

LAND-USE PLANNING AND PUBLIC ADMINISTRATION IN BAVARIA, GERMANY: TOWARDS A PUBLIC ADMINISTRATION APPROACH TO LAND-USE PLANNING

Uchendu Eugene Chigbu, Vache Kalashyan

Summary

Germany has notable land management and planning traditions. As part of their formal responsibilities, local governments have powers to regulate and structure their areas and landscapes through land-use planning. They use it to prepare and guide land-uses for development purposes in municipalities. This study presents the Bavarian experience of land-use planning in relation to public administration. The study emanated from a research conducted at Technische Universität München and funded by the German Academic Exchange Service. It uses data from semi-structured interviews with land management experts, mayors and public administrators at different levels of public administration. The authors used these interviews to discern the scope, nature and role of public administration of land-uses at either the local or regional scale. It led to four findings. The two major ones being that: first, based on good governance principles, there are contradictions in the administration of land-use planning in Germany. Second, there are no harmonised criteria for assessing the efficiency and effectiveness of land-use planning administration. By way of recommendation, it suggests an efficiency assessment criteria and method of land-use planning through public administration, among others suggestions.

Keywords

Bavaria • Germany • land management • land-use planning • public administration

1. Introduction

In Germany, local governments regulate development and structure their municipal areas and space by means of land-use planning as part of their formal responsibility. Local governments use it to guide development in municipalities. This makes land-use planning essential for local development administration and vice versa – leading to a relationship between land-use planning and public administration. Both public administration and land-use planning literature are vast. This study considers public administration to include the processes involved in fulfilling government tasks (at national, regional and local scales) to the public. On the other hand, land-use planning

is a culmination of all activities and decisions concerned with guiding the allocation and use of land in patterns that enable improvements in peoples' way of living.

This study emanated from a research project conducted at Technische Universität München, Germany. The project, entitled Local-Level Governance Diagnostics: Development Of Combined Assessment Framework On Land-Use Planning In Germany was funded by the German Academic Exchange Service (DAAD). Its objective is to present steps for improving land-use planning through public administration in Germany. Hopefully, it will serve as important learning points for other countries. A critical aspect of the project was a cooperation between Technische Universität München (Germany) and Yerevan State University (Armenia). The essential elements of the study are that it emphasised the broad developments and institutional issues that make land-use planning a public administration affair in Germany.

2. Methodology

The methodological approach to the study involved the use of semi-structured interviews to collect data on the scope, nature and role of public administrators of land-use planning at both the local and regional scale in Bavaria, Germany. 16 interviews with local, regional land management experts and administrations were conducted. In general, the study answers the following questions. What is the public administration framework in Germany? What is the general indicator for assessing the effectiveness of public administration of land-use planning? How can any anomalies identified be improved? What are the challenges to land-use planning in the context of public administration? In determining the effectiveness of public administration activities related to land-use planning, decision-making is critical. In this regard, the study adopted the following formula for general applicability within Bavaria and Germany:

$$E \sim \frac{R}{G}$$

where:

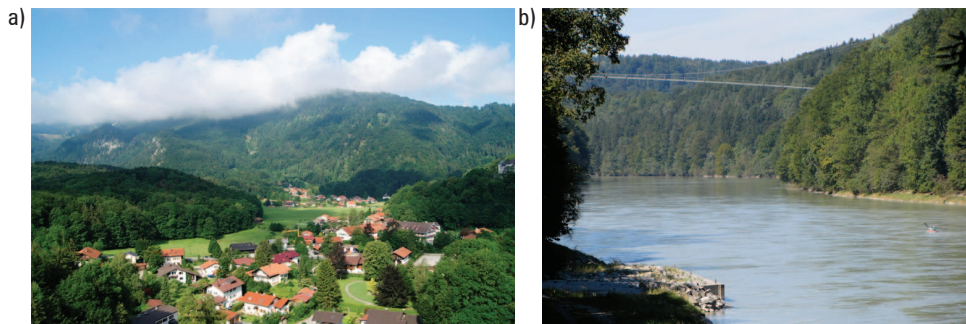
- E – the effectiveness,
- R – the result,
- G – the goal.

The study used the above formula to derive a more generalisable efficiency assessment criterion and method for public administration of land-use planning.

3. General description of Bavaria

The Free State of Bavaria comprises the entire southeast of Germany. Geographically, it is the largest federal state of Germany, with Munich as its capital. It has a land area of 70,548 km² and a population of 12,604,244. Land management in Bavaria has technical, social, cultural, environmental and political decision-making aspects. As a key instrument, land-use planning serves as a base for development (Figure 1). The Land-use

Planning Ordinance Bavaria 2006 (*Verordnung über das Landesentwicklungsprogramm Bayern*) guarantees unique development of Bavaria and its parts with focus to the whole municipalities; central places, housing projects and nonphysical development issues. It also guides the development of agriculture and forestry, social and cultural, as well as technical infrastructure. What this study does is to analyse the administration of land-use planning critically.



Source: Chair of Land Management, Technische Universität München

Fig. 1. Visualisation of some important evidences of different land-uses in Bavaria: a) residential, mountains and forests land-uses in Füssen; b) water system as part of land-uses in Upper Franconia

4. Public administration of land-use planning in Germany

Being a federal democracy, legal and institutional frameworks serve as the basis for all forms of planning in Germany – strategic, sectoral, and spatial and land-use planning. The country’s Basic Law (*Grundgesetz*) recognises the autonomy of municipalities in determining their vision for development. Usually, a preparatory land-use plan (*Flächennutzungsplan*) provides the basis for determining the types of land uses for municipalities and sets the framework for binding land-use plans. Binding land-use plan (*Bebauungsplan*) serves as “the chief instrument for implementing local government planning, and constitutes the basis for other measures needed to implement the Building Code” [Pahl-Weber and Henckel 2008: 79]. The typical development activities engendered by the binding land-use plan include land consolidation, infrastructural provisions, rural and urban development, etc. Despite the autonomy in decision-making enjoyed by the municipalities, there exist some forms of restrictions on the ability of municipalities to self-planning. They are meant to follow a “highly structured institutional and legal framework characterised by the legally determined distribution of responsibilities and tasks between the Federal government (Bund), the states (*Länder*) and the municipalities (*Gemeinde*)” [Schmidt 2009: 1912]. In between the state and municipalities, are the districts (*Kreise*). The districts comprises of a number of municipalities with the role of coordinating functions that a municipality may not

be able to perform adequately on its own. Districts also play supervisory functions over their municipalities on behalf of *Länder*. At the centre of the operation of these institutions are three important ideological concepts that guide development at all levels. Firstly, the concept of *Raumordnung* (spatial planning or management) that is ensured by the federal and regional governments. Then, the concept of *Bauleitplanung* (local planning), catered for by the municipalities. Decision-making and feedback mechanisms are based on the principle of *Gegenstromprinzip* (reciprocal influence of authority) by all three levels of government. The different spatial units develop and operate within a policy of equal living conditions [Magel 2014]. Public administration contributes in the actualisation of the objectives of land-use planning and related schemes. In this regard, there are two dominant programmes – *Flurbereinigung* (land consolidation) and *Dorferneuerung* (village renewal).

The village renewal and land consolidation programmes gear towards the improvement of rural living conditions. They provide a multifaceted approach to revitalising rural lives in the aspects livelihood improvements, farmland facilitation, cultural and landscape preservation. Land-use planning plays the role of ensuring lawful, appropriate and non-conflicting uses of land in the whole process. The land consolidation schemes involve the reorganisation of land for economic purposes, for landscape preservation and farmland prioritisation. This does not imply a mere reallocation of parcels to remove effects of fragmentation. Usually, there is a tendency for conflicts to arise between uses and users of land. This depends on the scale of land reorganisation. Where conflicts occur (and they usually do occur), public administration serves the first purpose for mediation and facilitation of resolutions, as well as for remediation and compensation of claims. Public administration is inseparable from land-use planning in Germany because political decisions are crucial to activities' location and management of space.

5. The land-use planning and public administration relationship in Bavaria

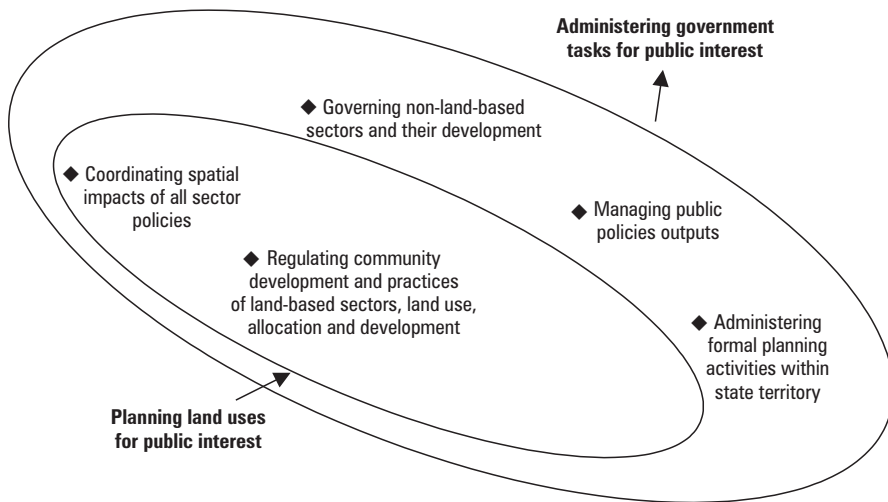
The study found that there is a strong connection between land-use planning and public administration in Bavaria (Figure 2). Public administration is a governance tool through which land-uses (and planning) and the interests of the public are guided. It is the elements of public administration (such as land administration) that drive and deliver land-use planning objectives. Public administration encompasses government activities over land in all sectors.

Land-use planning mainly focuses on the land-based component of planning which depends on public administration for approval. Therefore, it is public administration that makes the land-use planning a formal procedure.

6. Separation of political power from land-use planning decisions is unclear

The study found that there are some regulations of cooperation between staff, mayor and council of the municipality within the administrative structure of municipalities in Germany. This gives mayors and council members the choice to decide on the manner

and mechanisms. Functions of mayors and council officials in some municipalities are poorly defined and clearly interwoven. Mayors in this case are expected to provide disciplinary leadership and control, whereas the administrative staffs are limited to the realisation of the decisions made by mayor and council. All heads of administrative personnel in the municipalities are under the power of mayors and councils. Based on the above scenario it is evident that public administration system at the local level does not meet the principles of separation of political power from the administrative management. There is a structural overlap of political power (political decision making) and public administrative duties, from the context of land administration.



Source: authors' study

Fig. 2. Relationship between land-use planning and public administration

7. No common criteria of assessment of land-use planning decisions

The study found that there are some indicators for the evaluation of effectiveness or efficiency of administrative decisions in land-use planning. It identified indicators such as noise protection, landscape protection, and forest conservation issues, among many others. In most cases, these indicators constitute prerequisites for obtaining financial support from the state. In other cases, they serve as legal demands for administering land-use planning projects. However, these assessments are carried out prior to the inception of projects. They are, therefore, pre-conditions for land-use planning. However, this study could not find any framework for assessing the effectiveness of land-use planning processes (or its administration). This calls for post-completion assessments. In this regard, the only thing that the study found is a framework of

reporting for the projects which did not involve any scientific studies for evaluating the effectiveness of the projects or how they were administered. The lack of result-based assessment is a missing link in land-use planning in many Bavarian municipalities.

8. There is urban bias in the administration of building permits

Within the administration of land-use planning, there exist power imbalance between urban and rural areas, in favour of the urban. This relates to the issuance of building permits. Existing practice indicates that only municipalities with a population of over 250 000 have the legal powers to carry out this exercise. For municipalities with less population, the issuance of building permission is delegated to local in districts (*Landkrüis*). Considering that most rural municipalities are less than 10 000 population in Germany, they are denied the controlling powers for building permit regulation. Nevertheless, urban areas or cities enjoy the right to control building permits because of their population advantage over the countryside. They are usually more than 25 000. This sparks of urban bias and a disenfranchisement of regulatory development powers of the rural municipalities.

9. There is no uniformity in local government administration structure

There is no uniform structure for public administration for municipalities. The implication is that land-use planning processes are not unified in Germany. Even within an individual state (like in Bavaria), legislative processes of land-use planning have tremendous differences from municipality to municipality and from rural and urban areas. For instances, cities are professionally organised in the field of land-use planning. They can handle significant management processes whereas rural municipalities would need external experts in managing their land-use planning concerns. At the state level, public administration in the field of land-use planning is different from state to state. The Bavarian state takes a more conservative approach to land-use planning than in other states, such as Berlin and Hamburg. This lack of uniformity in structure of local government administration in land-use planning leads to difficulty in making comparison between municipalities, adopting general assessment criteria for evaluating results and facilitating cross-municipal cooperation in the administration of land-use planning.

10. Questionable context of good governance at the local government level

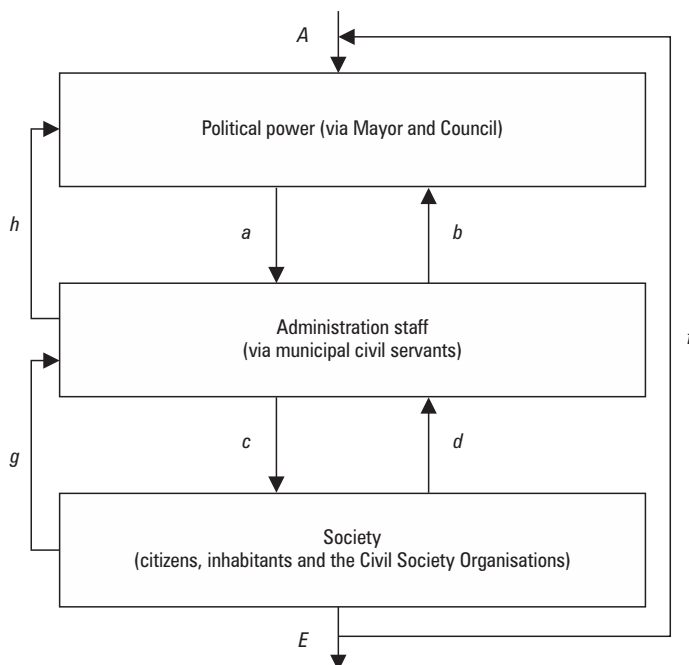
Democracy or democratic government is not the same as good governance. It is a well-known fact that there has to be good governance in a democratic government. The governance structure at the local level in Germany, with respects to political tenures, is questionable. This study is not alone on this. Despite providing a very positive side of rural development through village renewal processes, Chigbu [2012: 223] questioned the “the context of good governance” in Bavaria Germany. In Bavaria, just as in other

parts of Germany, some of the mayors have been in office for 20–35 years. Considering the overwhelming powers they wield on public administrative issues – and their double positions as part-time mayors in addition to being local citizens – long political mayoral tenures has consequences on public administration of land-use planning. Studies have shown that long political tenures are directly linked to increases in government spending [Basham 2011]. The reason being that longevity in office is likely to change mayors’ political visions toward other programs that incur higher spending [Steelman 1998]. This can be detrimental to land issues in situations where land management is not a priority supported by the long-standing government.

11. Suggestions for improvement

11.1. Separate political power from public administration of land-use planning

In the contemporary notions of the public administration system, a particular attention is paid to ensuring efficient interactions between its sub-systems. Incompatible links between the politics and the state administration affect efficiency in land-use planning. More so, a lack of the principle of separation of the political power and administrative management of land-use planning, fuses rather than differentiates, between administration and government. System reorganisation is needed.



Source: authors’ study

Fig. 3. Reorganising public administration to enable separation of powers

The logic is not that the two institutions, political authorities and the public service of land-use planning should exist independently from each other. The concerns hinges on a direct influence of political power on land-use planning decisions through public administration. As a way forward, this study calls for a structuring or restructuring of the current system. This is necessary in order militate against the impinging of political power on land-use planning administration. The suggested structure is presented in Figure 3. There is need for a system where politicians, administrators and the society have inter-dependent but separate duties. For instance, the links *b* and *a* characterise the spectrum of the alternative decisions proposed to the political authorities by the state/public service system and the decisions already taken by the authorities respectively. The decisions already taken by the authorities are subject to implementation by the state apparatus. In other words, *a* should be the sub-multitude of the *b*. The less the difference between the decisions taken and the proposed alternative versions, the more efficient will be the feedback between the political authorities and the administrative staff. This difference will become even lesser if the level of the involvement of the public servants and their inter-identification with the apparatus become bigger – in the diagram, this is shown by the link *h*. Furthermore, the links *c* and *d* characterise the services provided by the authority (in this case, land-use planning) and the control of the quality of those services by the public (public/participative monitoring) respectively. The effectiveness of this feedback is directly proportional to the level of its influence due to the participation of the public in public decisions, presented by the link *g*. The component *A* represents promises given by the authorities during the pre-election phase, the leading values of the political power having the authority, the vision of the latter on development. The component *E* is the component characterises public needs. Components *A* and *E* should be in a permanent state of inter-influence because they are conditioned by each other, thereby producing the link *f*. This study asserts that the stronger and bilateral the feedbacks are, the more effective the whole system of the public administration will be for land-use planning. Moreover, the level of the reciprocity of the feedback *f* describes the political structure of the public organisation. Therefore, the more dominant the top down direction in the information flow is, as represented *f*, the more the political regime is inclined towards totalitarian and authoritarian manifestations in administrative activities. This situation should be avoided within German administrative systems in land-use planning. Similarly, the case of the dominance of the bottoms up directions can lead to excessive liberal manifestations.

Therefore for the interaction between political power and administrative staff to be balanced, the following four steps are imperative.

1. Develop an approach for separating political functions from managerial ones. This is possible through readdress of the roles of the mayor and council, and the staff of the municipality in land-use planning issues.
2. Establish positions for “municipal servants” at the local level that should be, also, protected by law and in line with promoting the objectives of land-use planning within municipalities.

3. Clearer job descriptions should be made concerning the role of municipal civil servants operating to wade off higher political interferences in their duties. It requires career stability in the position of the head of staff of the municipality (in terms of tenure) and independence from the influence of the mayor or council of the municipality concerning employment of personnel.
4. Improving the capacity and development of municipal staff in administrative duties regarding land-use planning is important. This can be achieved by providing obligatory training courses for municipal servants in land management. However, such trainings can lead to further strengthening of relationships between the academic institutions and local self-government system.

11.2. Device a general efficiency assessment criterion and method for public administration of land-use planning

Concerning the lack of a framework for efficiency assessment of public administration in the context of land-use planning, this study provides a framework as a suggestion. This framework can provide a standard criterion for efficiency assessment and serve as a guideline for characterising the effectiveness of decisions based on the theories (and practices) of good political governance. In this sense, for the characterisation of any activity effectiveness, the study suggests that the following formula should be applicable:

$$E \sim \frac{R}{G} \quad (1)$$

where:

- E – the effectiveness,
- R – the result,
- G – the goal.

A necessary methodological issue is important. “The effectiveness of each concrete decision must be characterised corresponding to the criteria conditioned by the content and results of that decision” [Kalashyan 2013: 53]. It means that a different approach is needed for the selection of each criterion (comprising of objectives of land-use planning) based on the concrete situation during the decision-making and implementation. Where it concerns a decision on the extraction and redistribution of resources by the governing subject, the criterion for the assessment of its effectiveness needs to be precisely defined. This is important because the result of the implementation of a decision in this case is the confirmation of the resource supply. The role of the expenditures is the use of a particular type of capital (political, social and informational factors). In such cases, the effectiveness of the administrative activity should be characterised by the goal (or result, interests and profit) on the basis on which the decision about the resource distribution was made. This enables that the goals and outcomes in the equation (1) are in line with the draft decisions and the decisions carried out on the basis of the latter during the governance quality assessment. In the case of the administration

quality assessment, it will enable them to be in line with the already made decisions and the decisions implemented on the basis of the latter. Deriving from equation (1) and taking into account the methodology of the mathematical elaboration of the pilot data (usual data on land-use planning), the study adapted the equation to arrive at the following:

$$E_p \sim \frac{\sum_{n=1}^p D_{\text{conf. n}}}{\sum_{n=1}^p D_{\text{draft n}}} \quad (2)$$

$$E_n \sim \frac{\sum_{n=1}^p D_{\text{im p. n}}}{\sum_{n=1}^p D_{\text{conf. n}}} \quad (3)$$

Where:

- D_{draft} – the number of the draft decisions proposed for the discussion during one session of the council,
- $D_{\text{conf.}}$ – the number of the decisions confirmed and adopted during one session of the council,
- $D_{\text{imp.}}$ – number of the implemented decisions,
- p – the number of the sessions held during a given period,
- E_p – potential effectiveness,
- E_n – nominal or adequate effectiveness.

This means that the closer E_p and E_n (measured during the same period) are to each other, the more the general effectiveness of a given agency. Based on this approach, E_p will be in accordance with the good governance quality, while E_n will be in accordance with the good administration quality. The implication of all these is that the effectiveness of land-use planning decisions (particularly as it affects achievement of its goals or objectives) will become assessable based on known criteria.

12. Conclusion

Although this study focused on Bavaria, the situation in Bavaria is applicable to other parts of Germany. It raises some questions regarding the German planning scenario, from a public administration perspective. Concerns about the role of state need to be addressed. A common assessment framework for determining the effectiveness of public administration decisions in relation to land-use planning need to be addressed. Separation of political power from the administrative management will enable decision-making processes to become professionally adequate for handling the new realities faced by municipalities in Bavaria. When it operates as nonlinear processes,

the administration of land management issues will be carried out in a more participative manner within the administrative office. Participation should not only be about citizens, and should be practiced in the spheres of decision-making on administrative duties concerning land-use planning. This way, public administration will serve as an instrument for fostering rapid responsiveness of governance in land-use planning towards fulfilling the growing needs of local societies.

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Dr.-Ing. Uchendu Eugene Chigbu
Institute for Geodesy, GIS and Land Management
Chair of Land Management
Technische Universität München
Arcisstraße 21, 80333 Munich, Germany
e-mail: ue.chigbu@tum.de

Dr Vache Kalashyan
Chair of Public Administration
Yerevan State University
1 Alex Manoogian, Yerevan, AM 0025, Armenia
e-mail: vkalashyan@ysu.am