

Urban contracts: A method to refinance the costs of the urban development

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Key words: Urban contracts, legitimacy, urban calculation, negotiation

SUMMARY (English)

The development of new building areas demands high investments in the local infrastructure. Oftentimes the legal framework of mandatory proceedings allows only the refinancing of the costs of infrastructure in the narrow sense of the word (e. g. traffic, electricity). Urban contracts are a helpful tool to refinance the costs of infrastructure in the broader sense (e. g. schools, playgrounds) or to absorb a part of the surplus value of the developed land for other objectives.

Many different scientific fields are engaged in the subject “urban contract”. Regarding the application of urban contracts it is a problem, that planners oftentimes only have knowledge in a special part. Therefore they do not use the knowledge of other scientific fields. For that reason it is necessary to extract the most important results of the different scientific fields and merge them into a flowchart. The juristic part provides information about the legitimacy and the assurance of the contents of contracts. In this area are also identified the risks of prosecution. Another important scientific area is “economy”. In this connection the economic consideration of the effect of urban contracts on the market development and the urban calculation as a part of the project management play a decisive role. Furthermore the importance of a monitoring system for the housing market to the urban calculation is pointed out. Other than that mentioned socioscientific cognitions play an important role. They allow for an appraisal, if a successful cooperation is likely and/or advisable in consideration of the given structures. Further on they shed light on the optimal behaviour during negotiation.

SUMMARY (German)

Die Entwicklung neuer Baugebiete erfordert hohe Investitionen in die lokale Infrastruktur. Der rechtliche Rahmen hoheitlicher Verfahren erlaubt dabei oftmals nur die Refinanzierung von Infrastrukturkosten im engeren Sinne (z. B. Verkehr, Elektrizität). Städtebauliche Verträge sind ein hilfreiches Werkzeug zur Refinanzierung der Kosten der Infrastruktur in einem weiteren Sinne (z. B. Schulen, Spielplätze) oder zur Abschöpfung von Wertvorteilen des entwickelten Landes für andere Zwecke.

Mit dem Thema „Städtebaulicher Vertrag“ beschäftigen sich zahlreiche Fachdisziplinen. Das Problem bei der Anwendung städtebaulicher Verträge besteht nun darin, dass Planer in der Regel nur über Wissen in Teilbereichen verfügen und somit wesentliche Wissensbestände unberücksichtigt bleiben. Es ist daher notwendig, die wesentlichen Erkenntnisse der einzelnen Disziplinen herauszuarbeiten und in einem Handlungsablauf zusammenzuführen. Der juristische Bereich liefert zunächst Informationen über die Zulässigkeit und die Sicherung der Vertragsinhalte. In diesem Kapitel werden zudem strafrechtliche Risiken aufgezeigt. Einen weiteren wichtigen Part bildet der Themenbereich „Wirtschaft“. Hierbei spielen sowohl eine volkswirtschaftliche Betrachtung der Auswirkung von städtebaulichen Verträgen auf das Marktgeschehen als auch die städtebauliche Kalkulation als Teil des Projektmanagements eine Rolle. Es wird zudem dargestellt, welche Bedeutung ein Wohnungsmarktbeobachtungssystem als Grundlage der Kalkulation besitzt. Neben dem genannten spielen sozial- bzw. verwaltungswissenschaftliche Erkenntnisse eine tragende Rolle. Diese erlauben zunächst eine Abschätzung, ob die gegebenen Strukturen eine erfolgreiche Kooperation wahrscheinlich und/oder zweckmäßig erscheinen lassen. Des weiteren geben sie Aufschluss über ein optimales Verhalten in den Verhandlungen.

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1. INTRODUCTION

The development of new building areas demands high investments in the local infrastructure. Oftentimes the legal framework of mandatory proceedings allows only the refinancing of the costs of infrastructure in the narrow sense of the word (e. g. traffic, electricity). Urban contracts are a helpful tool to refinance the costs of infrastructure in the broader sense (e. g. schools, playgrounds) or to absorb a part of the surplus value of the developed land for other objectives.

Many different scientific fields are engaged in the subject “urban contract”. Regarding the application of urban contracts it is a problem, that planners oftentimes only have knowledge in a special part. Therefore they do not use the knowledge of other scientific fields. For that reason it is necessary to extract the most important results of the different scientific fields and merge them into a flowchart [cp. Hendricks, 2006].

2. INTEGRATIVE SEQUENCE OF OPERATIONS

The basic structure of the sequence of operations out of the point of view of the municipality is orientated on the chronological progression [cp. Figure 1]. At first it is necessary to check, if there even exists a demand for building land. In that case the municipality has to initiate preparatory measures in their territory. In the next step the municipality has to decide, if a cooperative proceeding is expedient in comparison to a mandatory proceeding. If the municipality likes to enter the cooperative proceeding, the local authorities have first of all to define the aimed contents of contract out of their point of view. Afterwards, they have to check the economic efficiency and the legitimacy of the contract. In the case of a negative result the consequence would be an optimization of the contract and a new check concerning the economic efficiency and legitimacy. In the case of a positive result the necessary instruments have to be defined to ensure the fulfilment of the contract. After finishing this draft agreement starts the negotiation between the representatives of the municipality and the private partner(s). If there are necessary any modifications of the contract, the check starts from the beginning. In the last step the objects of the contract have to be implemented and the whole process has to be evaluated.

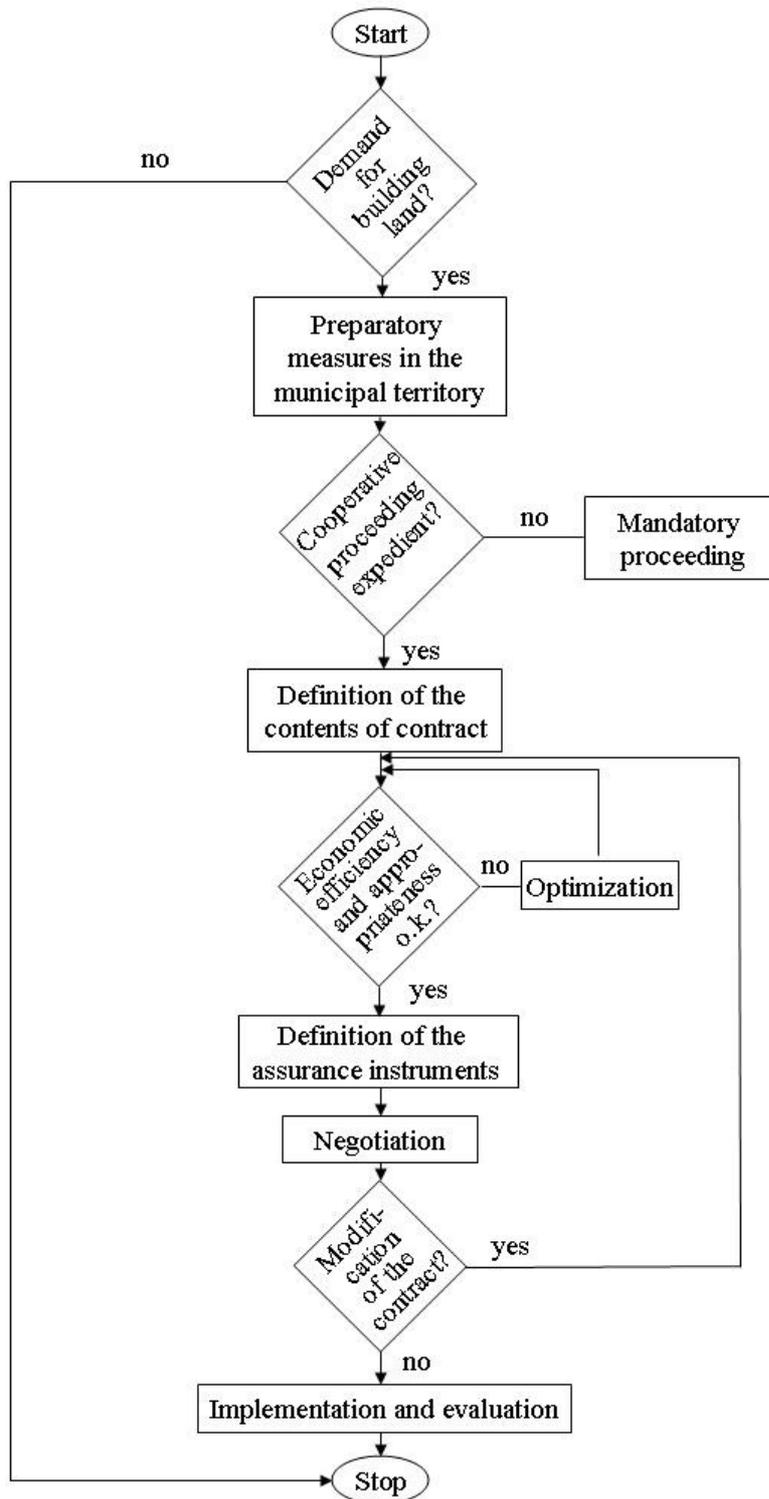


Figure 1: Flowchart of the integrative sequence of operations

2.1 Determination of the demand for building land

To determine the demand for building land it is necessary to observe and analyze the regional housing market. On the one hand it is important to investigate the motivation of the moves of the individuals and the structural data of the incoming and outgoing households. In this investigation the housing market should be divided into different parts (e. g. type of property, price range or location).

Bigger municipalities should install a monitoring system for the housing market. The components of such a system are the collection of qualitative data (e. g. statistical data, data of estate agents, data of the employment office or data of the power-supply industry), analysis of those data and installation of an early warning system, integration of expert knowledge and a yearly report. The most important result is the determination of the need for living space in the whole municipality in the near future.

The need for new living space in rural areas is equal to the need for living space in the whole minus the reserve of living space in urban areas. The potential of living space in the urban areas can be determined by using a building land cadastre. In the next step the need for new gross building land in the rural areas can be calculated based on the need of living space and experience values (e. g. floor space index, addition for infrastructure):

Example:

Need of living space (ls): 1000 m²

Addition to convert living space into floor space (Als): 20 %

Floor space index (Fsi): 0,4

Addition to convert net building land into gross building land (Anbl): 40 % (including the areas for technical infrastructure and ecological compensation)

Net building land (Nbl) = $ls * (1 + Als) / Fsi = 1000 \text{ m}^2 * 1,2 / 0,4 = 3000 \text{ m}^2$

Gross building land (Gbl) = $Nbl * (1 + Anbl) = 3000 \text{ m}^2 * 1,4 = 4200 \text{ m}^2$

Remark: The biggest problem is the estimation of the addition to convert net building land into gross building land. The experience values of the area for technical infrastructure vary from 10 to 40 % and the area for ecological compensation from 10 to 30 % of the gross building land.

2.2 Preparatory measures in the municipal territory

2.2.1 Regional cooperation and informal networks

The creation of informal networks enhances in general the willingness for cooperation and compromises. The regional cooperation of municipalities is very important to save the natural resources, to avoid bad investments and to guarantee a good capacity utilization of the infrastructure. Furthermore, it increases the pool of potential building areas, improves the coordination of the development of new building areas and makes it easier to get data of the regional housing market.

Oftentimes it is problem that the municipalities are competitors regarding the influx of business enterprises or high-income households. For this reason there should exists a

regulation of balancing for economical benefits and losses. Furthermore, the formation of a regional working group may be helpful.

2.2.2 Fundamental decision of land development

Especially in regions with high demand for building land exists the problem that the landowner in rural areas are not willing to sell their property because they are speculating on higher prices because of the urban development. In this case the municipality should reach a fundamental decision that the municipality will absorb in any case a part of the surplus value of the developed land.

The fundamental decision should be based on a broad political majority and include the objectives and ways of development and make clear that there will be no development without absorption.

Important supporting measures are good public relations and if necessary the build up of land stocks.

2.2.3 Reorganization

In general, it is necessary to reorganize the administration. It should be installed a steering group which is in a position to form interdisciplinary groups for special development projects. Furthermore, it is necessary to train the employees regarding their cooperative behaviour.

2.3 Conditions for cooperative proceedings

2.3.1 Economical conditions

The price increase of land property from farm land to building land depends on the period of time of the development and the land-use planning of the municipality [cp. Figure 2].

In Germany exists a two-stage planning at the municipal level. The first step is the preparatory land-use plan. It is binding for the administration but has no direct external impact. It achieves a strategic balance between different public and private interests related to the limited area of land within the municipal boundaries. The main contents are the proposed distribution of different land uses including housing, business, industry or other urban land uses and the definition of areas which have to be reserved as open space.

The legally binding land-use plans have to be developed out of the preparatory land-use plan. The main contents are plot-specific regulations concerning land use and building density and the determination of those parts of a plot on which may be built houses.

If the area is developed by mandatory proceedings, the surplus value which is caused by the municipal planning remains to the land owner. The part which is caused by the reorganization of the land property and the infrastructure remains to the municipality.

If the area is developed by cooperative (voluntary) proceedings, the municipality is able to make a grab at the part which is caused by the planning, if the contract is concluded before the

planning.

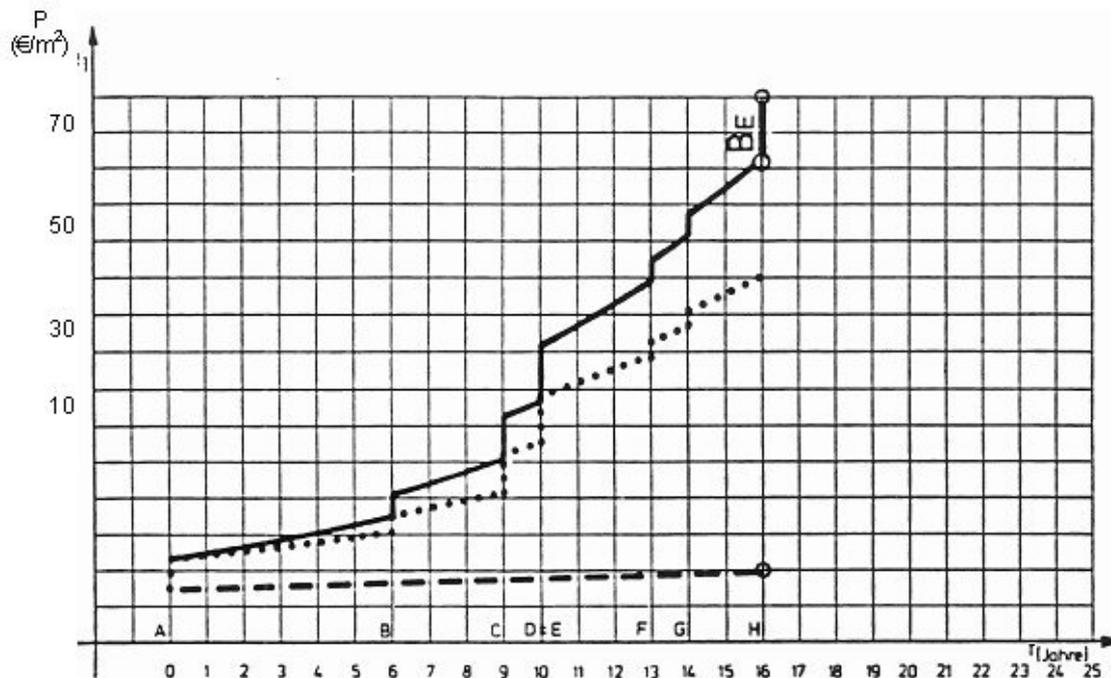


Figure 2: The price increase in a development area [Source: following Seele, VR, 1975]

Dotted line: Price increase of building land without the general economic trend

Solid line: Price increase of building land including the general economic trend

Dashed line: Price increase of farm land including the general economic trend

B_E : Costs of the construction of infrastructure

A: Passing of the preparatory land-use plan

B: Resolution to draw up the legally binding land-use plan

C: Presentation of the draw of the legally binding land-use plan

D: Passing of the legally binding land-use plan

E: Beginning of the reorganization of the land property

F: End of the reorganization of the land property

G: Begin of the construction of infrastructure

H: End of the construction of infrastructure

On the other hand, if the land owner expects a price increase which is higher than the interest on capital he will hoard his property. This speculation is influenced by the expected surplus value because of the land planning and the economic outlook on the housing market. This is especially a problem in conurbations where exists a high demand for building land. For this reason it is very important that the fundamental decision of land development of the municipality includes clear rules concerning the absorption of the surplus value and the period of time of the development to reduce the expectations of the land owners (cp. Section 2.2.2).

2.3.2 The cooperation situation

First of all we have to consider the power structure of the negotiating partners. In general, the municipality is more powerful because of its monopoly to reach building regulations as a basis for building permissions. On the other hand, the situation can be vice versa, if the municipality has only one possibility to develop the urban territory because of the geographic situation (e. g. surrounded by mountains or a lake).

From a neutral point of view the best situation for a successful cooperation is a more or less evenly distribution of power and a small number of negotiating partners. Furthermore, it is helpful if already exists a bond of trust and a certain time pressure to get a result. It is important to agree on negotiating rules and in the end the partners should reach a win-win-situation.

2.4 Definition of the contents of contract

If the municipality likes to enter the cooperative proceeding, the local authorities have first of all to define the aimed contents of contract out of their point of view. Afterwards, they have to check the legitimacy of the contract and the economic efficiency.

2.4.1 Legal criteria

Of course the legitimacy of the contract depends on the local law. First of all there have to be checked the regulations of the ownership law (e. g. Exists private property? How can the authorities intervene in private property?).

In Germany the surplus value which is caused by the municipal planning remains to the land owner, if the area is developed by mandatory proceedings (cp. Section 2.3.1). Only if the area is developed by cooperative (voluntary) proceedings, the municipality is generally able to make a grab at the part which is caused by the planning. In this case it is very important that the contract is concluded before the planning. If there already exists a legally binding land-use plan, the resulting price increase forms part of the private property of the land owner. On the other hand, according to the German ownership law the anticipation of a price increase doesn't form part of the property. For this reason the local authorities are generally allowed to intervene in the private property before the passing of the municipal planning.

On the other hand, the legislation includes some restrictions concerning the objectives of the intervention. The legal objectives in Germany are defined in article 11 of the German Statutory Code on Construction and Building. The "contracts of measures" include the contracts of planning (e. g. the draft of the preparatory or legally binding land-use plan) and the contracts to prepare the building activities (e. g. demolition of old buildings, removal of plants or contaminated soil). The "contracts of edification" may regulate the use of the plot (e. g. type and grade of the authorized use, the obligation to finish the construction of the buildings in a given period of time), the ecological compensation, the housing supply for

sections of the population who have extraordinary problems to find an adequate accommodation or the housing supply for the locals. The most important group of contracts are the “contracts to cover the follow-up costs”. They can be used to cover the costs of the municipality (not another territorial authority) in the past or in the future which are condition or consequence of the development of the area (e. g. infrastructure in the broader sense).

All the contents of contract have to meet two important legal principles. The first one is “the exclusion of arbitrary tying arrangements”. There has to be a strict objective connection between the obligation of the private contractual partner and the urban development. Furthermore, the municipality has no right to “sell” sovereign acts. The second one is “the imperative of adequacy”. The problem is that the interpretation of “adequacy” depends on the way you look at it. The best criterion to check the fulfilment of this principle is the proportion of the surplus value of the developed land to the cost distribution. In the literature it is controversial discussed how many percent of the surplus value which is caused by the planning may be absorbed by the municipality, but it is the prevailing opinion that an absorption up to 50 % is permitted.

In the whole it is permissible, if the municipality absorbs up to 50 % of the surplus value to fulfil an objective according to article 11 of the German Statutory Code on Construction and Building and if the contract is concluded before the planning. A permissible absorption of more than 50 % has to be checked in every isolated case.

Another legal problem is the risk of prosecution. In Germany the unlawful acceptance of benefits by public officials includes also benefits in favour of the municipality. On the other hand, the German constitutional court decided that not every inadmissible provision of a contract should have the consequence of prosecution. There will be no prosecution, if it is only a formal violation or if the same result could have been reached by another (permissible) formulation. Nevertheless the contract should be formulated with painstaking care.

In the case of a negative result of the check concerning the legitimacy the consequence would be an optimization of the contract and a new check.

2.4.2 Economic efficiency

A profitability calculation is necessary to check the economic efficiency of the development and to prove the adequacy of the absorption of the plus value. In general, it is a dynamic calculation taking into account the financing expenses and the individual investments and purchases at the corresponding point in time [cp. Figure 3].

Furthermore, the calculation is used to fix the maximum purchase price of the land which should be developed. Taking into account the discount of the individual investments and purchases the calculation can also be used to realize a risk estimation of the investments and to compare different variations of development [cp. Kötter, 2002].

In the case of a negative result of the check concerning the economic efficiency the consequence would be an optimization of the contract and a new check.

	1. Year	2. Year	3. Year	4. Year	5. Year	Sum
Costs						
Preparing measures	1,00	1,00				2,00
Acquisition of land	4,00	4,00	4,00			12,00
Infrastructure		8,00	8,00			16,00
Ecological compensation			1,00	1,00	1,00	3,00
Sum	5,00	13,00	13,00	1,00	1,00	33,00
Proceeds						
Sale of the developed land			4,00	6,00	4,00	14,00
Compensation charge			1,00			1,00
Subsidies	2,00	8,00	10,00			20,00
Sum	2,00	8,00	15,00	6,00	4,00	35,00
Balance	-3,00	-5,00	2,00	5,00	3,00	2,00
Amount of the previous year		-3,24	-8,90	-7,45	-2,65	
Balance total	-3,00	-8,24	-6,90	-2,45	0,35	
Payment of interest (8 %)	-0,24	-0,66	-0,55	-0,20	0,03	-1,62
Surplus/Deficit	-3,24	-8,90	-7,45	-2,65	0,38	
Final balance of the development					0,38	

Figure 3: Example of a dynamic profitability calculation, all amounts in million € [Source: Following Dransfeld, Finanzwirtschaft, 1/1999]

2.5 Definition of the assurance instruments

In the case of a positive result of the check concerning the legitimacy and the economic efficiency the necessary instruments have to be defined to ensure the fulfilment of the contract. The best way to control the realization according to contract of the building operations are clauses like the right to be informed, controlling measures and options of sanctions. Personal servitudes are oftentimes used to ensure the realization of the ecological compensation or the occupation of flats by determined sections of the population. Mortgages are the typical tool to assure financial obligations. Finally a right of purchase or repurchase can be used to ensure the fulfilment of the objectives of the housing supply.

2.6 Negotiation

The first step should be an agreement on the rules of negotiation. In the initial stage should be pointed out the advantages to both of the negotiating partners and should be realized confidence-building measures. Furthermore, it is necessary to separate facts and assessments. A mediator may be useful, if the chief negotiators don't have much experience or if there exists an urgent call for action or if the negotiation came to a standstill. Binding concessions should not be made until the final balance is possible [cp. Heussen, 2002].

In general, the negotiating partners should start the negotiation in a cooperative way. On the other hand, uncooperative behaviour should be punished, but there have to be avoided escalations.

In the planning period should be taken into account that an abstention from the negotiation

has generally less negative consequences as a breaking off. On the other hand, a breaking off may be more advantageous than a bad compromise or a hollow compromise which probably will not be fulfilled. For this reason it is important to define criteria for a breaking off.

2.7 Implementation and evaluation

It is very important to continue the cooperation until all obligations of the contract are fulfilled. For this reason the partners should stay in contact and install a controlling system. Furthermore, the competences should be laid down clearly.

At the end there should be an evaluation of the whole process to improve the cooperative behaviour.

3. CONCLUSION

The basic structure of the sequence of operations out of the point of view of the municipality is orientated on the chronological progression. At first it is necessary to check, if there even exists a demand for building land. For this reason the municipality has to collect data of the housing market to define the need for living space and to calculate the need for building land. In the case of a detected demand the municipality has to initiate a regional cooperation and informal networks and has to reach a fundamental decision of land development. In the next step the municipality has to check the economical conditions of the development and the cooperation situation to decide, if a cooperative proceeding is expedient in comparison to a mandatory proceeding. If the municipality likes to enter the cooperative proceeding, the local authorities have first of all to define the aimed contents of contract out of their point of view. Afterwards, they have to check the legitimacy and the economic efficiency of the contract. The legitimacy depends on the local ownership law. The economic efficiency should be checked by means of a dynamic profitability calculation. In the case of a negative result the consequence would be an optimization of the contract and a new check concerning the economic efficiency and legitimacy. In the case of a positive result the necessary instruments have to be defined to ensure the fulfilment of the contract. After finishing this draft agreement starts the negotiation between the representatives of the municipality and the private partner(s). If there are necessary any modifications of the contract, the check starts from the beginning. In the last step the objects of the contract have to be implemented and the whole process has to be evaluated.

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BIOGRAPHICAL NOTES

Andreas Hendricks is a scientist at the University of Neubrandenburg. He studied geodesy at the University of Karlsruhe where he graduated in 1994. Afterwards he worked two years in the cadastre administration and took the state examinations in 1996. After several years working for the University of Stuttgart he moved to the University of Darmstadt where he gave lectures in the areas of cadastre, real estate valuation and land management and where he finished his PhD thesis in 2006. After two and a half years at the University of Buenos Aires he moved to Neubrandenburg where he is responsible for the area cadastre.

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