitors from the U.S. and elsewhere had been interested in helping Russia with privatization, but that they tended to submit not-very-valuable reports, and to leave when the vodka, caviar, and money ran out. He seemed impressed that I was paying my own expenses and received no compensation.

It is not clear to me to what extent existing Russian law is even relevant to land privatization, or to land and land owners once land is in private hands. My Dubna hosts, though interested and highly intelligent, were not lawyers. In discus-



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sions with them, I gained an impression—possibly inaccurate—that Russia is doing quite a bit of land privatizing without even a basic legal structure in place. What is frustrating is that in most respects, Dubna does not have the political/governmental power to create such a structure. That power, I gather, lies partly with the Moscow Region and partly with the national government of the Russian Federation. A legal structure for private property can hardly have been on Boris Yeltsin's front burner when I was there, or at any time since.

But privatizing is going on. Some apartments are being transferred so the longtime occupants now own them. "Kitchen-garden" small plots are being transferred to "owners" who have worked them in years past. Land plots are being transferred to owners who are building houses (some very large, which I saw) on them. And without enumerating (which I could not) all the legal questions which Eric and others raised about all this activity, I can forecast that legal issues will arise which no existing statute or ordinance

will solve. Some of them will, presumably, come to the Russian courts, which may need to perform a lawmaking role familiar in common-law countries, but not in Russia.

One matter which Dubna can address locally is the development of a land records system. Some land records exist. The city's human talent is as computer-sophisticated as any in the world, I believe. In my closing seminar for the Dubna officials, I emphasized how important it might be to develop a comprehensive, automated land information system at the beginning of privatization.

Dubna apparently has the power and authority to lease publicly owned land to individuals, cooperatives, etc. It is doing some of this in a way that might be characterized as "incremental privatization." Some of the leases involve an option to purchase after some period of years. Quite a few of my discussions with

Eric and others had to do with terms and problems relating to such leases.

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This was my first visit to Russia—indeed, my first to Eastern Europe, unless you count a 1965 week in Yugoslavia. It is not an easy time for ordinary Russians, whether highly educated or not. Some traders and entrepreneurs, evidently, have caught the wave of economic freedom and made a killing. But Eric Taghirov and his fellow Dubna physicists, formerly a near-elite group, have been shoved by inflation into an economic lower middle class where luxuries and recreations exist only in memory. They understand and value the new political and personal freedoms, but they tend to view the new traders as parasites hardly better than the growing organized crime presence in the larger cities. Eric listened with respectful skepticism to my argument that profits from trade were an essential element of a free-market economy. I said, "Eric, I'm not really sure that you believe in privatization." He admitted I might be right.

A few years ago, artificial economic barriers erected by the Soviet Union meant that it took about \$1.50 to buy a Soviet ruble legally. In June, in a Russian bank branch inside an American Express office in the gorgeous St. Petersburg hotel where my Wisconsin Alumni tour began, I exchanged twenty dollars for rubles: 1,280 rubles per dollar.

Until then, I had seen ruble transactions, but had not known even the approximate dollar relationship. Examples: (1) Eric told me that although Dubna understood and appreciated that I was not being paid, the city wanted me to have some rubles for incidentals or possible emergency; he gave me 2,000 rubles. (2) We spent one night in Moscow, and decided to go that evening to one of Moscow's two top-ranked circuses. Eric went to the box office and was disappointed to find the performance sold out. As he walked back to the car, two young men spoke to him; he then reported to me that the box office had no tickets, but the scalpers had offered him two tickets at an outrageous price. He could not accept, but if I wanted to see the circus we could have the tickets for five dollars apiece. We enjoyed the circus. (3) On my last day in Dubna, Eric took me to a small cafeteria restaurant for lunch. Filled to the brim for nine days by his wife, all I wanted was a bowl of hearty soup with meatballs. I happened to notice the price, 80 rubles. Now I knew it was six cents. (4) Later that day, we were riding to Moscow for the overnight train to St. Petersburg, chauffeured by the city's driver who had been at our service when needed all during my

visit. I asked Eric if it would be acceptable to give the driver a tip, suggesting five to ten dollars. Eric said a tip would be okay, but the amount was too much; two or three dollars would be plenty. I said that I would give him five. Eric said I could do what I wished, but should understand that five dollars would be nearly one-fifth of the driver's monthly salary.

An American with dollars (or Deutschmarks, yen or Swiss francs) who can cross over from the tourist economy to the ruble economy can do and buy a great deal for very low cost by our standards. But what he can buy will normally not include luxury lodging and transportation, or gourmet food. For those, you need hard currency and you'll pay international tourist prices.

After three days in St. Petersburg, our tour group flew to Moscow to board our trans-Siberian train. Then, we joined travelers who had not chosen the St. Petersburg option. One was an old friend and distinguished UW Law alumnus, Bob Froehlke ('49). As our train left Moscow in the late afternoon, Bob and his roommate summoned me to the bar car for pre-dinner vodka. It was served ice-cold in a shot glass—delicious—for one dollar a shot. Bob bought. The second evening, our train was still rolling eastward toward Siberia. Bob's lifelong friend and roommate, John McDonald of Denver, bought the vodka. It had clearly become my turn. The next day we stopped for lunch, sight-seeing and dinner in the western Siberian city of Omsk, recently opened to tourists. There turned out to be only one Omsk restaurant able to handle a tour group our

size—about 80 people. We went there for lunch, and we went there for dinner, and the lunch and dinner menus were essentially identical. But at dinner I was able to order vodka. They brought a decanter about one-third full, enough to fill our three small glasses twice. The vodka was perfectly good, though not chilled. The waitress presented a bill, which I paid. Froehlke and McDonald had not changed dollars for rubles in Moscow, and did not know the exchange rate. They asked how much I had paid in U.S. money. I was tempted to lie, but decided it would be more fun to tell the truth. I said, "Including the tip, 23 cents." The bill had been 271 rubles; I had paid 300 rubles and told the waitress to keep the change; she was delighted. Froehlke and McDonald, though, were poor sports—they firmly told me that I had not met my obligation, that it was still my turn to buy!

As I write, a month into 1994, I wonder whether recent developments in the Russian cabinet may have the effect of slowing, or halting, land privatization. A slow-down, so the law can catch up, might not be bad. A halt, given the amount of privatizing already done, would yield an awkward, fractured situation. An attempt at reversal suggests legal and other problems too frightful to contemplate. It will be interesting to see whether the momentum of land privatization, even without an adequate legal foundation, is one of the phenomena that will make movement toward a market economy in Russia hard to stop.