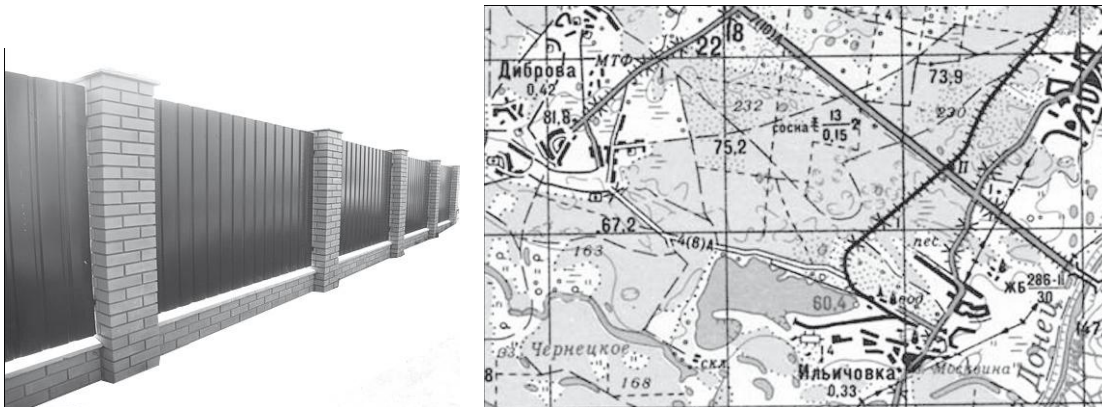


“NO TRESPASSING” or THE “STOLEN” ROAD

Citizens of northern Donbas, accustomed to spending their summer vacation in the Bakay Lakes (sometimes mistakenly called the Blue Lakes) – located between the villages of Dibrova and Ilichovka in Krasnolymansk district, will be very surprised if they visit them now. The paved road that used to go along the lake toward Ilichovka will now take them to... a fence enclosing a construction site. The natives have been astonished at the construction for some time. The only people who do not seem surprised are the officials and representatives of local government. Officials have no reasonable answer to the question – how did the road connecting the villages, marked on the map and road atlas, happen to be fenced and become private property?



GET OFF! END OF THE ROAD. UNAUTHORIZED FENCE AHEAD

Last year, on December 5, tempers were flaring in the club in the village of Dibrova. The reason for the village meeting was a controversial matter. A partially paved road from Dibrova to Ilichovka was blocked by a metal fence. The road with woods on one side and a lake on the other was chosen a construction site. “No Trespassing!” coldly informed a sign on a small piece of cardboard. Who made the decision? All roads in the district are public, and construction of any type is forbidden there. Most importantly, this was the only road linking the two villages, Dibrova and Ilichovka.

“Who and why was the road blocked?” villagers asked their village head after they had managed to get into the cold, half-lit club, which still has no electricity. How could it have happened? Oleksiy Shilov, the village head, tried to disrupt the meeting initiated by the villagers. A curious moment. The fence blocking the road had outraged the residents of several villages to that point they were prepared to bring it down with their own tractors. The village head, regardless of being well-informed about the newly-built fence, acted like it was not blocking a road under his jurisdiction but was somewhere between San Francisco and New York.

“The fence is unauthorized...Whose is it? We have no information,” was his answer to the villagers. “This land no longer belongs to Dibrova, so we do not know who the owner is.”

“But when and to whom was this piece of road transferred?”

“Last year the village council allocated land plots along the lake to a group of people,” Shilov started explaining unwillingly.

“They have a constitutional right to acquire land. That is why we distributed the plots.”

“Do these people have names and addresses?”

“We have no information...”

No matter how hard they tried, Dibrova natives failed to find out the truth. The village head could not provide them with detailed information, and said that he was a hostage of the situation, recommending assistance from BYuT party representatives, who accompanied him (this was right before elections so the politicians were as active as animals in mating season, to find out who the unauthorized fence belonged to, or suggesting that the “raiders” should be obliged to build another road right away. The result of the negotiations was an appeal to the Krasnolymansk Public Prosecutor’s Office “to stop the unauthorized construction.”

The journalists were only left to launch investigations to discover the identities of those respectable citizens whose constitutional rights were so vigorously defended by the village head, whilst setting aside the rights of his village community. And who was to blame for leaving the natives of several villages without such an important route?



On December 5, 2009, Kryvolutsk Village Council Head Aleksey Shilov (second from the left) closed the village club closed for a long time to prevent a meeting of villagers, rationalizing his move as concern for the health of his fellow villagers during the swine flu epidemic.

FOLLOW THE ROAD...

All citizens have the right to acquire a land plot free of charge to build a cottage-house or a country-cottage. The Code does not specify where exactly the land should be located – only

within the residential area of the citizen, within city limits, or by a picturesque lake. The procedure for land acquisition is not specified either. Decision-making is a matter of conscience, or in fact, of the wallet of local officials. The officials, in turn, conducted an illegal auction where, as usual, land was sold to the person that made the most generous offer. The luckiest got the highest elevated plots or land on the water. And the road to that property is paved right to the owner's gate...

Winston Churchill once said that there are no roads in our homeland, there are only directions. Roads connecting several villages are another thing. The aforementioned partially paved road is not a mere beaten path around the lake. The road was marked on the detailed road atlas of Donetsk region. Both the topographic map of Krasnolymansk district and the road atlas of Donbas also included this route. Generally, we classify it as a regular road, although not as good, as it could be. However, there are villages in Ukraine where such a road would be considered a blessing.

“WE WERE HAPPY ABOUT THE COMING OF CIVILIZATION...”

The decision about the allocation of land plots around the Bakay Lakes was considered twice by the city council. At first, verification for allocation of the “Recreational complex to the northwest of the village Ilichovka on the property of the Kryvolutsk Village Council in Krasnolymansk district” was requested by the Kryvolutsk Village Council. On September 12, 2008, agreement #39 of 2008 was concluded with the Center for the Support of Town-planning Initiatives. The order was taken and paid.

“We did not oppose the allocation of land by the lake. Oleksiy Fedorovych described the future plan for the territory: a beach, restrooms, tourist areas, and, of course, a playground for children... Of course we voted for it,” said Vira Sarzhevska, village council member. “Dibrova is a small village where locals survive mainly thanks to country cottage owners. Our living conditions are limited to a non-working club, the sun and the moon to serve as our main source of light. We do not even have a school. The land for recreation might have increased the village budget because the village council is literally scraping by to make a living. We were happy about the coming of civilization...”

The village head used this creative approach to turn the allocated territory into “paradise”. At first, it appeared that the village council would enjoy no “benefit” from land allocation, but it was too late to reverse the procedure. Then, natives that had a right to acquire land plots received a very direct and unambiguous answer to their requests, “There is no land in Dibrova!”

The confusion was created given that land outside the limits of Dibrova, supposedly, falls under the jurisdiction of the Krasnolymansk City Council. Aside from that, there is no general construction plan and map of Dibrova with an exact indication of the village limits. Thus, Oleksiy Shilov, head of the Kryvolutsk Village Council, was unable to identify whether a land plot requested by one villager was not occupied by someone else.

“There is no land in Dibrova!” repeated Shilov, head of the Kryvolutsk Village Council, when being asked humbly by fellow villagers. “Only roads are left.” However, in December, it became clear that roads started to disappear as well.

BEING GOOD TO EVERYONE? OR ONLY TO THOSE WHO PAY?

The locals observed the start of construction by the lake with amazement and wondered where exactly would the “fishing zone” and “service areas” of the “recreational complex” be located? There was only one thing they could have not wondered about, and the village head was not in a hurry to tell them – the “project” ordered by the village council and completed with money from the community (we need to note here that large sums of money were spent) was gone forever. Instead, a new project appeared. This time, the client was an individual, some Oleg Yuriyovych Kravchenko.

In May 2009, he concluded an agreement, again with the Center for Support of Town-planning Initiatives on the project design of another recreational area. The project was finished in no time at all – with the previous project as the basis. The alterations were few, however, quite significant. First, the land plot allocated to Kravchenko was “a small forest tract of conifers”. Second, the plot also included space previously intended for the playground. Most important, Kravchenko’s private property was divided in half by the road that had linked Dibrova and Ilichovka for years. The paved part of the road, in a “strange coincidence”, finished right at the entrance to Kravchenko’s property.

The new project was made without discussion at the village council meeting. Moreover, village deputies could not have imagined that the Kransolymsk City Council adopted decree #5/31-3540 of June 24, 2000 that satisfied all of Kravchenko’s requests.

Could the village head have been ignorant to the aforementioned events? Definitely, no. First of all, what kind of a village head was he, if he had no clue of the decisions made concerning lands by the Kryvolutsk Village Council? Secondly, Oleksandr Altukhov, director of the Center for Support for Town-planning Initiatives, expressed sheer surprise, “I cannot imagine a situation like that. The council should discuss it. How can they make decisions without even taking a look? I would never suppose that anything could have slipped past the officials’ eyes or ears.”

Then, what is the reason for Oleksiy Shilov’s following remark, recorded in the minutes of the village council meeting of December 5, 2009, “All fences that are not included in town-planning documents shall be considered unauthorized and demolished!” Might the village head have forgotten something and provoked his fellow villagers’ unlawful actions?

A THORNY PATH TO THE TRUTH

Regardless of the fact that trespassing was allowed and construction was temporarily stopped, the villagers of Dibrova were worried, “How will we be getting to Ilichovka and Kryva Luka? Many of us have relatives there, plots of land, and again, the village council is located there – what if we urgently need some papers?”

Village Head Oleksiy Shilov gave guarantees that a road would be open on behalf of an “unidentified citizen”. However, the villagers still had their doubts about the road. Even if reality corresponded to the words of the village head, why should the road be fenced? It is unlikely the owner would enjoy caravans of strangers passing by his cottage and tractors or a seeding-machine rumbling down the road early in the morning.

First of all, they directed an inquiry to the Krasnolymansk Public Prosecutor’s Office.

The reply did not keep them waiting. “According to the general plan of the town-planning service, the road by the construction site, which should provide free passage of villagers, is specified. The results of the audit revealed no violations of the law on land allocation”, wrote the interdistrict prosecutor Kostyantyn Kushakov.

What about the metal fence? Does it “provide for free passage of villagers”? And where are the documents “specifying the road by the construction site”?

Based on “directions” from the BYuT party representatives, the residents addressed an appeal for help to state deputy Nataliya Korolevskaya. The appeal, signed by 63 villagers, stated, “Why did local administrative services sign documents without asking even what was the road in the middle of Kravchenko’s land? That road is very busy in the summer. Not only with cyclists, but also cars, tractors and trucks. According to the town-planning service, no one intends to build a detour. Moreover, according to Kravchenko’s lawyer, all buildings are going to be constructed right along our road.”

The state deputy expressed “comprehension” of the problem, and referred Dibrova villagers to... Nina Karpachova, implying that everyone has the right to address their appeal to her, so the villagers, as citizens of Ukraine, enjoyed the same right. So, follow that road... to the “Commissioner on Human Rights of the Verkhovna Rada”.

MAYOR SAID, MAYOR DID

The villagers considered the ombudsman out of their reach and addressed Leonid Perebyinis, mayor of Krasny Lyman. At first, they sent him a public letter. Since they received no reply in due time, Dibrova villagers, hoping they could be heard, asked the editorial office of the newspaper “Zorya” in Krasny Lyman to publish this open appeal. The editor-in-chief of “Zorya”, Mykola Pasichnyk, claiming to be an honorable journalist of Ukraine, denied the villagers’ request. Although in their letter, the natives were simply asking the mayor to bring their road back.

“That road has been here for more than tens of years. Old-timers still remember the first buses following that route. The road is marked on the maps of the region. Leonid Yuriyevych! We are asking you to make the wrong right and bring the road back to the village”, concluded the “free-thinking” appeal.

Even though the appeal was not made public, Leonid Perebyinis still reacted to it. Moreover, he drove all the way to Dibrova, as we understand it, to check the situation personally. The mayor listened to Village Council Deputy Vira Sarzhevska, Village Head Oleksiy Shilov, Dibrova District Land Office Head (in simple words, the head land surveyor) Mykola Garkavy, theatrically gave a promise to examine the facts and left. Why theatrically? Because the mayor of Krasny Lyman, like Oleksiy Shilov, could not have been unaware of the road being transferred into the private ownership of Kravchenko.

LETTERS TO ELISA...

The last project included construction of a detour road to be completed following the technical documents. The existing road shall be in operation until the detour is completed, and there shall be no blocking of traffic”, wrote the mayor of Krasny Lyman in his letter.

A letter and a word are not official documents. The letter from the mayor, even if it was registered and given a number, is not official correspondence. The mayor of Krasny Lyman could have sent letters to thousands of people in his life, maybe even giving promises to get married with the addressee. Nowadays, you cannot put faith in a document certified by a notary. The law requires an obligatory and simple procedure, the concluding of an agreement.

HIT THE ROAD JACK, AND DON'T YOU COME BACK NO MORE!

Is it possible that the mayor, together with the village head, were not informed of the regular legal practice concerning land use, the land easement? In accordance with Article 98 of the Land Code of Ukraine, the right for land easement provides the land owner or land user with limited use of another land user's plot (plots) on a paid basis or free of charge. And that means the road linking Dibrova and Ilichovka could be left open to the community, regardless of the construction, which would be continued until the promised detour was finished.

The nature of easement serves to limit the right of one physical entity to another physical entity's property, if all other options have proved useless. Oleksiy Shilov and Leonid Perebyinis were pledging their words to the villagers that the road would not be blocked. They said it would be open until the new road was constructed. But if land easement is not concluded today or tomorrow, the land owner will have full authority to block traffic on his private property, and the law will be on his side.



It is known that private property is inviolable, and Ukrainian law proves that the use of private land without permission from the land owner or a relevant legal basis is forbidden. Today, the trespassing by the villagers of Dibrova and Ilichovka is allowed, but what happens tomorrow?

A representative of the State Architecture and Construction Inspection (SACI), in a private conversation, gave a very clear explanation of the situation, “All decisions in our country are made by word. There is no permission for construction on this road. If an individual has private property, they can arrange a gate and charge money for trespassing. Because they have the right to do that, it is their private property. How could the chief architect and all other services have put their signatures on the state land bill, and how was verification at the road service arranged? Questions about the basis for land allocation along this road should be addressed to the public prosecutor’s office”.

The village council, supporting their own interests, should be taking care of concluding the land easement agreement. If Kravchenko tries to interfere with the agreement, all disputes can be settled in court. But shall the city and village sue a person whose requirements for recreational area they satisfied by changing the entire project?

By the way, the entity using land easement, according to law, should be charged for using the private property of the other entity. This means that local residents should be charged for use of their own road.

Kravchenko’s lawyer made a very comprehensive statement – private property is always protected. Otherwise it would easily change ownership. So, if someone asks for permission to trespass on your land, you can allow this because of your good heart or supported by an obligatory agreement, specifying all details and the exact term of action.

WHAT IS THE JURISDICTION OF THE VILLAGE HEAD?

“I was shocked at the steps taken by the village head”, said village council deputy Vira Sarzhevskya. “In my opinion, the village head should be a fair arbiter between the village community and owners of land plots in disputes, and should definitely not try to play into somebody’s hands.”

The villagers of Dibrova and Ilichovka were also surprised by the actions of the village head. Oleksiy Shilov, as head of the Kryvolutsk Village Council for around fifteen years, is doubtfully ignorant of his responsibility in protecting the rights and interests of the village community in solving social and utility problems. Therefore, we can assume that there is something more significant for Shilov than community matters, which prevents him from following the “Law on local administration”.

Apparently, that “something” assisted the village head in suggesting the discussion of the “land distribution plan of residential areas” at the meeting of the village council, and there was no mention of the road...

“THERE IS NO PROBLEM”

Oleksiy Shilov eagerly wrote comments to our publications and even wrote letters to our editorial office. For that reason, we had a conversation with the village head to get the information about his actions to save the road firsthand, and if he did nothing, then what was in his way...

“Oleksiy Fedorovich, what is the current situation with the road connecting Dibrova and Ilichovka?”

“There is no problem about it – the road functions and people are using it”.

“But it is located on private property. The land belongs to an individual...”

“There was a suggestion from the city council to use one road construction project which was included in the town-planning documents. Right now the road is functioning. As soon as the question of constructing a new road arises, you are welcome to arrange another meeting for us... At the moment, there is no problem with traffic”.

“The road presents material value, doesn’t it? At whose cost shall the new road be constructed – the village council, city council, or some individual?”

“The village council will not take part in the construction. The individuals owning that land or the city council will be responsible for the construction...”

“And do you have an official agreement concluded with them?”

“No, we do not. We only have technical documents. Those requirements shall be satisfied.”

“But there is no agreement, right?”

“I do not have much detailed information. But as far as I know, we do not have an agreement of that kind. In a conversation, they said, “In autumn, as soon as it is possible, we shall start road construction. According to the technical documents”.

“The lawyers imply that the individual has full authority to block the road, as long as land easement between the community and land owner does not exist”.

“Well, land easement... If only they want to order it themselves... It is not under my jurisdiction, I have lack of powers to make decisions. In a telephone conversation, they said that they planned to construct the road... It is all I can say. I have no more information”.

“At the end of April, the “land distribution plan of residential areas” was discussed at a village council meeting, and there was no mention of the road...”

“The plan was ordered by the regional department of land resources. At the moment, it is being discussed until a decision is made about the future of the road”.

“Therefore, the future of the road remains unclear, right?”

“No”.

This is it. We are only left with amazement at the fact of a document which is, according to head of the Kryvolutsk Village Council, “being discussed”. In fact, it should be no wonder. At the last meeting of Dibrova villagers on May 30, people were trying to find a solution to their problem once again, and Oleksiy Shilov did not support the community, but acted as the legal representative of Kravchenko. In the end, the village head summarized that “All decisions taken by this meeting are considered to be void, first of all due to many absentees, and because one of you made the decision while intoxicated with alcohol”.

As we say, no comment.

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