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THE IMPACT OF ZONING CHANGES ON AGRICULTURAL REAL ESTATE TURNOVER¹

Abstract

The revised planning and zoning regulations in 2023 create new rules for the shaping of space in a municipality. This is to be served by new legal acts which will become mandatory from 2025. This profound reform, not to say revolution in spatial planning, in some part also applies to agricultural land. The new legislation includes regulations relating to agricultural holdings. At the same time, the legislator does not introduce changes to the existing links between real estate turnover and spatial planning. In this respect, the article analyses the legal consequences of such a choice and proposes *de lege ferenda* postulates.

KEYWORDS

agricultural law, agricultural system, agricultural property, spatial planning, local zoning plan

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prawo rolne, ustrój rolny, nieruchomości rolne, planowanie przestrzenne, miejscowy plan zagospodarowania przestrzennego

INTRODUCTION

The Act of 7 July 2023 amending the Act on spatial planning and development and certain other acts² is the implementation of one of the so-called milestones of the National Reconstruction Plan. It deals with important issues of space shaping. Undoubtedly, spatial planning has many functions. One of the most important is to organise space and introduce spatial order. This function is important insofar as it influences the others. The introduction of new types of planning acts, especially general plans, will undoubtedly influence the shaping of space for agricultural production.

The new regulations are becoming a challenge for the resolution of various conflicts,³ not only spatial but, above all, legal ones in rural areas. New regulations⁴ have been added to the existing legal chaos related to the rather undefined relations between legal acts issued by commune authorities (such as local spatial development plans) and other entities (for example, one can only mention the regional director for environmental protection authorised to issue plans of protection tasks, which are also acts of local law⁵). An undoubted shortcoming of the new regulations is the rather short *vacatio legis*, in particular, with regard to general plans.

In terms of agricultural regulations, land-use planning since 2016 has had another function of shaping the trade in agricultural real estate. The introduced swaps are out of sync with the current Act on the shaping of the agricultural system. The article will present the legal consequences of the introduction of the spatial planning reform for the agricultural real estate trade. An assessment of

² Journal of Laws of 2023, item 1688.

³ H. Groszyk, A. Korybski, *Konflikt interesów i prawo*, Warsaw 1990; W. Skrzydło, *Ocena rozwiązań prawnych w zakresie zapobiegania konfliktom interesów*, (in:) *Zapobieganie konfliktowi interesów w III RP*, M. Zubik (ed.), Warsaw 2003.

⁴ B. Bińkowska, *Obowiązek uchwalania planów ogólnych gmin–aktów prawa miejscowego nowego rodzaju*, "Zeszyty Prawnicze BAS", 2023, No. 78(2), pp. 121-131.

⁵ A. Bołtomiuk, *Możliwości i problemy rozwoju obszarów wiejskich objętych europejską siecią ekologiczną Natura 2000 – podsumowanie i rekomendacje*, (in:) *Europejska sieć ekologiczna Natura 2000 jako nowy element otoczenia polskiej wsi i rolnictwa*, idem (ed.), Warsaw 2010; P. Czechowski, A. Niewiadomski, *Selected legal issues of modern forms of environmental protection on the example of national parks and the networks of Natura 2000 sites, taking into account coexistence with agriculture*, "Studia Iuridica", Warsaw 2015, Vol. 61, pp. 35-52.

the adopted solutions and proposed *de lege ferenda* conclusions will also be presented. This new function of spatial planning affecting the trade in agricultural real estate as a result of the amendment has been very much complicated.

The aim of the paper is to present selected issues of the impact of the amendment to the Act on spatial planning and development on rural areas. The main research hypothesis is to indicate that the amendment in question does not solve any problem of spatial planning in rural areas, introducing at the same time legal chaos and haste in the establishment of local law. To exemplify the main assumptions of the article, the issues related to agricultural real estate turnover will be presented through the prism of definitions of these real estates expressed in the Act on shaping the agricultural system. The main structural assumptions of general plans as a planning tool directly influencing the development of rural areas will also be presented.

SPATIAL PLANNING AND THE MARKETING OF AGRICULTURAL REAL ESTATE

One of the key issues related to the new regulations is their impact on the trade in agricultural real estate regulated by the Act of 11 April 2003 on the formation of the agricultural system.⁶ This Act has not been amended as regards references to the Act on planning and spatial development. In my opinion, this is the main problem related to the lack of amendment of regulations related to agricultural real estate turnover with simultaneous changes in the scope of planning regulations. Different types of interpretation of the law will not be able to determine the role of general plans, i.e. the most important change in planning and spatial development in relation to the cited Act on shaping the agricultural system.

The definition of agricultural real estate contained in Article 2(1) of the Act on formation of the agricultural system plays a key role in this assessment. This definition defines agricultural real estate as “agricultural real estate within the meaning of the Civil Code, with the exception of real estate located in areas designated in zoning plans for purposes other than agricultural”. In the current state of the law, using the linguistic interpretation of the law, it should be clearly indicated that in order to determine whether or not one is dealing with agricultural real estate, it is important to decipher the designation of this real estate in local spatial development plans.⁷ The local plan, as the basic and most important planning act, is the determinant of the designation of the property and, together with other pro-

⁶ Journal of Laws of 2022, item 2569, as amended.

⁷ Cf. also SN Judgment IV CSK 93/12; SN Orders II CSK 9/09; II CSK 467/07; IV CKN 461/01.

visions, shapes the ownership right. Assigning such a role to the local plan seems reasonable and worth emphasising, especially in a situation where the percentage of land covered by spatial planning is increased. Such solutions undoubtedly affect the turnover of agricultural real estate, but they are not sudden due to the rather long time needed to enact the local plan.

It should be noted that in the doctrine of agricultural law,⁸ as well as in the civil law,⁹ there is an ongoing dispute whether the local zoning plan is the only legal act that makes it possible to determine the agricultural character of the property in the light of the cited definition.¹⁰ The question arises as to the role of not only the local revitalisation plan or the zoning decision, but also the study of the conditions and directions of spatial development.¹¹ It should also be clearly pointed out that this definition does not refer to other legal acts which may decide on the use of the real estate, such as plans of national parks or plans of protection tasks in Natura 2000 areas.

The problem of determining the agricultural character of the land should also be pointed out. Zygmunt Truskiewicz points out that the application of the Act on shaping the agricultural system to real property with various types of use should be determined by the dominant function of the real property, i.e. the dom-

⁸ Cf. K. Czerwińska-Koral, *Possessio nuda, czyli czy istnieje jeszcze funkcja prawno-korygująca posiadania nieruchomości rolnych?*, “Studia Iuridica Agraria”, 2018, No. 16, pp. 39-52; Z. Truskiewicz, *O kilku podstawowych zagadnieniach na tle ustawy o kształtowaniu ustroju rolnego, part I*, “Rejent” 2017, No. 10, pp. 41-68; Z. Truskiewicz, *Wpływ planowania przestrzennego na pojęcie nieruchomości rolnej w rozumieniu Kodeksu cywilnego*, “Studia Iuridica Agraria”, 2007, No. 6, pp. 144-155; P. Blajer, *Umowa sprzedaży nieruchomości rolnej po wejściu w życie ustawy z dnia 26.04.2019 r. o zmianie ustawy o kształtowaniu ustroju rolnego oraz niektórych innych ustaw*, “Rejent”, 2019, No. 12, pp. 102-140.

⁹ K. Czerwińska-Koral, *Pojęcie nieruchomości rolnej jako wyznacznik zasad obrotu nieruchomościami rolnymi*, “Rejent”, 2016, No. 6, pp. 52-73.

¹⁰ Cf. K. Czerwińska-Koral, *Zasady obrotu nieruchomościami rolnymi w postępowaniach sądowych po 29.04.2016 r. – wybrane zagadnienia praktyki sądowej. Part I*, “Przegląd Sądowy”, 2018, No. 9, pp. 75-88: “Decisions on land development conditions and other location decisions cannot constitute the sole and categorical basis for determining that a given property is or is not agricultural real estate within the meaning of the Act on shaping the agricultural system. The municipality’s zoning study cannot affect the qualification of the property. It should [...] be considered that in the absence of a zoning plan, the definition contained in Article 461 of the Civil Code determines the nature of the property as agricultural and the application of the provisions of the Act. The court is obliged to determine on its own whether the property in question is agricultural property within the meaning of Article 2(1) u.k.u.r.”.

¹¹ Cf. decision of the Supreme Court II CSKP 271/2 in which it was emphasised that “designation of real property subject to proceedings in the study for purposes other than agricultural does not exclude its qualification as agricultural within the meaning of Article 461 of the Civil Code. The agricultural designation of real property meeting the criteria set out in Article 461 of the Civil Code, or more narrowly in Article 2(1) of the Act on the Formation of the Agricultural System of 2003, does not change the fact that, with regard to an insignificant part of that real property, a decision on land development and zoning conditions has been issued allowing its insignificant part to be designated for purposes other than agricultural”.

inant way of using it or the dominant purpose.¹² This argumentation is perfectly understandable, however, it presupposes the use of a functional interpretation to determine the definition of agricultural real estate, which may lead to different results. This legal uncertainty related to agricultural real estate trade has not been removed by numerous subsequent amendments to the Act on shaping the agricultural system (in 2023 alone there were 5 such amendments).

Without deciding which of the views of the cited doctrine reflects the *ratio legis* of the regulation contained in Article 2(1) of the Act on shaping the agricultural system, it should be stated that this definition in its current wording does not take into account the discussed amendment to the Act on planning and spatial development. In this case, it does not refer to the introduced general plans, which are to significantly influence the shape of the spatial policy implemented in communes. The fundamental question arises as to whether an agricultural property within the meaning of the Civil Code designated in the general plan for purposes other than agricultural (e.g. industrial or construction) will still be an agricultural property in the light of Article 2(1) of the Act on shaping the agricultural system.¹³ This is important as the considerations so far connected with the relation of this definition to the municipality's zoning study or zoning decision concerned acts of law that are not universally binding. In the case of general plans, the issue is completely different as we are dealing with an act of local law.¹⁴ There was also no reference at all to the integrated investment plans as a new planning tool.¹⁵

This oversight on the part of the legislator should be assessed negatively, all the more so as he introduced relevant changes in another act concerning agricultural real estate trade. Pursuant to Article 24 para. 1 item 1 of the Act of 19 October 1991 on management of agricultural property of the Treasury,¹⁶ “the National Centre manages the Agricultural Property Stock by: first of all, leasing or selling agricultural property for the enlargement or establishment of family farms, according to the principles specified in Chapters 6 or 8, excluding agricultural property: [...] which in the local spatial development plan, local revitalisation plan or local redevelopment plan are designated for purposes other than agricultural or for which in the final decision on the conditions of development and land use the

¹² Z. Truskiewicz, *Nieruchomość rolna i gospodarstwo rolne w rozumieniu u.k.u.r.*, “Krakowski Przegląd Notarialny” 2016/2, p. 150. There is also an opposing view expressed in: K. Maj, *O potrzebie zmian w ustawie o kształtowaniu ustroju rolnego*, “Krakowski Przegląd Notarialny” 2017/2, p. 26.

¹³ A. Niewiadomski, *Rola aktów planistycznych w obrocie nieruchomości rolnymi*, (in:) *Współczesne problemy prawa rolnego i cywilnego. Księga jubileuszowa Profesora Teresa Kurowskiej*, D. Łobos-Kotowska, P. Gała, M. Stańko (eds.), Warsaw 2018, pp. 419-430.

¹⁴ A. Cieśla, *Plan ogólny: konsekwencje dla planów miejscowych*, “Municipal Review”, 2023, No. 11, pp. 77-81.

¹⁵ M. Górski, *Zintegrowane plany inwestycyjne – charakterystyka nowego narzędzia planistycznego*, “Samorząd Terytorialny”, 2023, No. 10, pp. 23-34.

¹⁶ Journal of Laws of 2022, item 2329, as amended.

manner of development and the conditions of development of the land on which the agricultural real estate is located are specified as other than agricultural, and in the absence of a local plan or a final decision on the conditions of development and land use - real estate covered in the general plan of the municipality by a planning zone other than a multifunctional zone with homestead development, an agricultural production zone or an open zone [...]”¹⁷

What is surprising in the above-quoted provision is not only its length, but the granting of much broader possibilities of influence of the Act on planning and spatial development and its amendment of 2023 on the possibilities of selling agricultural real estate by the National Support Centre for Agriculture. The inconsistency of the legislator consists in creating completely two different regimes of agricultural real estate trade in Poland – the private-legal one in accordance with the Act on shaping the agricultural system, and the public-legal one described above. While some differences are justified, such as, for example, a tender for disposal of state property, introducing de facto two types of agricultural real estate creates legal chaos. In addition, the above-mentioned provision clearly resolves doctrinal disputes about the significance of, for example, the decision on development conditions in the agricultural real estate trade, ordering its inclusion.

The fundamental question arises why a similar procedure enumerating other planning acts has not been performed in Article 2, point 1 of the Act on shaping the agricultural system. It should be clearly emphasised that this is also important in the context of the possibility of acquiring agricultural real estate by foreigners or preserving the agricultural character of land in accordance with European resolutions.¹⁸ The existing legal chaos requires urgent amendments not only to the Act on shaping the agricultural system, adjusting it to the amendment of the Act on planning and spatial development, but also initiating a discussion on the necessity to create new regulations of trading in agricultural real estate in Poland. The presented inconsistencies with regard to the definition of agricultural real estate in Article 2 point 1 of the Act on shaping the agricultural system are only an example of inappropriate hasty legislation dictated by the need of the moment, in this case the realisation of the so-called milestones. The question also arises as to how the introduced solutions will affect not only the agricultural market in

¹⁷ A. Suchoń, *Wpływ miejscowego planu zagospodarowania przestrzennego na prawne formy dysponowania nieruchomościami rolnymi*, “*Studia Iuridica Agraria*”, 2016, Vol. 14, pp. 131-146.

¹⁸ P. Czechowski, A. Niewiadomski, *Instrumenty prawne reglamentacji obrotu nieruchomości rolnymi w Polsce na tle regulacji wybranych państw europejskich*, “*Studia Iuridica*”, Warsaw 2017, Vol. 72, pp. 87-100; P. Czechowski, A. Niewiadomski, *Mechanizmy prawne ochrony rolnego charakteru nieruchomości w świetle rezolucji Parlamentu Europejskiego z dnia 27 kwietnia 2017 r. w sprawie aktualnego stanu koncentracji gruntów rolnych w UE: jak ułatwić rolnikom dostęp do gruntów?*, “*Studia Iuridica*”, Warsaw 2018, Vol. 78, pp. 102-115.

Poland, but, first and foremost, the competitiveness of Polish agriculture in relation to countries that do not have such restrictions.¹⁹

I am convinced that the above example of the lack of correlation of the introduced revolution in spatial planning with other legal acts gives serious arguments for a complete change in the way agricultural real estate is traded both in the private and public law sphere. Temporary solutions, such as the prolonged suspension of the sale of agricultural real estate from the Agricultural Property Stock of the Treasury, may no longer suffice and, in the long run, do not serve the postulate of clarity of law.

GENERAL PLANS AND RURAL DEVELOPMENT

An issue related to the trade in agricultural real estate and the possible impact of general plans on this trade is to find an answer to the question of what do general plans change in the functioning and management of rural areas in Poland? As acts of local law (pursuant to Article 13a(7) of the Act on planning and spatial development), general plans will be acts of universally binding law, which means that no addressee of the legal norms will be able to hide behind their ignorance.²⁰

According to Article 13a of the Law on planning and spatial development, general plans are to cover entire municipality (excluding closed areas other than those established by the minister responsible for transport). Article 13a(4) indicates that the general plan defines planning zones and municipal urban planning standards. Already at this point, it should be noted that these two elements of the general plan have an impact on rural areas because a planning zone can be agricultural land. Previously, such areas were also defined in the study of conditions and directions of spatial development, but the role of this document was quite different and limited only to influencing the local spatial development plan.²¹

The role of the general plan under the provisions of the cited Article 13a is to be taken into account when drawing up a local development plan. In addition,

¹⁹ M. Nowak, *Problemy polskiego systemu planowania w świetle dyskusji międzynarodowej na temat porównań krajowych systemów planowania przestrzennego. Kluczowe tezy i wnioski*, "Studia BAS", 2023, No. (1), pp. 9-20.

²⁰ M. Pelc, *Ład przestrzenny jako zadanie własne gminy. Kryzys w zarządzaniu przestrzenią*, "Studia Politologiczne", 2023, No. 67.

²¹ A. Kłys, *Instytucjonalny rynek nieruchomości na wynajem-cechy charakterystyczne oraz kwalifikacja przeznaczenia w aktach planowania przestrzennego*, "Nieruchomości@", 2023, No. 4, pp. 309-325.

it constitutes the legal basis for the decision on land development conditions.²² This completely new role of the planning act, which is to influence the individual administrative decision on land development conditions, is to significantly influence the shaping of the agricultural space. The assumption is that in planning zones designated for agriculture it should not be possible to obtain a zoning decision allowing for development activities, unless municipal urban planning standards provide otherwise.

In addition, Article 13c(2)(7) of the Act specifies that agricultural production zones will be delimited. The problem is the lack of a legal definition of agricultural production, which would enable the delimitation of such zones. Undoubtedly, however, the most important problem is the short time the legislator has allocated for the implementation of these provisions. Developing master plans in little more than a year's time will not, in my opinion, be feasible. Procedural experience with other planning acts has shown that the time required for the passage of such an act should be determined in years.

The legislator has also failed to resolve an important issue that is the aftermath of past practice, but also the wording of this law. The primacy in spatial management will continue to be given to speculative laws and not to the general plan or the local zoning plan. It should be made clear that such an approach does not assume the implementation of spatial order or the principle of sustainable development. These overriding principles of shaping spatial planning seem to recede into the background when there is a need to achieve a rapid investment effect.

It should be postulated that the adopted regulations should be verified in terms of their compliance with other laws, such as those on the protection of agricultural and forestry land, and that the expiry of the municipality's spatial planning studies and the introduction of general plans as a planning tool should be postponed.

SUMMARY

The analysis carried out above leads to several final conclusions. The general remark refers to the unpreparedness in time of the introduced revolution in planning and spatial development. The main addressee of these regulations, i.e. the municipalities are not able to cope with the preparation of at least general plans

²² A. Suchoń, *Nowelizacja z 13 lipca 2023 r. ustawy o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa oraz ustawy o kształtowaniu ustroju rolnego a rozwój obszarów wiejskich—wybrane zagadnienia*, "PRAWO i WIĘŹ", 2023, No. 4 (47), pp. 509-534.

until 2025. This deadline already urgently requires an amendment²³ due to the consequences related to the expiry of the validity of the study of conditions and directions for spatial development of the municipality.²⁴ The lack of a study and the simultaneous lack of general plans will make it impossible to carry out any construction investments in Poland, except for those allowed by the current local spatial development plans.

The definition of agricultural real estate in the Act on shaping the agricultural system also requires urgent intervention by the legislator. This definition, which is the key to trading in agricultural real estate in Poland, should not raise major doubts. Taking into account the views of the doctrine and the case law, the conclusion is quite different. Problems with the Act on shaping the agricultural system begin, so to speak, at the very beginning with the definition of the subject of this Act. The amendment to the Act on planning and spatial development has only deepened and intensified the existing doubts. Following the example of the Act on the management of agricultural property of the State Treasury, it should be specified whether only the local spatial development plan is to be taken into account in the trade in agricultural property or whether other planning acts should also be included.

In ordering the above matter *de lege ferenda*, it should be postulated that the meaning of other planning acts than those specified in the Act on planning and spatial development should also be resolved. For example, one can only mention the plans of protection tasks for Natura 2000 areas,²⁵ which are an act of local law issued by the Regional Director for Environmental Protection. Such a change requires a comprehensive analysis not only of the consequences for the legal system itself but, above all, for spatial planning in Poland.

The revolution in spatial planning that has been introduced, including the introduction of general plans, unfortunately leaves unanswered the question of which planning act determines land use. There is no doubt that it will be the local zoning plan, but the assessment of other planning documents is already not so clear. Above all, the legislator has not been very clear about the role of general plans in rural areas and their relationship not only to the marketing of agricultural property but also to the actual development of the land.

The lack of precise inter-temporal provisions is also not insignificant, in particular, with regard to the circulation of agricultural real estate and its actual

²³ M.J. Nowak, P. Śleszyński, *Opóźnienia w sporządzaniu miejscowych planów zagospodarowania przestrzennego w polskich gminach. Uwarunkowania i bariery*, "Studia Regionalne i Lokalne", 2023, No. 92(2), pp. 100-115.

²⁴ K. Sobieraj, *Ocena propozycji ustawowego uchylenia wybranych uchwał rad gmin w zakresie planów miejscowych*, "Zeszyty Prawnicze BAS", 2023, No. 79(3), pp. 213-223.

²⁵ E. Zębek, *Plany zadań ochronnych jako prawny instrument ochrony obszarów Natura 2000 w województwie warmińsko-mazurskim*, (in:) *Problemy wdrażania systemu Natura 2000 w Polsce*, A. Kaźmierska-Patrzyzna, M.A. Król (ed.), Szczecin-Lódź-Poznań, 2013, pp. 359-374.

development. This applies above all to ongoing investment procedures related, for example, to the location of renewable energy sources in rural areas.²⁶ This problem is also addressed by the amendment in question, without a clear definition of the scope of application of individual provisions to pending administrative proceedings.

In summary, the change in spatial planning was needed and eagerly awaited. However, the scope of the changes introduced and the legal chaos existing in this area cannot gain a positive assessment. This assessment is all the more worrying if we juxtapose the introduced amendment with the entire system of law, including, above all, the regulations concerning the trade in agricultural real estate.

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²⁶ R. Dubieszko, J. Antepowicz, *Nowelizacja ustawy o planowaniu i zagospodarowaniu przestrzennym oraz jej wpływ na realizację inwestycji w odnawialne źródła energii – wybrane zagadnienia oraz ich ocena*, “Palestra” 2023, No. 11, pp. 21-38.

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