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THE ECONOMIC NEEDS OF THE MUNICIPALITY IN THE PROCESS OF CHANGE IN LAND USE FROM AGRICULTURAL TO NON-AGRICULTURAL PURPOSES

Abstract

The aim of this study is to answer the question of whether the economic needs of a municipality can serve as a basis for change in land use from agricultural to non-agricultural purposes. In order to address the research question, the Author conducted an analysis of the provisions of the Act on the protection of agricultural and forest land and the Act on spatial planning and development, relating to the change of agricultural land designation for non-agricultural purposes and also examined key administrative court judgments in cases concerning the consent of the minister responsible for rural development to change the designation of agricultural land of classes I-III. The hypothesis put forward in the article, assuming that the economic needs of the municipality can serve as a basis for changing the designation of agricultural land for non-agricultural purposes has been confirmed. However, the extent of the possibility to invoke them primarily depends on the soil quality classification of the land in question, as well as the specific circumstances of an individual case.

KEYWORDS

spatial planning, agricultural land, change in land use, economic needs of the municipality

SŁOWA KLUCZOWE

planowanie przestrzenne, grunty rolne, zmiana przeznaczenia gruntu, potrzeby ekonomiczne gminy

I. INTRODUCTION

Agricultural land is exceptionally valuable from the point of view of, *inter alia*, food security or environmental protection. Due to the functions of agricultural land, the legislator, by virtue of the provisions of the Act of 3 February 1995 on the protection of agricultural and forest land,[1] restricts the possibility of changing their use, introducing the principles of quantitative and qualitative protection of such land.[2]

The principle of quantitative protection, as expressed in Article 3(1)(1) of the u.o.g.r.l., constitutes the restriction of the designation of agricultural land for non-agricultural or non-forest purposes. This constitutes one of the forms of interference in the municipality's planning sovereignty,[3] which is vested in the municipality under Article 3(1) of the Act of 27 March 2003 on spatial planning and development.[4]

One of the phenomena threatening the existence of agricultural land is progressive urbanisation.[5] With more and more people living in urban areas, over time, housing needs increase and urban development becomes inevitable.[6] Consequently, the willingness of municipalities to use agricultural land for housing or

[1] Journal of Laws 2022, item 2409, as amended; hereinafter: u.o.g.r.l.

[2] D. Danecka, W. Radecki, *Komentarz do art. 3* (in:) D. Danecka, W. Radecki, *Ochrona gruntów rolnych i leśnych. Komentarz*, Warszawa 2021, p. 72.

[3] B. Wierzbowski, *7. Zmiana przeznaczenia gruntów* (in:) *Gospodarka nieruchomościami. Podstawy prawne*, Warszawa 2014, LEX/el.

[4] Journal of Laws 2023, item 977, as amended; hereinafter: u.p.z.p.

[5] K. Marciniuk, *Inwestycje budowlane na gruntach rolnych położonych w granicach administracyjnych miast*, 'Studia Iuridica Agraria' 2011, No. 9, p. 368.; A. Zieliński, *Orzecznictwo sądowoadministracyjne w sprawach odrolnienia gruntów*, 'Zeszyty Naukowe Sądownictwa Administracyjnego' 2010, No. 5-6, p. 497.

[6] B. Chmielewska, *Obszary wiejskie a presja urbanizacyjna w powiatach sąsiadujących z Warszawą*, 'MAZOWSZE Studia Regionalne' 2015, No. 16, p. 53.

commercial and retail purposes is also on the rise. This results in gradual suburbanization which is the process of moving the population from cities to the surrounding rural areas.[7] Another negative phenomenon affecting the existence of agricultural land is 'exurbanization', which is the process of uncontrolled 'urban sprawl'.[8] Furthermore, municipalities may plan construction projects on properties outside the urban area that include agricultural lands, often for economic reasons (under pressure from investors).

The aim of this study is to answer the question of whether the economic needs of a municipality can form a basis for change in land use from agricultural to non-agricultural purposes. The hypothesis put forward in the article assumes that the economic needs of the municipality can serve as a basis for changing the designation of agricultural land for non-agricultural purposes. However, the extent of the possibility to invoke them primarily depends on the soil quality classification of the land in question, as well as the specific circumstances of the individual case.

The Author used the formal-dogmatic approach. In order to address the research question, the Author conducted an analysis of legislation relating to the change of agricultural land designation for non-agricultural purposes and also examined key administrative court judgments in cases concerning the consent of the minister responsible for rural development to change the designation of agricultural land of classes I-III. The article also presents the views of the legal doctrine on the issue of changing the land use designation from agricultural to non-agricultural purposes.

II. THE PROCESS OF CHANGING THE USE OF AGRICULTURAL LAND FOR NON-AGRICULTURAL PURPOSES

The definition of agricultural land for the purpose of the u.o.g.r.l. is provided in Article 2(1) of this act.[9] Agricultural land in the meaning of the u.o.g.r.l. is, among others, land defined in the land register as agricultural land (Article 2(1)(1)).[10] By

[7] I. Markuszewska, A. Delebis, *Urbanizacja terenów wiejskich w percepcji lokalnych mieszkańców na przykładzie Wolicy koło Kalisza*, 'Badania Fizjograficzne nad Polską Zachodnią: Seria A - Geografia Fizyczna' 2016, Vol. 67, p. 146.

[8] E. Kacprzak, B. Głębocki, *Urban sprawl a zmiany zasobów użytków rolnych na obszarach wiejskich aglomeracji poznańskiej w latach 1990-2016*, 'Rozwój Regionalny i Polityka Regionalna' 2016, No. 34, p. 101.

[9] Considering the length limitations of the article, there is no point in quoting the full definition of agricultural land.

[10] As pointed out in the literature: 'the notion of agricultural land is registration (formal) in nature. Land is agricultural land when it has been identified as agricultural land in the land regis-

virtue of Article 2(3) of the u.o.g.r.l., land under parks and gardens entered in the register of historical monuments is not considered agricultural land.

From the text of Article 4(6) of the u.o.g.r.l., it can be inferred that the designation of land for non-agricultural purposes is understood as establishing other than agricultural or forestry use of agricultural land. However, such change in use is limited by the already described principle of quantitative protection of such land.[11] Pursuant to Article 6(1) of the u.o.g.r.l, lands identified in land records as wasteland should be primarily designated for non-agricultural and non-forestry purposes. In their absence, other land with the lowest production suitability may be designated for these purposes. Such wording of the regulation allows the adjudicating authorities the discretion to assess whether, in a given state of affairs, it is justified to consent to a change of land use.[12] The addressees of this norm are the authorities that decide on the change in the use of agricultural land for other purposes.[13] The principle in question states that only in the absence of wasteland may other land with the lowest production suitability be used for non-agricultural or non-forestry purposes. In the event of the presence of a wasteland, the allocation of other agricultural land for non-agricultural or non-forestry purposes is precluded.[14] Production suitability is determined according to soil quality classes, which are described in the Regulation of the Council of Ministers of 12 September 2012 on soil classification.[15] The Regulation introduces a hierarchical classification of land, listing classes: I (the best arable soils), II (very good arable soils), IIIa (good arable soils), IIIb (medium good arable soils), IVa (medium quality arable soils, better), IVb (medium quality arable soils, worse), V (poor arable soils), VI (the weakest arable soils), VIz (the weakest arable soils, permanently too arid or too moist). Where there is no wasteland in a particular area, the designation of agricultural land for non-agricultural or non-forestry purposes should begin with classes VIz and VI and, in the absence of a given class, include hierarchically upper classes.[16] According to J. Bieluk and D. Łobos-Kotowska: "in the absence of wasteland and land of the lowest production suitability, it is possible to change the use, even for land of classes I-III".[17] However, this requires the consent of a competent authority, described further on.

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ter', cf. D. Danecka, W. Radecki, *Komentarz do art. 2* (in:) D. Danecka, W. Radecki, *op. cit*., p. 54. The same view was presented in K. Małysa, *Ustalanie warunków zabudowy i zagospodarowania terenu dla gruntów rolnych*, Samorząd Terytorialny 2003, No. 11, p. 25.

[11] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 3* (in:) *J. Bieluk, D. Łobos-Kotowska*, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2015, LEX/el., Section No. 1.

[12] A. Zieliński, *op. cit*., p. 506.

[13] D. Danecka, W. Radecki, *Komentarz do art. 6* (in:) D. Danecka, W. Radecki, *op. cit*, p. 86.

[14] *Ibidem,* p. 87.

[15] Journal of Laws 2012, item 1246, as amended, hereinafter: the Regulation.

[16] D. Danecka, W. Radecki, *Komentarz do art. 6* (in:) D. Danecka, W. Radecki, *op. cit*., p. 88.

[17] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 6* (in:) *op. cit.,* Section No. 1.

Pursuant to the regulation of Article 7(2)(1) of the u.o.g.r.l., the designation for non-agricultural and non-forest purposes of agricultural land of classes I-III (i.e. I, II, IIIa and IIIb) requires the consent of the minister responsible for rural development,[18] unless the conditions of Article 7(2a)[19] of the u.o.g.r.l. are jointly met, or if the land is located within the administrative boundaries of towns and cities.[20] Pursuant to Article 7(1) of the u.o.g.r.l., the change in land use from agricultural to non-agricultural purposes, which requires the consent of the Minister, is, in principle, done in a local zoning plan.[21] As an exception, such designation may occur without MPZP, but only in areas where MPZPs are not adopted (Article 7(1a) of the u.o.g.r.l.).[22] The procedure for obtaining the required consent is part of the procedure for adopting MPZP.[23] It cannot be initiated independently of the spatial planning procedure.[24] As noticed in the doctrine, this solution, due to

[18] Currently, Minister of Agriculture and Rural Development, https://www.gov.pl/web/rolnictwo/podstawowe-informacje (accessed 10 September 2023); hereinafter: 'the Minister'.

[19] It should be indicated at this point that, by virtue of the Act of 7 July 2023 on the Amendment of the Act on Spatial Planning and Development and some other acts (Journal of Laws 2023, item 1688), hereinafter: Amendment to the u.p.z.p. of July 2023), the wording of Article 7(2a) of the u.o.g.r.l. changed as of 24 September 2023. From 10 October 2015, the lack of need to obtain consent for the change of use applied to agricultural land of classes I-III, if the land cumulatively fulfilled the following conditions: 1) at least half of the area of each compact piece of land was contained in a compact development area; 2) they were located at a distance of no more than 50 m from the border of the nearest building plot within the meaning of the provisions of the Act of 21 August 1997 on Property Management (Journal of Laws 2015, item 782, as amended); 3) they were located at a distance of no more than 50 metres from a public road within the meaning of the provisions of the Act of 21 March 1985 on Public Roads (Journal of Laws 2015, item 460, 774 and 870); 4) their area did not exceed 0.5 ha, regardless of whether they constituted a single whole or several separate parts. Following the amendment to the wording of this provision, as of 24 September 2023, the absence of the need to obtain consent for the change of designation shall apply to agricultural land located in the building extension area within the meaning of the provisions on planning and spatial development.

[20] Pursuant to the Article 10a of the u.o.g.r.l., introduced into this act on 5 September 2014, by virtue of the Act of 11 July 2014 on the Amendment of the Environmental Protection Law and some other acts (Journal of Laws 2014, item 1101), the provisions of Chapter 2 of u.o.g.r.l. shall not apply to agricultural land located within the administrative boundaries of towns and cities.

[21] A local zoning plan (hereinafter: MPZP) is a spatial planning instrument, by virtue of which, in principle, the use of land is established, the location of public purpose investments is determined and the conditions for development of the land are specified (Article 4(1) of the u.p.z.p.).

[22] It should also be noted at this point that "for land requiring the consent referred to in Article 7(2) of the u.o.g.r.l., it is possible to issue a decision on land development for projects that are compatible with the agricultural or forestry use of the land, and therefore do not lead to a change of use of the land, but only serve to continue the purpose for which the land is intended, in order to deepen the function it has"., cf. K. Małysa-Sulińska, *Klimat a ochrona gruntów rolnych i leśnych przy ustalaniu lokalizacji inwestycji w oparciu o przepisy ogólne na obszarach nieobjętych miejscowym planem zagospodarowania przestrzennego*, 'Gdańskie Studia Prawnicze' 2021, No. 3, p. 137.

[23] D. Danecka, W. Radecki, *Komentarz do art. 7* (in:) D. Danecka, W. Radecki, *op. cit.,* p. 98.

[24] A. Zieliński, *op. cit.,* p. 502.

the necessity of enacting or amending the MPZP, allows for a reasonable possible change in the use of agricultural land for non-agricultural purposes.[25] The mayor is a party to the consent proceedings pursuant to Article 7(3a) of the u.o.g.r.l. The consent proceedings are initiated precisely at the mayor's request[26] (Article 7(3) of the u.o.g.r.l.). As D. Danecka and W. Radecki indicate: "No other person may file a legally effective application for consent to change of use, in particular not an investor".[27] The Marshall of the Voivodeship attaches his opinion to the application. It is he who forwards the application to the Minister within 30 days of the submission of the application by the mayor (Article 7(4) of the u.o.g.r.l.).

In the aforementioned scenario, pursuant to Article 10(1) of the u.o.g.r.l., the aforementioned application should contain:

1) justification of the need to change the designation of agricultural land of classes I-III;
2) a list of areas of such land, taking into account soil quality classes;
3) economic justification of the proposed use, taking into account in particular:
   (a) the sum of dues and annual fees for the land proposed to be used for non-agricultural and non-forest purposes,
   (b) the anticipated extent of the losses to be suffered by agriculture as a result of the negative impact of the investments located on land proposed for non-agricultural and non-forest use;
4) a map of the municipality or town made to a scale equal to that of the map of the municipality's or town's MPZP, taking into account the requirements described in Article 10(2) of the u.o.g.r.l.

The competent authority, while granting the consent provided for in Article 7(2) of the u.o.g.r.l., does so in the form of an administrative decision,[28] which must meet the requirements set out in Article 107 of the Administrative Procedure Code.[29] As J. Bieluk and D. Łobos-Kotowska pointed out: "A decision issued on the basis of the provision of Article 7(2) of the u.o.g.r.l. is of a discretionary nature".[30] According to J. Zimmermann, "administrative discretion" can be understood as "a flexibility defined by law concerning the behaviour of the public adminis-

[25] S. Prutis, *Instrumenty planowania przestrzennego w rolnictwie (założenia modelowe a rzeczywistość)*, 'Studia Iuridica Agraria' 2012, No. 10, p. 36.

[26] By virtue of the Amendment to the u.p.z.p. of July 2023, as of 1 January 2026, the competent authority will have 60 days from the date of receipt of the application to grant its consent. The new regulations also provide for the so-called 'administrative silence'. The absence of consent or refusal to grant consent within this period will be deemed to be equivalent to consent.

[27] D. Danecka, W. Radecki, *Komentarz do art. 7* (in:) D. Danecka, W. Radecki, *op. cit.,* p. 98.

[28] *Ibidem*, p. 102.

[29] Act of 14 June 1960 - Administrative Procedure Code (Journal of Laws of 2023, item 775, as amended).

[30] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 7* (in:) *op. cit.,* Section No. 12.

tration authority issuing an administrative decision".[31] However, when issuing a decision based on discretion, the authority cannot act in a completely arbitrary and unrestrained manner, as it is constrained by the legislator within the norm that introduces discretion. Consequently, the authority cannot arbitrarily make different decisions in identical circumstances, but it does have the opportunity to arrive at the correct decision, not only on the basis of the law but also by applying unwritten principles of purpose and justice, as well as considering the specific circumstances of the case.[32] The jurisprudence emphasises that "the authority, when examining an application for a change in land use, should first and foremost consider the principles of land protection indicated by the legislator".[33]

According to the rulings of the administrative courts, it is the applicant (i.e. the municipality's executive body) who, in order to obtain a consent, must structure the application in such a way and present all relevant circumstances supporting its legitimacy so as to convince the adjudicating authority that the application may be accepted (within the scope of administrative discretion).[34] Furthermore, case law indicates that: "The municipality, when exercising its authority in the context of spatial policy development, is obligated to take comprehensive measures. This implies that when making decisions regarding the municipality's development, it cannot do so in isolation from the current status of the entire municipal land. Whenever a municipality intends to alter land use, it must not only provide justifications for the proposed changes based on prior changes but also demonstrate that it was objectively unfeasible to utilise the land for which a previous change of use decision had been granted".[35]

The question that also needs to be addressed pertains to the status of agricultural land for which the aforementioned consent is not required (so, *inter alia*, agricultural land of classes IV-VIz). Firstly, the municipality, as the governing body with planning authority over its territory, has the autonomy to decide with regard to the utilisation of such land.[36] The municipal council, as its governing body responsible for decision-making, decides on the designation of particular properties in the MPZP. It is reasonable to assert that such actions cannot be carried out arbitrarily. The municipal council must adhere to the principle of quantitative protection of agricultural land and try to first allocate wasteland for non-agricultural or non-forest purposes. Secondly, if the land in question is not

[31] J. Zimmermann, *Uznanie administracyjne* (in:) *Alfabet prawa administracyjnego*, Warszawa 2022, p. 271.

[32] *Ibidem*, p. 271.

[33] Judgement of the Supreme Administrative Court (NSA) of 9 May 2023, I OSK 956/22, LEX No. 3559970.

[34] Judgement of the NSA of 17 February 2010, II OSK 329/09, LEX No. 592060.; Judgement of the NSA of 5 December 2012, II OSK 1425/11, LEX No. 1233709.

[35] Judgement of the Voivodeship Administrative Court (WSA) in Warsaw of 18 February 2020, IV SA/Wa 2635/19, LEX No. 3031009.

[36] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 7* (in:) *op. cit.,* Section No. 2.

governed by the provisions of an MPZP, a competent authority[37] may modify the land use by issuing a decision[38] on land development.[39] It should also be noted that, in accordance with Article 61(1)(4) of the u.p.z.p., the absence of the need to obtain consent for changing the use of agricultural land to non-agricultural and non-forest purposes is one of the prerequisites that must be met in order for a WZ to be issued for a specific property. When issuing the discussed decision, it also appears necessary to adhere to the principle of quantitative protection of agricultural land.[40]

III. THE ECONOMIC NEEDS OF THE MUNICIPALITY AS A RATIONALE FOR CHANGING THE USE OF AGRICULTURAL LAND TO NON-AGRICULTURAL PURPOSES

As emphasised by the NSA in its ruling of 18 December 2020,[41] "the exclusion of agricultural and forestry land from production[42] should also consider the guidelines derived from the u.p.z.p. These include the fundamental principles of creating spatial order and sustainable development, which serve as the cornerstone for all spatial management activities. They also stand as the primary yardstick for gauging the correctness and legality of executing the provisions laid out within the u.p.z.p.".

In view of the diversity of values that must be considered in the planning and spatial development process – ranging from environmental protection[43] to fostering opportunities for municipal economic growth by leveraging the economic

[37] Pursuant to Article 60(1) of the u.p.z.p., a decision on land development is issued, in principle, by the mayor.

[38] A decision on land development (hereinafter: WZ) is a planning instrument that serves as the foundation for establishing planning and spatial development conditions in areas without an MPZP (Article 4(2) of the u.p.z.p.).

[39] D. R. Kijowski, *Zabudowa nieruchomości na terenach nie objętych miejscowym planem zagospodarowania przestrzennego*, 'CASUS' 2005, No. 3, p. 11.

[40] In practice, however, this may be ineffective, due to the fact that the WZ is not a discretionary decision but a constrained one. This means that if the investor fulfils the prerequisites of Article 61(1) of the u.p.z.p., the authority issuing the WZ cannot refuse to grant it, cf. K. Małysa-Sulińska, *op. cit.*, p. 137.

[41] Judgement of the NSA of 18 December 2020, II OSK 1993/18, LEX No. 3095638.

[42] The exclusion of agricultural land from agricultural production is the second stage, after the change of use for non-agricultural purposes, of the so-called 'de-agriculturalisation' procedure. The quoted judgement, however, refers in its substance to the procedure of change in land use.

[43] In line with Article 1(2)(3) of the u.p.z.p., environmental protection requirements, including water management and protection of agricultural and forestry land, should be particularly taken into account in the process of planning and spatial development.

potentials of land[44] – the research question whether a municipality's economic needs can serve as a basis for change in land use from agricultural to non-agricultural purposes emerges as a significant concern.

Answering the research question requires considering two distinct situations. The potential recognition of economic motives as a basis for changing the designation of agricultural land for non-agricultural purposes primarily depends on determining whether obtaining the Minister's consent is required for the change in question.

On the basis of an analysis of the provisions of the u.o.g.r.l., it should be concluded that obtaining consent for the change of the use of agricultural land for non-agricultural purposes by the municipality is not necessary in relation to:

1. agricultural land of classes I-III, if they fulfil the requirements set out in Article 7(2a) of the u.o.g.r.l.;[45]
2. agricultural land of classes IV-VIz (*a contrario* to Article 7(2)(1) of the u.o.g.r.l.);
3. lands other than those defined in the land register as agricultural land, as defined in Article 2(1) in conjunction with Article 2(3) of the u.o.g.r.l.;
4. agricultural land identified as a wasteland in the land register (Article 6(1) of the u.o.g.r.l.);
5. agricultural land located within the administrative boundaries of cities (Article 10a of the u.o.g.r.l.).

It is worth noting that changing the use of agricultural land to non-agricultural purposes, which does not require consent from the competent authority, does not need to be carried out in the MPZP. In such cases, issuing a WZ is sufficient.[46] In my opinion, the economic needs of the municipality can serve as the basis for changing the designation of these lands. Especially agricultural lands located within the administrative boundaries of cities (to which the provisions of Chapter 2 of the u.o.g.r.l., as stipulated in Article 10a of this act, do not apply) may be deprived of their agricultural designation. This does not seem to be controversial, given their location within urbanised areas and limited potential for agricultural production. However, it is important to consider the issue of the inadequate technical readiness of such lands for construction projects.[47] The case of agricultural lands of classes I-III, fulfilling the requirements specified in Article 7(2a) of the u.o.g.r.l. is also indisputable.[48] With regard to wastelands and

[44] Judgement of the NSA of 18 December 2020, II OSK 1993/18, LEX No. 3095638; Pursuant to Article 1(6) of the u.p.z.p. the economic advantages of land are also a value to be taken into account in spatial planning.

[45] As has already been pointed out, the text of Article 7(2a) of the u.o.g.r.l. was modified by the Amendment to the u.p.z.p. of July 2023.

[46] D. R. Kijowski, *op. cit.*, p. 11.; Obviously, this is only permitted if the area in question is not covered by a MPZP.

[47] K. Marciniuk, *op. cit.*, p. 372.

[48] Both as of 24 September 2023 and before the Amendment to the u.p.z.p. of July 2023.

agricultural lands of classes IV-VIz, it is necessary to adhere to the previously mentioned principle stemming from Article 6(1) of the u.o.g.r.l. In the absence of the necessity to obtain consent from the competent authority, the municipality, in its actions related to the management of agricultural land, should be bound by the principle arising from Article 6(1) of the u.o.g.r.l. and the values essential to be considered in spatial planning and development as defined in Article 1(2) of the u.p.z.p. Among these values, the economic advantages of land are particularly significant. The municipality (and indirectly, private investors) can leverage the advantageous location of the property for the planned construction projects on the discussed lands, which, due to their quality (low suitability class of soil) or location, will not have a negative impact on environmental aspects. Through decisions concerning the intended use of a specific property, the municipality exercises its planning authority.[49] However, the situation of changing the designation of lands other than those specified in the land registry as agricultural lands, within the meaning of the definition in Article 2(1) in conjunction with Article 2(3) of the u.o.g.r.l., requires a thorough analysis. Finally, it should be emphasised that when designating the aforementioned agricultural lands for other purposes, municipalities should not abuse their planning authority by excessively issuing decisions on land development. Due to its limited spatial scope, this instrument may not be well-suited for effecting substantial, long-term changes in land use, particularly from production to investment purposes.[50] Furthermore, due to difficulties in meeting the so-called 'good neighbourhood principle'[51] when applying this decision in agricultural areas, it most often does not lead to the creation of spatial order.[52]

Obtaining the Minister's consent is required for lands of classes I-III, located outside the administrative boundaries of towns and cities.[53] As already pointed out, granting or refusing consent for changing the designation of agricultural lands for a different purpose is based on administrative discretion.[54] The Minister is obliged to consider two values. On the one hand, it is the value stemming from the objectives of the u.o.g.r.l., i.e., the protection of agricultural lands by restricting their use for non-agricultural purposes. On the other hand, it is the value arising from the socio-economic development needs of the given area.[55] Furthermore,

[49] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 7* (in:) *op. cit.,* Section No. 2.

[50] K. Marciniuk, *op. cit*., p. 373.

[51] "The good neighbour principle constitutes the necessity of adjusting new development to the urban and architectural features and parameters determined by the existing state of development in a particular place", cf. Judgement of the NSA of 17 April 2018, II OSK 2627/17, LEX No. 2505289.

[52] K. Marciniuk, *op. cit.,* p. 371.

[53] J. Bieluk, D. Łobos-Kotowska*, Komentarz do art. 7* (in:) *op. cit.,* Section No. 4.

[54] Judgement of the NSA of 17 January 2019, II OSK 775/18, LEX No. 2628730.

[55] Judgement of the NSA of 6 December 2016, II OSK 613/15, LEX No. 2205999.; As noted by the WSA in Warsaw in its judgement of 16 April 2019, IV SA/Wa 185/19, LEX No. 3074076:

"If the public interest allows and the administrative body has the authority to do so, it must rule in favour of the party in matters left to administrative discretion".[56] However, it should be noted that Article 7(2) of the u.o.g.r.l. does not impose an obligation on the Minister to grant a consent that could be issued in the case of a specific factual situation.[57] Hence, the analysis of case law presented below serves solely as an illustration and aims to categorise specific judgments related to the change in the use of agricultural lands of classes I-III for non-agricultural purposes.

At the very beginning of the analysis of the case law concerning the discussed consent, it is worth quoting the views of the NSA, which will serve as the starting point for further analysis. In the judgement of 11 January 2011,[58] the court emphasised that the provisions of Article 6(1) and Article 7(1) and (2) of the u.o.g.r.l. are merely guidelines for the Minister, which he should consider when granting consent for a designation of agricultural land for non-agricultural purposes. These provisions do not preclude the possibility of changing the use of agricultural lands of classes I-III for non-agricultural purposes. The NSA pointed out that the sole circumstance that the law provides special protection for these lands cannot constitute the only argument for refusing consent to change the designation of these lands. The judgement stated that the protection of agricultural lands cannot be extended to the extent that it would result in a lack or significant limitation of the municipality's development possibilities. This is because the potential for this development, just like the right to property, are values subject to legal protection and must also be taken into account when arriving at a decision based on Article 7(2) of the u.o.g.r.l. Furthermore, in another judgement,[59] the NSA stated that when making a decision regarding granting consent for a change of the designation of agricultural land for non-agricultural purposes, the Minister is obligated to conduct a thorough and specific analysis of whether and to what extent allocating a specific area of agricultural land for non-agricultural purposes may have a negative impact on the achievement of the goals and values specified in the u.o.g.r.l.

"The authority deciding within the administrative discretion on the change of use of agricultural land should consider the public interest consisting in the necessity of improving the economic and development conditions of the inhabitants of the municipality in the area of which the land covered by the application is located". As A. Zieliński points out, "The protection of agricultural and forest land cannot [...] be reduced solely to strict limitations, disregarding other responsibilities of the state or local authorities. The protection aspect cannot dominate over the needs for ordering investment space and infrastructure", cf. A. Zieliński, *op. cit.,* p. 497.

[56] Judgement of the NSA of 11 January 2012, II OSK 2031/10, LEX No. 1138046.

[57] M. Karpiuk, *Normatywne aspekty ograniczenia przeznaczenia gruntów rolnych i leśnych na cele nierolnicze i nieleśne*, 'Studia Iuridica Lublinensia' 2013, Vol. 20, p. 77.

[58] Judgement of the NSA of 11 January 2012, II OSK 2031/10, LEX No. 1138046. This view was also referred to by the WSA in Warsaw in its judgement of 16 April 2019, IV SA/Wa 185/19, LEX No. 3074076, and in its judgement of 26 April 2018, IV SA/Wa 3391/17, LEX No. 3005251.

[59] Judgement of the NSA of 8 May 2018, II OSK 1506/16, LEX No. 2527637.

The court pointed out that the Minister must assess the significance of changing the designation of the proposed area of agricultural land with a specific soil suitability class for non-agricultural purposes in the context of the current needs of the national agricultural economy, taking into account the impact of this change on agricultural production and the legal significance of the reasons supporting the change of designation. The judgement emphasised that abstract and unspecified references to general concepts such as 'food economy needs', 'food security', and 'the need to protect high-quality agricultural land' are not sufficient in this regard. The cited judgments indicate the significance of the 'economic needs' of municipalities and the absence of primacy of the necessity to protect agricultural land in every case. On the other hand, it should be noted that in the case of a collision between the public interest and the interest of the entity applying for a change in land use to non-agricultural purposes, the Minister should primarily consider the specific public interest stipulated by law, which is the protection of land as a public good. The outcome of balancing the public interest and the interest of the entity applying for a change in land use depends on the specific factual circumstances in each case.[60]

The circumstances that argue against the Minister granting consent for a change in land use from agricultural land to non-agricultural purposes will be discussed first. Based on the analysis of case law and the factual situations presented in administrative court judgments, these circumstances can be categorised into three groups:

A. Lack of continuity with existing land use in neighbouring areas or disruption of the compact agricultural production area

From the analysed judgments, it can be inferred that a factor justifying the Minister's refusal to grant consent is the absence of a linkage between the proposed land use change and the current development of neighbouring areas or the disruption of a contiguous agricultural production area. In the judgement of the NSA of 9 May 2023,[61] dismissing the mayor's cassation complaint against the Minister's refusal, one of the court's arguments was that the areas covered by the application were situated in the vicinity of agricultural lands. Changing their designation to non-agricultural purposes would result in non-agricultural construction intruding into agricultural areas, thus disrupting the continuity of the agricultural production area. Reference to the necessity of protecting the contiguous agricultural production area has been made in several other analysed judgments.[62] Furthermore, in the aforementioned NSA ruling, it was noted that

[60] Judgement of the NSA of 24 May 2016, II OSK 2263/14, LEX No. 2108471.

[61] Judgement of the NSA of 9 May 2023, I OSK 956/22, LEX No. 3559970.

[62] Judgement of the NSA of 2 September 2014, II OSK 436/13, LEX No. 1572729; Judgement of the NSA of 23 April 2014, II OSK 2898/12, LEX No. 1481939; Judgement of the WSA in Warsaw of 13 October 2021, IV SA/Wa 577/21, LEX No. 3309633; Judgement of the WSA in Warsaw of 14 December 2020, IV SA/Wa 1571/20, LEX No. 3146455; Judgement of the WSA in Warsaw

the Minister does not evaluate a request submitted by the municipality's executive body on the basis of economic needs and urban planning intentions of the municipality. Instead, the evaluation is made from the perspective of protecting agriculturally utilised areas, considering the adverse effects of such changes and adhering to the public interest and the principles of land protection expressed in the u.o.g.r.l. A similar perspective was expressed by the NSA in a judgement of 21 December 2016:[63] "The Minister evaluates the proposed change in land use not in the context of the compactness of built-up areas, but gives priority to preserving the uniformity of the agricultural area". In addition, it is worth noting that the intersection of areas with different uses might lead to spatial and social conflicts (e.g., due to the use of natural fertilisers on agricultural land or the need for access to fields), thus hindering the proper functioning of farms.[64] Therefore, if specific agricultural lands are part of a compact agricultural complex with a considerable surface area and high production potential, the Minister should not grant consent for their conversion to non-agricultural purposes, especially when the construction project can be realised in another location.

B. The municipality's possession of an investment reserve or wasteland/ lower-class land

Another reason for not granting consent by the Minister may be the municipality's possession of an investment reserve or lands of lower classes.[65] The term 'investment reserve' refers to previously unused lands designated for non-agricultural purposes in prior planning procedures. Administrative courts have repeatedly emphasised that a municipality's policy of changing the land use from agricultural to non-agricultural must be rational and the fact of having a significant investment reserve makes it unnecessary to exclude more lands from agricul-

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of 20 January 2016, IV SA/Wa 2830/15, LEX No. 2141954; Judgement of the WSA in Warsaw of 18 February 2020, IV SA/Wa 2635/19, LEX No. 3031009; Judgement of the WSA in Warsaw of 27 September 2019, IV SA/Wa 606/19, https://orzeczenia.nsa.gov.pl/doc/F854729628 (accessed 14 September 2023); Judgement of the WSA of 9 September 2015, IV SA/Wa 1503/15, https://orzeczenia.nsa.gov.pl/doc/D307B2F939 (accessed 13 September 2023).

[63] Judgement of the NSA of 21 December 2016, II OSK 1234/16, LEX No. 2279427.

[64] Judgement of the NSA of 14 October 2020, II OSK 2327/18, LEX No. 3296186; Judgement of the WSA in Warsaw of 28 May 2021, IV SA/Wa 229/21, LEX No. 3313242; cf. W. Jabłoński, K. Mazurkiewicz., *Konflikty przestrzenne na terenach wiejskich - ignorancja czy niewiedza? Studium przypadku*, 'Infrastruktura i ekologia terenów wiejskich', No. IV/2/2014, POLISH ACADEMY OF SCIENCES, Branch in Kraków, p. 1170.

[65] This conclusion can be inferred, *inter alia*, from the justifications of the following judgments: Judgement of the WSA in Warsaw of 28 May 2014, IV SA/Wa 671/14, LEX No. 1562863; Judgement of the WSA in Warsaw of 18 February 2019, IV SA/Wa 2574/18, LEX No. 3018673; Judgement of the WSA in Warsaw of 9 March 2017, IV SA/Wa 3207/16, LEX No. 2776708; Judgement of the WSA in Warsaw of 18 March 2016, IV SA/Wa 3798/15, LEX No. 2459469; Judgement of the WSA in Warsaw of 15 July 2020, IV SA/Wa 138/20, https://orzeczenia.nsa.gov.pl/doc/D9D577D7DD (accessed 15 September 2023); Judgement of the NSA of 5 October 2016, II OSK 2739/14, https://orzeczenia.nsa.gov.pl/doc/9C5A2B6ED2 (accessed 15 September 2023).

tural production.[66] In cases where there are wastelands or lands of lower classes in a particular area, they should be prioritised for construction purposes. It is also worth noting another view of the NSA, which states: "There may be several cases where reasons other than the lack of alternative lands advocate designating higher-class agricultural lands for non-agricultural purposes (see the phrase 'primarily' used in Article 6(1) of the u.o.g.r.l.)".[67]

C. Lack of specific circumstances supporting the granting of consent

Pursuant to Article 10(1), points 1 and 3 of the u.o.g.r.l., an application for consent to change the use of agricultural land for non-agricultural purposes should include a rationale for the need to change the land use, as well as an economic justification for the proposed use. Based on the interpretation of Article 6(1) of the u.o.g.r.l., performed by administrative courts, the change of land use from agricultural should primarily concern wasteland and lands with the lowest production suitability, and exceptionally, lands of the highest classes.[68] Therefore, when applying for Ministerial consent, the applicant should adequately justify their request by invoking specific circumstances that necessitate changing the land use of high-class agricultural lands for other purposes. The absence of such special circumstances may support the refusal to grant consent.[69] Furthermore, it is noteworthy that in several court rulings, it has been emphasised that changes in land use from agricultural to non-agricultural purposes should not be solely justified by economic factors.[70] In my opinion, this standpoint does not exclude the possibility of generally referring to 'economic needs' or 'development needs' in the applications,[71] as there are situations in which prioritising the protection of

[66] Judgement of the NSA of 6 May 2022, I OSK 1733/21, LEX No. 3347541; Judgement of the NSA of 5 November 2020, II OSK 1570/20,https://orzeczenia.nsa.gov.pl/doc/ED3CDC010A (accessed 16 September 2023); Judgement of the NSA of 26 May 2020, II OSK 2397/19, https://orzeczenia.nsa.gov.pl/doc/BF19BA2F7D (accessed 16 September 2023; Judgement of the NSA of 26 May 2020, II OSK 2969/19, [https://orzeczenia.nsa.gov.pl/doc/0468F6E01A, accessed 16 September 2023].

[67] Judgement of the NSA of 11 January 2012, II OSK 2031/10, LEX No. 1138046.

[68] Judgement of the NSA of 6 May 2022, I OSK 1733/21, LEX No. 3347541; Judgement of the NSA of 27 May 2021, I OSK 148/21, LEX No. 3265534; Judgement of the NSA of 17 January 2019, II OSK 775/18, LEX No. 2628730.

[69] Judgement of the NSA of 18 May 2022, I OSK 1757/21, LEX No. 3401257; Judgement of the NSA of 6 May 2022, I OSK 1733/21, LEX No. 3347541; Judgement of the NSA of 27 May 2021, I OSK 148/21, LEX No. 3265534;

[70] Judgement of the NSA of 9 May 2023, I OSK 956/22, LEX No. 3559970; A similar view was expressed by the NSA in a thesis of judgement of 21 December 2016, II OSK 1234/16, LEX No. 2279427, assuming that: "Arguments of an economic nature are not sufficient to be taken into account when considering an application for consent to change the use of agricultural land for non-agricultural purposes".

[71] In the judgement of 13 October 2021, IV SA/Wa 569/21, LEX No. 3309679, the WSA in Warsaw remarked that "Economic reasons may justify the proposal from the point of view of the municipality's interest". This court presented a similar view in the judgement of 26 April 2018, IV SA/Wa 3391/17, LEX No. 3005251.

agricultural lands becomes irrational and economic reasons are the pivotal factor for the change in land use, as further detailed.

Furthermore, it seems reasonable to acknowledge that the higher the soil suitability class of the land, the lower the chances of the municipality obtaining a positive decision from the Minister. A low percentage of high-class agricultural lands in the spatial structure of a particular municipality argues for the need to protect them.

The circumstances that favour the Minister's consent to changing the designation of agricultural lands for non-agricultural purposes, as determined through the analysis of case law, can be categorised into four distinct categories:

A. Continuation of existing development and the absence of interference in compact agricultural production area

In the examined judgments, administrative courts emphasised, when overturning the Minister's decision of refusal, that the Minister, in not granting consent, did not take into account the circumstances that the planned development on the land constitutes a continuation of the existing built-up area. This bolsters organised and harmonious municipal development.[72] In a judgement of 16 April 2019,[73] the WSA in Warsaw, when adjudicating a case related to the Minister's decision to refuse consent, also noted that: "It is necessary to thoroughly consider the consequences of the decision, with particular regard to the fact that the lands proposed for a change of use are of a small area and are located in the vicinity of lands designated for residential or public road construction, thus not forming a larger soil complex of class IIIb". Therefore, it can be considered that if changing the land use from classes I-III to non-agricultural purposes enables the continuation of existing development while not disturbing the cohesive agricultural production area, the Minister should grant consent for the change of use.

B. Lack of the possibility or willingness to continue using a particular parcel of agricultural land

Another circumstance that may serve as a basis for the Minister to grant consent is when the applicant demonstrates the lack of possibility or willingness to continue using the land for agricultural purposes. The lack of possibility can result from factors such as restricted access for agricultural equipment. In a judgement of 8 May 2018,[74] the NSA noted that, "In the case of agricultural lands, even those of a high class, forming a kind of enclave in an area predominantly non-agricultural, the issue of providing realistic access for agricultural equipment to these lands has legal significance".[75] The inability to continue agricultural activities on a particular

[72] Judgement of the WSA in Warsaw of 27 October 2021, IV SA/Wa 930/21, LEX No. 3309608; Judgement of the WSA in Warsaw of 26 April 2018, IV SA/Wa 3391/17, LEX No. 3005251.

[73] Judgement of the WSA in Warsaw of 16 April 2019, IV SA/Wa 185/19, LEX No. 3074076.

[74] Judgement of the NSA of 8 May 2018, II OSK 1506/16, LEX No. 2527637.

[75] The lack of accessibility and the need to consider the real possibility of cultivating the land was also referred to by the WSA in Warsaw, stating that: "Indeed, when recognising the necessity

land can also be due to its location. In a judgement of 16 April 2019,[76] the WSA in Warsaw pointed out that: "In a situation where agricultural lands, even if they are of a high class, constitute a small area (...) and are located in the vicinity of lands designated for residential development and road investment, the impact of pollution caused by future development of the adjacent lands cannot be overlooked. Consequently, the impact of this environment and the pollution created by it on the quality of crops from the soil and its influence on the quality of life of society should not be without significance. The decision-making body, within the framework of administrative discretion regarding the change of land use, should, in the Court's opinion, consider the interest manifested in ensuring the country's food security not only in terms of the potential food production but also the quality of the produced food". While the lack of 'possibility' is an objective condition and, when properly demonstrated and justified, should support the Minister's consent, the lack of 'willingness' is purely subjective. Demonstrating the sole lack of willingness to continue using agricultural land in accordance with its designated purpose does not appear to be a sufficient basis for obtaining Ministerial consent.[77] It stems from the fact that it is economically reasonable for landowners to strive for a change in land use from agricultural to non-agricultural purposes. Building lands reach higher prices on the market and they are subject to fewer regulations juxtaposed to agricultural lands.[78] Meanwhile, the Minister is the authority charged with the task of protecting agricultural lands. The case law in this matter is not uniform. As the NSA pointed out in the judgement of 5 May 2015:[79] "The issue of the owner's intentions and the lack of willingness on their part to engage in agricultural cultivation on highly fertile lands cannot justify the abandonment of the rational use of agricultural space". However, in the judgement of 11 January 2012,[80] the NSA stated that: "Lack of interest in

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of preserving the agricultural character of land of the highest quality class, the authority should assess the real possibility of cultivating this land, including, *inter alia*, whether there is access to this land by equipment allowing for its cultivation. If no such access is provided, doubts as to the existence of the possibility of agricultural use of the land are justified. In the Court's view, maintaining the agricultural character of the land solely on the basis of its high quality, in the event that, in view of the changed reality, the land cannot be used agriculturally, while at the same time there is a declared increasing interest in the land in question by investors (residential development), constitutes an unjustified restriction on the development of the municipality", cf. Judgement of the WSA in Warsaw of 16 April 2019, IV SA/Wa 185/19, LEX No. 3074076.

[76] Judgement of the WSA in Warsaw of 16 April 2019, IV SA/Wa 185/19, LEX No. 3074076.

[77] Judgement of the WSA in Warsaw of 23 March 2018, IV SA/Wa 3179/17, https://orzeczenia.nsa.gov.pl/doc/8E65C0E869 (accessed 17 September 2023).

[78] Pursuant to Article 2a(1) of the Act of 11 April 2003 on the Formation of the Agricultural System (Journal of Laws 2022, item 2569, as amended), in principle, only an individual farmer may be a purchaser of agricultural property.

[79] Judgement of the NSA of 5 May 2015, II OSK 897/14, LEX No. 1796299.

[80] Judgement of the NSA of 11 January 2012, II OSK 2031/10, LEX No. 1138046; This standpoint was also referred to by WSA in Warsaw in the judgement of 10 June 2015, IV SA/Wa 359/15, LEX No. 2325653.

continuing agricultural production on the lands may, in some cases, be an indication that these lands are not suitable for rational further use". Nevertheless, this requires the applicant to provide appropriate justification, and in itself, it does not appear to be a sufficient basis for the Minister to grant consent.

C. Lack of an investment reserve and wasteland/lower-class lands

The Minister should also take into account the absence of both investment reserves and wasteland/weaker class lands within the municipality's territory as a reason to grant approval. Urban development in municipal areas is often unavoidable and adhering to the principle in Article 6(1) of the u.o.g.r.l., which dictates that non-arable lands and lands of the lowest class should be primarily designated for non-agricultural purposes, does not always fully enable the municipality's continued development.

D. Special circumstances (related to the specific conditions of the particular case)

Analysing the case law, it can be noted that ministerial consent may also be influenced by the specific circumstances of the case. Examples of such special circumstances could include the location of the lands in a special economic zone,[81] the inability for the city's territorial development in other directions due to the marshy terrain,[82] or the convenient location of the land near an expressway.[83]

IV. CONCLUSIONS

On balance, the hypothesis put forward in the article, assuming that the economic needs of the municipality can serve as a basis for changing the designation of agricultural land for non-agricultural purposes has been confirmed. However, the extent of the possibility to invoke them primarily depends on the soil quality classification of the land in question, as well as the specific circumstances of the

[81] cf. Judgement of the NSA of 6 December 2016, II OSK 613/15, LEX No. 2205999, in which the court stated that: "The adoption in Article 7(2) of the u.o.g.r.l. the admissibility of the use of agricultural land of class III for non-agricultural purposes implies that, since there is no absolute prohibition, but only the consent of the minister of agriculture and rural development is needed, when examining the case, the authority is obliged to take into account not only the regulation adopted in the u.o.g.r.l., but also in the legislation setting other values, including the Act of 20 October 1994 on Special Economic Zones".

[82] Judgement of the NSA of 11 January 2012, II OSK 2031/10, LEX No. 1138046.

[83] Judgement of the NSA of 19 January 2018, II OSK 830/16, LEX No. 2449049, in which the court indicated that 'the fact that the land in question is located close to the S8 trunk road may have a significant impact on the outcome of the case. Indeed, such an additional factor has, on the one hand, an impact in general on the possibility of using the land for agricultural purposes; and, on the other hand, it is a factor which, if properly utilised, may have an impact on issues relating to the development of the Municipality'.

individual case. It is essential to differentiate between situations where obtaining ministerial consent is a prerequisite for altering land use and those where it is not. According to the current law, it depends on the soil quality classification. When Ministerial consent is not mandatory, economic needs can provide a valid rationale for land use modification. The legislator adequately protects only the land with the highest suitability class. In other situations, municipalities should follow the guidelines outlined in Article 6(1) of the u.o.g.r.l., which prioritise the conversion of wasteland before other land types. At the same time, the municipalities should have the possibility to take advantage of the location of a particular agriculture land of lower quality. In cases requiring ministerial consent, the feasibility of invoking economic needs as a basis for change depends on the specific circumstances of each case due to the discretionary nature of the Minister's decision.

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