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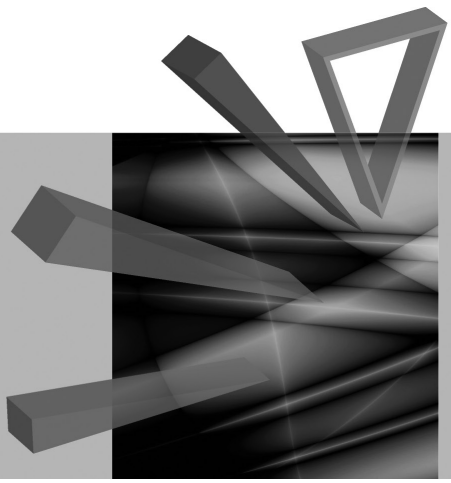
Local Economy in Theory and Practice
Local Development Governance Aspects



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Local Development Governance Aspects

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ENVIRONMENTAL ASPECTS OF RESIDENTIAL PROPERTY MANAGEMENT IN POLAND

Summary: Residential real estate market is a multi-layered structure that reflects the essence of the provision for Man, not for physical objects. Applying this approach will cause the need to change the perception of property. Real estate, shapes social behavior and is a carrier of a significant financial value. Its creation and use has a significant influence on the environment, which in turn results in the need for significant legislation.

Keywords: residential real estate, property, environment.

Space affects a human being to a greater degree than he/she seems to realize. It influences his/her mood, behavior, decisions and the important sense of emotional security (pointed out, *inter alia*, by [Bell et al. 2004]). The proper and full development of a human being requires the beauty of the landscape – natural, but also urban. As K. Wejchert noted: "spatial environment is necessary for human beings, not only well-organized, well-functioning, but providing them with the aesthetic experiences including different moods, poetry, symbolism, setting for the valuable traditions, allowing for a strong relationship of each individual with the city, the district or region" [Wejchert 1984, p. 93].

Taking into account the principles of sustainable development in spatial planning, as expressed in the normalization of art. 5 of Fundamental Law under the applicable legal regulations in Poland, it is worth quoting a statement of Z. Niewiadomski, who wrote: "Space management is a process divisive by its nature. It is a game of many entities with conflicting interests. The purpose of legal regulations is an attempt to reconcile those interests. This means that the spatial management law becomes a compromise between different interests and ideas about the land development and generally not satisfying anyone. It arouses extreme emotions and evaluation" [Niewiadomski 2006, p. VII].

Urban policy, which is a scheduled activity of local authorities, is established and conducted in collaboration with other entities who are achieving their objectives and satisfying their needs in the city. This leads to the achievement of the objectives which are important for the development of the structure, which is the city, among

which one can target the goal of striving to create the best possible living conditions for individual users, inter alia by increasing the housing stock.

The Polish planning system is three-tier, there is a division of competences and duties between the commune and the state and the voivodeship government, where the commune acts as the national spatial policy creator, and the vovivodeship government is the "keystone" between the planning of the commune and the spatial policy of the state.

The Polish policy of housing development policy in terms of planning, means the necessity of drafting and updating the concept of spatial development of the country, the voivodeship development strategy, the spatial development plans of voivodeships, the study of conditions and directions of spatial development of communes and local spatial development plans. In the study of conditions and directions of spatial development of communes and local spatial development plans, conditions for maintaining the balance of nature and the rational management of the environment resources are provided, especially by the organization and development of green areas, ensuring the protection of the landscape features of the environment and climate. The establishment of the plan provides the basis for making decisions on the allocation of land, providing conditions for maintaining the balance of nature and the natural resources management.

The literature, especially Agenda 21, of the subject, argues that the provisions on sustainable development and spatial order were included in the majority of planning documents enacted in recent years, but they are usually formulated in a too general way and their range is narrow. They are also not translated into concrete actions or programming tasks. The lack of correlation between the provisions contained in the laws of environmental protection, nature conservation, forest, etc., and spatial planning, in effect prevents or at least significantly reduces the possibility of using spatial management instruments for environmental protection.

The basic method of spatial policy is now the creation of all kinds of plans and "branch" programs or documents of an operational nature. However, there is a lack of a comprehensive program of public and private projects on a specific space, such as a city. Branch programs and their findings are often not consistent with the findings contained in development strategies and spatial development plans. The Act on Spatial Planning and Development [Act dated 23 March 2003, o planowaniu i zagospodarowaniu przestrzennym] introduced a new form of establishment plans' hierarchy, which however does not create the conditions of sectoral and branch policy integration with numerous environmental and planning documents. The multiplicity of uncoordinated programs and spatial documents developed at national, vivodeship, district and commune level causes the progressive disintegration and ineffective functioning of the basic instruments of environmental protection and spatial management. Most of these documents have definitely a spatial character, and the role of the voivodeship and communal spatial development plans should include the establishment of programs and sectoral strategies, for example environmental

protection programs, waste management plans, prepared at various levels of management, and plans for protection of areas covered by the European Ecological Network Natura 2000, is greater [Tyszecki 2004, pp. 19–17].

It should be taken into account that not all cities have enacted spatial development plans, and in areas without a spatial management plan, the procedure for issuing ad hoc decisions which establishes the suitable conditions for land development takes place. The lack of local spatial development plans is seen mainly in the large cities of Poland, where plans are enacted fragmentarily for particular areas (districts) of the city. The commonly termed "planning fragmentation", which is manifested in enacting plans for small areas, often results in the omission of – more or less deliberately – aspects of environmental protection programs. From the wording of Art. 1 the Act dated 27 March 2003 on spatial planning and development, one can find that the act has to serve primarily to ensure the possibility of the inclusion of spatial order to land management (and therefore some of the pre-defined rules or building conditions) to ensure harmony between the existing and planned buildings. Spatial order and sustainable development were considered by the legislature as the basis of the operations for spatial planning and development. These two determinants, whose meaning was defined in art. 2 of the Act, must be regarded as the rules of all actions relating to land management. The adoption of spatial order and sustainable development as a basis for planning activities makes them the main measures of the accuracy and legality of the implementation of the Act. Therefore, whether the planning project can be considered to be compatible with the existing legal order will largely depend on whether it remains in accordance with the requirements of spatial order and sustainable development. The content of these terms should be considered as an interpretative directive in the implementation of the Act's provisions.

For the purposes of the analysis of planning procedures, sustainable development should be understood as social and economic development, in which the process of integrating political, economic and social actions occurs with preserving the balance of nature and the durability of basic natural processes in order to ensure the possibility of satisfying the basic needs of communities and citizens of both present and future generations. Whereas the legal definition of "spatial order" indicates that this term must be understood as the landscape, which creates a harmonious unit, and takes into account all conditions and the functional, socio-economic, environmental, cultural, compositional and aesthetic requirements in the ordered relations.

However, the above mentioned determinants, including sustainable development, which should be the basis of spatial development policy of cities, are often ignored, and modern investors – through legal loopholes, lack of clarity and ambiguity of legal terms – seek to obtain an administrative decision establishing building conditions for the specific area by the simultaneous circumvention of existing laws.

Currently, in most cities in Poland there is a lack of local spatial management plans, which in practice leads to the necessity of creating the spatial urban policy by issuing decisions setting building conditions, called "wz" – conditions of

development, as an analysis of the possibilities of the plot selected by the investor, not the concept of the whole area. In effect, this leads to a distortion of the spatial order and to an imbalance and lack of spatial order and affects the policy of sustainable development. Provision of Art. 6.1 of the Act on Spatial Planning and Development dated 23 March 2003, states that the establishment of a local spatial development plan, together with other provisions, shapes the manner of implementing ownership. This means that the records of the plan determine the situation of the property owner, *inter alia*, within its investment development. According to Art. 6.2 point 2 of the Act on Spatial Planning and Development, within the limits set by law, everyone has the right to protect their own legal interest in the land development of other people. Whereas in the absence of a local spatial development plan in a specific area, "the mini-plan" becomes a decision setting building conditions (Art. 59.1 in conjunction with Art. 61 of the Act). Making such a decision is subject to a number of requirements made to the investor, which have to ensure respect and free use of the third parties' property. It should be noted that under the regulation of the Act on Spatial Planning and Development, the determination of the building conditions included in the decision will be possible if the conditions set out in Art. 61.1 are met. According to this normalization, setting out the building conditions decision is possible only if: at least one neighboring plot accessible from the same public road, is built on in a way that allows you to specify requirements for new buildings in the continuation of the functions, performance, features and indicators of building development and land management, including the size and form of architectural buildings, building line and the intensity of land use (1), area has access to the public road (2), existing or proposed utilities, including paragraph 5, are sufficient for the construction project (3), the area does not require permission to change the purpose of agricultural and forest land to non-agricultural and non-forest, nor is covered by the consent obtained in the preparation of local plans that have lost their power under Art. 67 of Act dated 7 July 1994 on spatial planning (4), the decision is compatible with separate regulations (5).

In order to preserve the architectural and urban order, and maintain sustainable development in a specific area, the legislator introduced a requirement to determine the building conditions for a specific area: at least one neighboring plot accessible from the same public road, is built on in a way that allows you to specify requirements for new buildings in the continuation of the functions, performance, features and indicators of building development and land management, including the size and form of architectural buildings, building line and the intensity of land use.

The essence of this regulation is to preserve, until the enactment of a local spatial development plan for a specific area, the existing urban and architectural systems. In the continuation of the function there is only such a building, which agrees with the existing status quo (compare with: the NSA judgment of 18.06.2008, II OSK 58/07, LEX No. 465665 (Polish Supreme Administrative Court)). The new function, which is placed in a specific area, must be of such a type that might be able to coexist with the

existing functions, and in the future this newly introduced feature does not limit the current one. Therefore, the new building is admissible so far as it can be compatible with the existing function. The understanding of the concept of "the continuation of the building and land development function" should be treated broadly, according to the system's interpretation, which requires resolving doubts in favor of the powers of the owner or investor in order to maintain the principle of freedom of land use, arising from Art. 6.2 of Act on Spatial Planning and Development, including its building (vide: the judgment of WSA in Warsaw of 23rd October 2006, IV SA 482/06).

However, in Poland it should be noted that the above described procedure for establishing building conditions decision concludes an analysis of these parameters in the analyzed area, whose range is limited. Therefore, skillfully identifying an analyzed area – which I regret to say – can lead to abuse arising from the adaptation of its range to the needs of the investor. Moreover, in analyzing the development of urban planning by creating spatial policy in a mode of issuing the decisions which establish building conditions by the communes, it can be concluded that the authorities in their decisions are not guided by the principle of sustainable development, but only the economic principle. Thus, the green areas are eliminated, which in the city center already remain in a worryingly small amount, replaced by the construction of multi-family buildings, pavilions and commercial and service centers, which results in the elimination of parks, green spaces, open-access recreation areas for children and adults. Simultaneously, the liberalization of the communes' means they should be considered as the competent bodies, in relation to issuing the decisions allowing the cutting down of trees. The policy of the complete removal of wooded enclaves within the administrative boundaries of cities and towns is important for the development of the commune's investment policy, leading to the deactivation of the green squares in communes and cities, and consequently, to the sale of that land for commercial purposes by the commune.

Economic trends and the demand for housing – which is especially visible in large cities – attractive from the point of view of, for example professional development, resulted in the unlimited building up of these cities. A sudden increase in demand for housing and the increased availability of credit for housing meant that during 2005–2007, tremendous interest in buying flats in the primary market was observed. Interest in the primary market, in turn, has prompted developers to intensify building in attractive areas, while ignoring the principles of sustainable development and urban order. It should be noted that in the period of prosperity and the so-called "housing boom" [2003–2007], developers were selling flats and building structures without the prior decisions establishing building conditions. Under the banner of the necessity of expanding the city and satisfying the housing needs of the population, investors began to expand in the direction of the so-called "cities' green areas", which in the assumptions of the study and projects of local development plans were potentially allocated for green spaces, recreational areas, ventilation lanes of the city, residential buildings, etc.

It should be noted that even the legal instrument, allowing the possibility of suspending procedure on the establishment of building conditions in cases where the municipal council/city resolution on accession is taken to enact the local development plan, has no effect. Explaining this issue – when the area specified in the application for the establishment of building conditions is not subject to a spatial management plan – the administrative proceedings determining building conditions may be suspended for a period no longer than 12 months from the date of submission of the application. On the other hand, *wójt* (village head), mayor or president of the city takes over the procedure and issues a decision on the establishment of building conditions, if the municipal council, within two months from the date of suspension of the proceedings, did not pass a resolution on accession to the preparation of the local plan, or during the suspension of the proceedings did not adopt the local plan or amendment. Indeed, the use of this possibility by the body conducting the proceedings is at the discretion of the body ("can be suspended"). An optional suspension under this provision serves the public interest and follows ex officio. This provision specifies the time frame for the suspension period – it cannot be longer than 12 months from the date of the application in this case. The purpose of regulation is to allow the municipal authorities to accede to the preparation of the local development plan, which is the basic instrument for creating space in the commune, or end the procedure enacting the plan during suspension. Therefore, if the applicant requests from the municipal authorities to determine building conditions, *wójt*, mayor or president of the city, recognizing that it would be better to develop the land on the basis of the local plan, may suspend the proceedings. This instrument allows the authorities which create the spatial area policy, for the temporary suspension of the procedure aiming at land development through the issuance of the zoning decision and implementation of the spatial policy planned in advance.

The lack of enacting the spatial development plans for the areas with simultaneous freedom of interpretation of individual provisions regulating the planning process, leads in effect to the irreversible ecological phenomena. The urban development of cities occurs in a chaotic and uncontrolled way, and building on green areas which have an unequalled ecological value for the cities, will cause the necessity of the restoration of green areas and rebalancing – between residential and service buildings – in the widest sense, and in the accompanying infrastructure.

Taking as an example the city of Kraków, you can point out as green areas, such as River Parks, the areas located in the protection zones or landscape parks, as well as areas used in establishing the ventilation lines of cities (otherwise known as channels), or located in urban green areas which are quasi parks for residents. In addition, on the land, which was characterized by a residential single-family housing for many years, multi-family buildings began to appear, leading to an increase of indicators of the new building surface in relation to the land surface, while simultaneously reducing the parameter of biologically active building, the so-called disequilibrium of sustainable development. There is a cutting down of the

tree enclaves, and liquidation of green areas for the implementation of housing to satisfy the housing needs of the municipal population, completely oblivious to the consequences of the loss of green areas which are necessary for the healthy and normal functioning of humans.

Uncontrolled city development, resulting largely in undoing the balance between residential development and green infrastructure and biologically active areas, can be stopped only by the enactment of local spatial development plans. According to the author of this study, the development of spatial policy by issuing decisions establishing building conditions for each area (which are by assumption "mini-plans"), in connection with a number of interpretative doubts of individual provisions of the Act, and the lack of uniformity of the judicial interpretation at the level of administrative courts, leads to multiple abuse and almost irreversible consequences of environmental damage and the destruction of the existing ecosystem. The creation of new parts of the city should be accompanied by an awareness that it is an instrument of transforming the local environment and generating change in its environment.

It should be noted that all legal remedies available to the citizens do not bring the expected results, because the whole procedure is carried out in accordance with the law, but the manipulation of all the terms and the whole planning procedure causes that the citizens' rational arguments lose out to the demands of the investor regarding the best use of available space. Simultaneously, the common practice was creating spatial development plans for specific parcels or groups, which leads to the situation that granting the rank of local law to the local spatial development plans for small areas, brought the spatial planning system into the position of a tool to satisfy the individual needs of investors, instead of shaping a harmonious spatial development, which has resulted in a negative number of processes in green space.

It is necessary to draw attention to the fact that the legislature aiming to ensure that citizens have a wider impact on the shaping and protection of the environment, implemented the Act dated 9 November 2000, on access to information about the environment and its protection and environmental impact assessments. The purpose of this regulation is to provide citizens, their organizations, and other entities with a wide, far greater than ever before, access to information about the human natural environment, held by public authorities (state and local government). The provisions contained in it determine the rights of people interested in participating in administrative proceedings to which the Act referred to and the administrative duties. By implementing the Act, the legislature wanted to organize, name clearly and expand the powers of the possible participation of citizens in the administrative proceedings, whose results are related to the environment.

To sum up, in practice the implementation of the principles of sustainable development taking into account environmental considerations in spatial planning is insufficient, and natural conditions are often treated in a more cursory way than the plans such as transportation or economic conditions. The city planners emphasize that at the stage of preparing to draw up planning studies, there is lack of comprehensive

information provided by the authorities competent in matters relating to the natural environment of the area covered by the study or plan, or indications where such information can be obtained, or only information of a general nature is transferred. At the stage of preparing to draw up planning studies, it is necessary to indicate by the relevant authorities, legally protected areas through the Act on Nature Conservation or an indication of the possible occurrence of such areas (based on evidence) to analyze in an eco-physiographic study.

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ŚRODOWISKOWE ASPEKTY GOSPODAROWANIA NIERUCHOMOŚCIAMI MIESZKANIOWYMI W POLSCE

Streszczenie: Rynek nieruchomości mieszkaniowych stanowi wielopłaszczyznową strukturę, której istota odzwierciedla świadczenie na rzecz człowieka, a nie przedmiot rzeczowy. Zastosowanie takiego podejścia powoduje konieczność zmiany sposobu postrzegania nieruchomości. Nieruchomości kształtują bowiem zachowania społeczne; są nośnikiem znacznej wartości finansowej; ich wytworzenie i wykorzystanie istotnie wpływa na środowisko naturalne, co w konsekwencji powoduje konieczność znacznych regulacji prawnych.

Słowa kluczowe: nieruchomości mieszkaniowe, nieruchomości, środowisko.