JOURNAL OF MODERN SCIENCE
SPECIAL ISSUE
3/57/2024
www.jomswsge.com

DOI: doi.org/10.13166/jms/191091

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PLANNING ANNUITY (FEE). CIVIL AND TAX LAW REGULATIONS

RENTA (OPŁATA) PLANISTYCZNA. REGULACJE PRAWA CYWILNEGO I DANINOWEGO

Summary

Adopting a new or changing the existing local development plan is most often associated with an increase in the value of real estate. When selling the property, the owner of the property is obliged to pay a special fee (planning rent) in connection with the increase in the value of the property. This fee is collected by the commune head, mayor or president and cannot be higher than 30% of the increase in the value of the property. In practice, many misunderstandings and problems arise in the operation of this fee. The main cause is an incorrectly calculated and overestimated difference in the value of the property, which leads to undue claims by the commune against the property owner. Art. 36 and 37 of the Act of 27 March 2003 on Spatial Planning and Development states that the condition for collecting a one-off fee (planning rent) is the need to simultaneously meet the following conditions: increase in the value of real estate as a result of adopting a new or changing the existing local plan, specifying in the local plan the percentage increase in the value of the property, constituting the basis for calculating the amount of planning rent or sale of real estate by the current owner or perpetual usufructuary.

Streszczenie

Uchwalenie nowego lub zmiana dotychczasowego planu miejscowego zagospodarowania przestrzennego wiąże się najczęściej ze wzrostem wartości nieruchomości. Właściciel nieruchomości przy sprzedaży nieruchomości zobowiązany jest uiścić specjalną opłatę (rentę planistyczną) w związku ze wzrostem wartości nieruchomości. Opłata ta jest pobierana jest przez wójta, burmistrza lub prezydenta i nie może być wyższa od 30% wzrostu wartości nieruchomości. W praktyce funkcjonowania tej opłaty powstaje wiele nieporozumień i problemów. Główną ich przyczyną bywa niewłaściwie wyliczona i zawyżona różnica wartości nieruchomości, która staje się przyczyną nienależnych roszczeń gminy wobec właściciela nieruchomości. Z art. 36 i 37 Ustawy z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym (dalej u.p.z.p.) wynika, że warunkiem pobrania jednorazowej opłaty (renta planistyczna) jest konieczność jednoczesnego spełnienia niżej wymienionych warunków: wzrost wartości nieruchomości w wyniku uchwalenia nowego lub zmiany dotychczasowego planu miejscowego, określenie w planie miejscowym stawki procentowej wzrostu wartości nieruchomości, stanowiącej podstawę do naliczenia wysokości renty planistycznej oraz zbycie nieruchomości przez dotychczasowego właściciela lub użytkownika wieczystego.

Keywords: *spa treatment, sanatorium, administrative law, spa treatment law, public finance law, public finance law, economic efficiency of organisations, planning and management of the spa community*

Słowa kluczowe: *right of perpetual usufruct, urban planning, civil law, public levies, planning fee, administrative decision, enforcement of compensation claims*

Introducion

According to the Art. 36 par. 1 Act of Spatial Planning and Development adoption of the local plan or its amendment, the use of the real estate or its part in the previous manner or in accordance with the previous purpose has become impossible or significantly limited, the owner or perpetual usufructuary of the real estate may, subject to paragraph. 2, demand from the commune: compensation for actual damage suffered or purchasing the property or part of it. Fulfillment of claims referred to in section 1 may also take place by the commune offering a replacement property to the owner or perpetual usufructuary. On the date of conclusion of the exchange agreement, claims expire. If, in connection with the adoption of the local plan or its amendment, the value of the property has decreased, and the owner or perpetual usufructuary sells the property and has not exercised the rights referred to in paragraph. 1 and 2, may demand from the commune compensation equal to the reduction in the value of the property.

If, as a result of the adoption of a local plan or its amendment, the value of the property has increased and the owner or perpetual usufructuary sells the property, the commune head, mayor or city president charges a one-off fee established in the plan, determined as a percentage of the increase in the value of the property. This fee is the commune's own income. The amount of the fee cannot be higher than 30% of the increase in the value of the property. The fee referred to in section 4, shall not be collected in the event of a gratuitous transfer by the farmer of the ownership of real estate constituting the farm to a successor within the meaning of the provisions of Act of December 20, 1990 on social insurance for farmers (Journal of Laws of 2008, No. 50, item 291, No. 67, item 411, No. 70, item 416 and No. 180, item 1112) or regulations on detailed conditions and procedure for granting financial assistance under the *Structural pensions* measure covered by the Rural Development Program for 2007-2013 issued on the basis of art. 29 section 1 point 1Act of March 7, 2007 on supporting the development of rural areas with the participation of funds from the European Agricultural Fund for Rural Development (Journal of Laws No. 64, item 427 and of 2008 No. 98, item 634 and No. 214, item 1349). In the event of sale by the successor of real estate transferred by the farmer, the provisions on the fee referred to in section 4 shall apply accordingly. If the resolution

of the commune council on the local plan is found to be invalid, in part or in whole, the compensation referred to in section 1 point 1, or the fee referred to in section 4, shall be returned to the commune or to the current owner or perpetual usufructuary of the property, respectively (Wołowiec, Reśko, 2012).

The amount of compensation for the reduction in the value of the property referred to in Art. 36 section 3, and the amount of the fee for the increase in the value of the property referred to in Art. 36 section 4, is determined on the day of its sale. The decrease and increase in the value of real estate constitute the difference between the value of the real estate determined taking into account the intended use of the land in force after the adoption or amendment of the local plan and its value determined taking into account the intended use of the land in force before the amendment of this plan, or the actual use of the real estate before its adoption. The provision of section 3 shall apply accordingly to the fees referred to in Art. 36 section 4. The notary, within 7 days from the date of preparation of the contract for the sale of real estate, in the form of a notarial deed, is obliged to send an extract from this deed to the commune head, mayor or city president. The commune head, mayor or city president determines the fee referred to in Art. 36 section 4, by way of a decision, immediately after receiving an extract from the notarial deed referred to in section 5. The owner or perpetual usufructuary of real estate whose value has increased in connection with the adoption or amendment of the local plan, before its disposal, may request the commune head, mayor or city president to determine, by way of a decision, the amount of the fee referred to in Art. 36 section 4. The commune head, mayor or city president presents periodically – according to needs, but at least once a year – at the session of the commune council, information about the submitted demands referred to in Art. 36 section 1-3 and sections 5, and the issued decisions referred to in section 6 and 7. Fulfillment of the obligation arising from the claims referred to in Art. 36 section 1-3 should take place within 6 months from the date of submission of the application, unless the parties decide otherwise. In the event of a delay in the payment of compensation or in the purchase of real estate, the owner or perpetual usufructuary of the real estate is entitled to interestsstatutory (Wołowiec, Skica, 2012).

Adopting a new or changing the existing local development

Adopting a new or changing the existing local development plan is most often associated with an increase in the value of real estate. When selling the property, the owner of the property is obliged to pay a special fee (planning rent) in connection with the increase in the value of the property. This fee is collected by the commune head, mayor or president and cannot be higher than 30% of the increase in the value of the property. In practice, many misunderstandings and problems arise in the operation of this fee. The main cause is an incorrectly calculated and overestimated difference in the value of the property, which leads to undue claims by the commune against the property owner. Joke. 36 and 37 of the Act of 27 March 2003 on Spatial Planning and Development (hereinafter referred to as Spatial Planning and Development) states that the condition for collecting a one-off fee (planning rent) is the need to simultaneously meet the following conditions: increase in the value of real estate as a result of adopting a new or changing the existing local plan, specifying in the local plan the percentage increase in the value of the property, constituting the basis for calculating the amount of planning rent or sale of real estate by the current owner or perpetual usufructuary.

Recipe art. 36 Act of Spatial Planning and Development, provide for ways to mitigate possible negative consequences for the owner and perpetual usufructuary resulting from the entry into force of the local development plan (hereinafter: local development plan) or its amendment (Bąkowski, 2004). The exclusion of the possibility of using real estate in the current manner made by the provisions of the local spatial development plan is a limitation of the ownership right to real estate, in the scope of one of the basic rights, namely the right to use things (art. 140 of Civil Code). Different rules and procedures for claiming compensation in the situations specified in art. 36 Act of Spatial Planning and Development, unjustifiably put the owner of real estate covered by the local development plan changing its purpose in a much worse situation than the owner whose right to the real estate was limited by an administrative decision.

The owner whose property rights are restricted by an administrative decision is entitled to compensation in the amount determined by the adjudicating

authority, payable once within 14 days from the date on which the decision to expropriate the property becomes final. However, the owner (perpetual usufructuary) who, as a result of the entry into force of new planning regulations, cannot use his real estate in the previous way and wants to obtain appropriate compensation for this, must initiate proceedings to assert his rights before a common court.

The provisions of the Public Procurement Law also regulate issues related to changes in the value of real estate resulting from the entry into force of a new local land use plan or changes in the current plan. The concept of reducing the value of real estate is defined in the regulation art. 37 par 1 Act of Spatial Planning and Development. In turn, the recipe art. 36 par. 4 regulates situations in which the consequence of the regulations resulting from the local development plan is an increase in the value of real estate located in the area covered by the plan. The fee paid to the commune on this basis was determined as a planning rent. It constitutes a specific participation of the commune in the profits resulting from the sale of real estate, the value of which has increased due to changes in the arrangements contained in the local spatial development plan (Wołowiec, Reśko, 2014). This provision only indicates the upper amount of this fee, while determining the applicable percentage rate is the competence of the commune council. Supreme Administrative Court in judgment of September 6, 2002 adopted that the obligation to pay a one-off fee (planning annuity) collected in the event of disposal of real estate, the value of which increased due to the adoption of a new or amended plan, excludes the possibility of establishing in the local plan development spatial zero percentage rate for calculating this fee (Judgment of the Supreme Administrative Court in Wrocław of September 6, 2002, II SA/Wr 1193/02, OSS 2003, no. 1, item 15).

According to the jurisprudence of the Supreme Administrative Court, the provisions apply to the planning pension (as a public levy in the form of a so-called surcharge) (Etel, 2010; Brzezicki, 2009). In the classical approach, a subsidy is considered an obligatory share, unilaterally determined by the state or local government, in the costs of creating state or municipal facilities, collected from entities that are credited with achieving special benefits from these facilities, consisting in increasing their income or increasing the market value of their assets (Czaja-Hliniak, 2006). There are also other levies that have

the nature of subsidies, although they are defined differently by the legislator. This applies in particular to: shares in the costs of public roads, arrangement of streets, squares, premises, co-financing of social activities; electrification fee, land improvement fee, fee for water supply facilities, fees for water and sewage facilities, fees for infrastructure investments, fees for consolidation and division of real estate, enhancement fees, etc. Currently, the public law nature of the planning rent results from art. 36 par. 4 of the Public Procurement Law, according to which *this fee is the commune's own income* (Wołowiec, 2016).

The amount of compensation for the reduction in the value of real estate referred to in Art. 36 section 3, and the amount of the fee for the increase in the value of the property referred to in Art. 36 section 4, is determined on the day of its sale. The decrease and increase in the value of real estate constitute the difference between the value of the real estate determined taking into account the intended use of the land in force after the adoption or amendment of the local plan and its value determined taking into account the intended use of the land in force before the amendment of this plan, or the actual use of the real estate before its adoption (Wołowiec, 2022).

The amount of compensation for the decrease in the value of the property and the amount of the fee for the increase in the value of the property should reflect the difference between the value of the property before the adoption of the local development plan and its value on the day of its sale. In turn, this difference and the related compensation or planning rent should be related to an objective change in the value of the property, and not to the price agreed by the parties to the contract (Cisek, Kremis, 2000).

Tthe five-year deadline referred to in Art. 37. paragraph 3 of the Act on Public Procurement, should be treated as a mandatory deadline. Therefore, failure to comply will result in the loss of the possibility of bringing a lawsuit to a common court. Due to the appropriate application of this provision to fees for the increase in the value of real estate (art. 37 paragraph 4 of the Act on Public Procurement, the expiry of the five-year period prevents the commune from claiming planning rent from the owner of the property. Pursuant to the provisions of Art. 37 section 5 of the Act on Public Procurement Law states that in practice the notary is obliged to send to the commune head (mayor, city president) an extract of each contract the subject of which is the sale of real

estate located in the area covered by the provisions of the Local Development Plan or its amendment, which came into force in the last 5 years, by the date of conclusion. contracts. The exception in this respect are contracts in which the commune is the party selling the property (Oleszko, 2002).

The legal basis for determining the amount of the planning rent are the provisions contained in the resolution on local spatial development plans(art. 15 par. 2 point 12 of the Act on Public Procurement). A fee for the increase in the value of real estate is not charged if its percentage rate is not specified in the resolution of the commune council. The decision of the commune head (mayor, president of the city) determining the amount of the planning pension, in the absence of specifying the percentage rate in the resolution on the local spatial development plan, is a decision issued without a legal basis and is invalid (Janeczko 2001). This position has been weakened due to the fact that the determination of interest rates is in accordance with art. 15 paragraph 2 point 12 is an obligatory element of the local spatial development plan. Therefore, the situation in which the commune head (mayor, city president) would set a fee by way of a decision in the absence of appropriate provisions in this respect in the local spatial development plan will be extremely rare or even only hypothetical (Wolanin, 2006).

The decision determining the amount of the planning pension

The decision determining the amount of the planning pension should be treated as an administrative decision of the tax authority. If the addressee of this decision fails to fulfill the resulting obligation to pay a fee for the increase in the value of the property, the commune head (mayor, city president) should take appropriate actions provided for in the regulation of Act of June 17, 1966 on enforcement proceedings in administration (Journal of Laws of 2002, No. 110, item 968, as amended). The decision issued by the commune head (mayor, city president) at the request of the interested party before the sale of the property differs in several respects from the decision referred to in art. 36 par. 6 Act of Spatial Planning and Development. Firstly, the procedure for issuing this decision is initiated on the initiative of the party (owner or perpetual

usufructuary). Secondly, the enforceability of the decision determining the amount of the planning annuity depends on the sale of the property, and in the event of failure to conclude a sales contract or its legal ineffectiveness, the unenforceability of this decision will be permanent. The value of real estate after the resolution on the local development plan comes into force or its amendment is determined by property appraisers (Reśko, Wołowiec, 2014).

On August 10, 2011, it entered into force Act of May 16, 2011 amending the Act on spatial planning and development (Journal of Laws No. 153, item 901). The regulations introduce changes in the scope of planning annuity. The amendment introduced by the Act of May 16, 2011 formulates the principle according to which in a situation where the adoption of a local spatial development plan took place after December 31, 2003, due to the loss of validity of the local spatial development plan adopted before January 1 1995, the rule for calculating the planning rent in relation to the increase in the value of real estate will not apply if the value of the real estate (determined taking into account the intended use of the area determined in the local development plan adopted before January 1, 1995) is greater than the value real estate determined taking into account its actual use after the termination of this plan (Reśko, Wołowiec, 2013).

In such a case, the increase in the value of the property is the difference between the value of the property determined taking into account the land use in force after the adoption of the new local plan and its value determined taking into account the land use determined in the local plan adopted before January 1, 1995. The change introduced by the amendment comes down to this that the obligation to pay a planning rent will not arise if the value of the land determined in accordance with its intended use in the local plan adopted before January 1, 1995 was higher or did not change as a result of the adoption of the local spatial development plan after December 31, 2003. However, for this exception to apply, the value of the real estate determined taking into account the intended use of the area determined in the local development plan adopted before January 1, 1995 must be greater than the value of the real estate determined taking into account its actual use after the expiry of this plan. We encounter the described situation where local plans expired within the period specified above under Art. 87 section 3 of the Act on Spatial Development It states that local spatial development plans adopted before January 1, 1995,

which were in force on the date of entry into force of the Act of 2003 on spatial planning and development, remain in force until the adoption of new plans, but no longer than until on December 31, 2003. The introduced exception will apply to those cases that may occur until local plans cover all areas where planning policy was implemented before January 1, 1995, but later the competent authorities did not adopt an appropriate resolution in this respect.

The amendment constitutes the fulfillment of the obligation to adapt the legal system to the judgment of the Constitutional Tribunal of February 9, 2010 (reference number P 58/08), declaring the inconsistency of the provision of Art. 37 section 1 of the Act on Spatial Planning and Development, art. 2 and art. 32 of the Constitution of the Republic of Poland. In the case analyzed by the Constitutional Tribunal, the local development plan lost its validity under Art. 87 section 3 of the Act on Spatial Planning and Development. When another local plan was adopted, more than a year after the expiration of the old plan, property owners were obliged to pay a fee resulting from the increase in the value of the property after the adoption or amendment of the local plan (Article 36(4) of the Act on Spatial Planning and Development). The Constitutional Tribunal found that the situation of owners of real estate located in places where new local plans were adopted after the expiry of the old ones differs from the situation of other owners of real estate located where, in accordance with the act, new plans replaced the old ones while they were in force. According to the Constitutional Tribunal, the increase in the value of real estate should be considered as a result of the adoption of a new local plan immediately after the previous one, and not as a result of the loss of continuity of planning and the creation of a situation of the periodic absence of any plan with its consequences related to fees.

Selected judgments of administrative courts regarding planning pension

Judgment of the Provincial Administrative Court in Kraków of September 20, 2011, II SA/Kr 1131/11**.** The obligation to pay a planning fee arises in situations of sale of real estate through an equivalent legal act, for a fee, materializing an asset gain resulting from the adoption or amendment of the plan. Therefore, whenever it cannot be stated that the sale of real estate is an equivalent sale, the request for payment of a planning fee by the seller of the real estate seems to be groundless. In this context, the abolition of joint ownership as part of the division of the spouses' marital property will usually not have an equivalent – paid nature.If, as a result of the division of marital property, joint ownership of real estate is abolished by its physical division or if only one of the spouses obtains ownership in exchange for funds from their joint property which is wholly or partially owned by the other spouse – there is no basis for assuming that we have dealing with a paid, equivalent legal transaction, i.e. disposal giving rise to the obligation to pay a planning fee. However, if as a result of this division, not only the property is divided, but also the repayment of one of the spouses with funds from the other spouse's personal property in exchange for obtaining ownership of the entire property (including the part of which the other spouse would be the owner in the event of physical division), we are dealing with with a paid equivalent legal transaction, i.e. disposal giving rise to the obligation to pay a planning fee.

Judgment of the Supreme Administrative Court in Warsaw of June 14, 2011, II OSK 1066/10. The fact that, after the adoption of the plan, the owner of the property no longer has to apply for a decision establishing development conditions before applying for a building permit is not in itself sufficient to establish a one-off fee for the increase in the value of the property. The cassation appeal alleged violation of substantive law through incorrect interpretation of Art. 36 section 4 of the Act of March 27, 2003 on spatial planning and development by incorrectly assuming that the increase in the value of real estate as a result of the adoption of the local spatial development plan results only and exclusively from the change in the use of the real estate that took place through the adoption of the plan and thus incorrectly assuming

that the appraisal report is a sufficient premise to determine the increase in the price of the property being sold, without examining other reasons that may result in an increase in the price of the property.

In the opinion of the Supreme Administrative Court adjudicating in this case, the above objection could not be accepted for the reason that in a situation where there was no local development plan for a given area immediately before the adoption of the local development plan in question, the Court of first instance was right in dismissing the complaint against decision to establish the planning fee, based on the evidence, which was an appraisal prepared by an authorized appraiser. The court of first instance noted that it was established that the plot in question intended for field crops was designated for single-family housing and services only as a result of the implementation of the local development plan, and the obligatory evidence for this fact is an appraisal report prepared by an appraiser. property.

The Supreme Administrative Court also found that the position expressed in the justification for the appealed judgment was justified: it was irrelevant to the case whether the complainant could have obtained an administrative decision on establishing development conditions for a specific investment before the entry into force of the local plan in question, if such a decision was requested at all. he didn't apply.

Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of May 31, 2011, II SA/Go 169/1. The principle of obligatory payment of a planning annuity, when such an annuity can be determined, entails the inadmissibility of specifying the percentage rate in the local spatial development plan in such a way that excludes the determination of this fee. The permissible and possible range of interest rates for the planning annuity must be defined in a way that allows the fee to be determined (calculated). Pursuant to the content of art. 28 section 1 of the Act on Spatial Planning and Development (Journal of Laws No. 80, item 717, as amended) – hereinafter referred to as the Spatial Planning and Development Act, the basis for declaring the resolution of the commune council invalid in whole or in part is a violation of the rules for preparing a local plan, a significant violation of the procedure for its preparation preparation, as well as violation of the authorities' jurisdiction in this respect. It should be emphasized that the local spatial development

plan is an act of local law (Article 14(8) of the Act on Local Development Act) adopted by the commune council. The principles of preparing a local plan are understood as values and substantive requirements for shaping spatial policy by authorized bodies regarding, among others, arrangements contained in the planning act. In the event of a violation of the rules for preparing a local plan, the legislator does not require that the violation in question be of a significant nature, which means that any violation of the rules for preparing a local plan will result in the invalidation of the resolution of the commune council in whole or in part.

The analysis of the resolution that is the subject of the complaint in this case allows the conclusion that the contested resolution grossly violates the provisions of Art. 15 section 2 point 12 in connection with Art. 28 section 1 by not specifying the percentage rate on the basis of which the fee for the increase in the value of real estate can be determined. Pursuant to art. 15 section 2 point 12 the local plan must specify the percentage rates on the basis of which the fee referred to in Art. 36 section 4 quotes of the Act. Pursuant to Art. 36 section 4 of the Upzp Act, if, as a result of the adoption of a local plan or its amendment, the value of the property has increased and the owner or perpetual usufructuary sells the property, the commune head, mayor or city president charges a one-off fee specified in the plan, determined as a percentage of the increase in the value of the property. This fee is the commune's own income and its amount cannot be higher than 30% of the increase in the value of the property.

Taking the above into account, it should be stated that the determination of the percentage rates on the basis of which the fee referred to in Art. 36 section 4 of the Act, i.e. a fee for the increase in the value of real estate in connection with the adoption or amendment of a local plan, is a mandatory provision of the local plan, as evidenced by the provision in Art. 15 section 2 point 12 of the Act on Public Procurement, *the local plan must specify the percentage rates on the basis of which the fee referred to in Article 36(4) is determined.* In the present case, we are dealing with a situation in which the authority – the City Council – did not indicate the rate in question at all. In the judgment of October 8, 2007, the Supreme Administrative Court (reference number II OSK 291/07, Lex Polonica no. 2285230) ruled that the plan did not specify the rate referred to in Art. 15 section 2 point 12 of the Act, even in part of its area, violates the above-mentioned norm, and the Court adjudicating in this case fully shares this view.

Moreover, the fact that the legislator decided on the existence of an obligation to pay a fee in the circumstances listed in Art. 36 section 4 of the Act in question, which in turn entails limiting the scope of freedom in adjudicating on its amount. This limitation consists not only in the impossibility of exceeding the upper limit specified in the Spatial Planning and Development Act (30%), but also excludes the possibility of applying a zero rate. The principle of obligatory payment of a planning annuity, when such an annuity can be determined, entails the inadmissibility of specifying the interest rate in the plan in such a way that excludes the determination of this fee. The permissible and possible range of interest rates for the planning annuity must be defined in a way that allows for the determination (calculation) of the fee. The failure to specify any rate in the contested resolution means that the above-mentioned the rent cannot be established for the area covered by this resolution and therefore constitutes a violation of the rules for preparing a local plan. Since specifying the percentage rate constituting the basis for determining the planning fee in the local development plan is an obligatory element of the plan, the failure to specify the percentage rate of the planning fee in the resolution amending the plan (§ 16 of the resolution) will result in the invalidation of this act in its entirety.

It should be stated that the consequence of the action of the administrative court cannot be an illegal situation, and such an effect would occur if the resolution was declared invalid only in the scope of § 16. A local plan would remain in circulation without containing one of the obligatory elements specified in Art. 15 section 2 point 12 of the Act on Public Procurement in the judgment of May 29, 2009 (reference number II OSK 1865/2008, Lex Polonica no. 2321658), the Supreme Administrative Court ruled that the local spatial development plan, just like any act of generally applicable law, is an integral source of rights and obligations of specific entities and cannot be led – even by a court judgment – to its disintegration, calling into question the possibility of its application in whole or in part.

Judgment of the Supreme Administrative Court in Warsaw of May 5, 2011, II OSK 741/10. The amount of the planning pension fee specified in the resolution of the commune council may be reviewed only in an administrative court case pursuant to Art. 101 section 1 ultrasound. The only evidence of the increase in the value of real estate as a result of the adoption of the local

spatial development plan is the appraisal report (Article 149, Article 150(5) and Article 156(1) of the Act in connection with Article 37(11) of the Act on Land Development). The public administration body is obliged to evaluate the appraisal report pursuant to Art. 80 of the Code of Administrative Procedure, which requires the administrative authority to assess whether a given circumstance has been proven on the basis of all the evidence), Art. 7 of the Code of Administrative Procedure (ordering to take all steps necessary to precisely determine the facts) and Art. 77 § 1 of the Code of Administrative Procedure (which imposes on the administrative body the obligation to exhaustively collect and consider all evidence). The administration body should comprehensively evaluate the valuation report and, in the event of any doubts as to its correctness, take actions to remove these doubts. The results of this procedure should be presented in the factual justification of the decision, which, in accordance with Art. 107 § 3 of the Code of Administrative Procedure should, in particular, include an indication of the facts that the authority found to be proven, the evidence on which it relied and the reasons why it denied other evidence credibility and probative value. There is no doubt about the assessment made by the Court of First Instance regarding the above issues. The allegations made in the cassation appeal are of a general nature and essentially constitute a repetition of the allegations in the appeal and complaint.

The complainant, since she considered the report to be incorrect, should have indicated specific circumstances in the previous proceedings, especially before public administration bodies, that could indicate defects in the report and submitted motions aimed at overturning it. The assumption expressed in the complaint that *taking into consideration the valuation of real estate prices over a too long period of time may result in the accumulation in the determined increase in the value of real estate not only of the effects resulting from the adoption of the local plan, but also of general market trends* could not constitute a sufficient basis for concluding that the valuation report was not prepared correctly. The amount of compensation for the reduction in the value of the property referred to in Article 36(3) and the amount of the fee for the increase in the value of the property referred to in Article 36(4) are determined on the day of sale. The reduction and increase real estate values constitute the difference between the value of the real estate determined

taking into account the intended use of the area in force after the adoption or amendment of the local plan and its value determined taking into account the intended use of the land in force before the amendment of this plan, or the actual use of the real estate before its adoption. The justification for the allegation of improper application of this provision (Article 174(1) of the Civil Code) with the fact that the content of the agreement concluded on September 26, 2002 between the Cooperative and the Management Board of the [city X]. Commune should have an impact on the resolution of the case determines its groundlessness. This agreement, in which the Commune Management Board agreed to waive the charging of fees resulting from the then applicable Art. 36 of the Act of July 7, 1994 on spatial development (Journal of Laws of 1999, No. 15, item 139, as amended), and the Cooperative and its members agreed to bear the costs of preparing a draft spatial development plan and submitting it to the Commune. plots intended for public roads at a price of PLN 1 per 1 m2 is a civil law contract and disputes between the parties to this contract can only be resolved by a common court. The maximum level of planning annuity, i.e. 30% of the increase in the value of the property, questioned in the cassation appeal, is also irrelevant to the resolution of this case. Possible control of the fee rate for the planning pension, specified in § 15 of resolution No. (…) of the J. Commune Council of (…) September 2004 (Journal of Laws of the Voivodeship Podlaskie No. 155, item 2059) could only take place in an administrative court case pursuant to Art. 101 section 1 of the Act of March 8, 1990 on municipal self-government (consolidated text: Journal of Laws of 2001, No. 142, item 1591, as amended). In these administrative proceedings, public administration bodies were bound by the amount of the fee established in this resolution, which is an act of local law within the meaning of Art. 87 section 2 of the Constitution of the Republic of Poland and art. 40 section 1 of the Act on municipal self-government.

Judgment of the Supreme Administrative Court in Warsaw of May 5, 2011, II OSK 684/10. Since the legislator states that the fee specified in Art. 36 section 4 of the Public Procurement Law *collected* by the executive body of the commune, and it constitutes the commune's own income, it should be treated as a public law receivable due to the commune and there are no grounds for waiving from *collecting* this receivable. The cassation appeal also contains

an allegation of violation of substantive law – Art. 37 section 1 of the Act of 27 March 2003 on spatial planning and development, which means that, in the complainant's opinion, this provision was incorrectly applied in the case. Pursuant to Art. 174 point 1 of the Civil Code, a cassation appeal may be based on the violation of substantive law through its incorrect interpretation or incorrect application. Misapplication of a provision of substantive law occurs when a given provision is applied in a specific case when it is not applicable. However, as stated in Art. 37 section 1, it regulates the issue of determining the amount of the fee for the increase in the value of real estate, referred to in Art. 36 section 4 of the Act on Spatial Planning and Development, however, this fee is determined on the day of sale of the property and the increase in the value of the property is the difference between the value of the property determined taking into account the intended use of the area in force after the adoption or amendment of the local plan and its value determined taking into account the intended use of the land in force before changing this plan or the actual use of the property before its adoption. Therefore, it cannot be justified to claim that this provision was violated by improper application, since it is not disputed that this provision was and should be the basis for adjudicating in the case, and moreover, the amount of the fee in question was determined on the day of sale of a given plot and the other conditions specified in this recipe.

The essence of the cassation complaint seems to be the dissatisfaction of the complainant with the fact that it has contractual relations with the Commune, according to which it incurred the costs of preparing and adopting a local development plan with the assurance from the Commune that it will not seek to collect a planning fee related to with an increase in the value of the property in connection with the adoption of the plan. The plan adopted the highest percentage rate (30%) of the planning fee. This argument could not have had any impact on the outcome of the case. The provision of Art. 36 section 4 of the Act on Spatial Planning and Development clearly states that when, due to the adoption of a local plan or its amendment, the value of the property has increased, and the owner or perpetual usufructuary sells the property within 5 years from the entry into force of the resolution of the commune council regarding the plan. local government (Article 37(3) and (4)), the commune head, mayor or city president *collects a one-off fee established in this plan,*

determined as a percentage of the increase in the value of the property. This fee is the commune's own income, and the amount of the fee cannot be higher than 30%. Since the legislator states that the fee in question is *collected* by the executive body of the commune, and it constitutes the commune's own income, it should be treated as a public law receivable payable to the commune, there are no grounds for waiving from *collecting* this receivable and the only case when it is not it will be *collected* when the limitation period for this fee expires (5 years have elapsed between the entry into force of the resolution on the local development plan and the initiation of administrative proceedings to determine the amount / but not the fee) of the fee in question. However, a separate issue is the assessment of the effectiveness of the agreement concluded with the Commune regarding the assumption of organizational (technical) responsibilities by the complaining party and the related costs regarding activities related to the preparation and adoption of the plan. The person filing the cassation appeal wrongly assumes that in this case he is a *taxpayer* whose obligation is determined in *tax proceedings*.

Conclusions

The fee which is the subject of the enquiry is the fee for the increase in the value of the real property caused by the adoption or amendment of the local spatial development plan (the so-called planning rent), established pursuant to the provisions of the Act of 27 March 2003 on spatial planning and development (consolidated text of Journal of Laws of 2023, item 977, as amended). Pursuant to Article 36 (4) of the Act on spatial planning and development, if, in connection with the adoption of the local plan or its amendment, the value of the real property has increased and the owner or perpetual usufructuary disposes of the real property, the head of the commune, the mayor or the president of the city collects a one-off fee established in this plan, determined as a percentage of the increase in the value of the real property, with the proviso that the disposal of the real property must take place before the lapse of 5 years from the date of entry into force of the local spatial development plan (Art. 37(4) in connection with paragraph 3 and Article 36(4) of the Act on

Planning and Spatial Development). Therefore, in order to establish a fee for the increase in the value of the real property resulting from the adoption or amendment of the local spatial development plan (the so-called planning annuity), it is necessary for the joint occurrence of three premises, i.e. Therefore, three conditions have to be fulfilled jointly, i.e.: the increase of the real property value as a result of adopting the local spatial development plan or its change, determination in the local plan or its change, determination in the local plan or its change of the percentage rate of the real property value increase constituting the basis for determination of the amount of the zoning annuity, or sale of the real property by the previous owner before the lapse of 5 years from the date of entry into force of the local plan or its change (the term *sale of the real property* should be understood as disposal of the whole or part of the real property, as well as sale of the share in the real property ownership right).

It should be emphasised here that the percentage rate of the increase in the value of the real estate, constituting the basis for determining the amount of the planning rent, is determined in each local spatial development plan adopted and may not be higher than 30% of the increase in the value of the real estate. On that basis – after the notary public has sent an excerpt from the notarial deed – proceedings are instigated ex officio to establish the fee for the real property value increase caused by the adoption or amendment of the local spatial development plan (the so-called planning rent). The increase in the value of the property resulting from the adoption or amendment of the local spatial development plan can be established only after a property valuation commissioned in the course of the proceedings to an appraiser. On this basis – based on the percentage rate specified in the local plan – the amount of the planning rent is established. Based on the collected evidence, a decision is issued to determine the fee for the increase in the value of the property caused by the adoption or amendment of the local spatial development plan (the so-called planning annuity) in a specified amount. Pursuant to Article 37 Section 7 of the Act on Planning and Spatial Development, before disposing of the property, the owner or perpetual usufructuary of the property whose value has increased due to the adoption or amendment of the local development plan may request the head of the commune, mayor or town president to establish, by way of a decision, the amount of the fee referred to in Article 36 Section 7

of the Act on Planning and Spatial Development. The request to establish the amount of the planning annuity should be accompanied by a current copy of the land and mortgage register which covers the subject property. This will make it possible to determine whether the subject property was and still is the subject of the applicant's ownership or perpetual usufruct on the date of entry into force of the local spatial development plan.

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