

ISSUE OF BUILDING STRUCTURES NECESSARY FOR THE PURPOSES OF STATE SECURITY AND DEFENCE IN THE PROVISIONS OF THE ACT – ON SPATIAL PLANNING AND DEVELOPMENT

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Abstract

The article discusses the provisions of the Act – Spatial Planning and Development, referring to the building structures necessary for the purposes of state security and defence localized in closed areas and localized outside of these areas.

Keywords: building construction, security, defence, areas closed

1. Introduction

This article is a continuation of issues regarding building structures necessary for the purposes of state security and defence presented in:

- papers [1, 2] – related to legal identification of the above building structures, including building structures requiring special protection,
- paper [3] – devoted to determination of closed areas pursuant to the act – *Land survey and cartography law* [12] as well as legal conditions related to protection of information within the scope of the abovementioned building structures located in closed areas and

- paper [4] – devoted to the issues of the abovementioned building structures included in the provisions of the building law.

Introduction of the “closed area” notion in the provisions of the act [12] resulted in referring to the said notion (and issue of building structures necessary for the purposes of state security and defence) in a number of statutory level provisions in the construction area (as illustrated in fig. 1), including the provisions of the act *on spatial planning and development* [11].

Knowledge of provisions in the above scope is important for persons participating in the investment and operating process regarding building structures intended for state

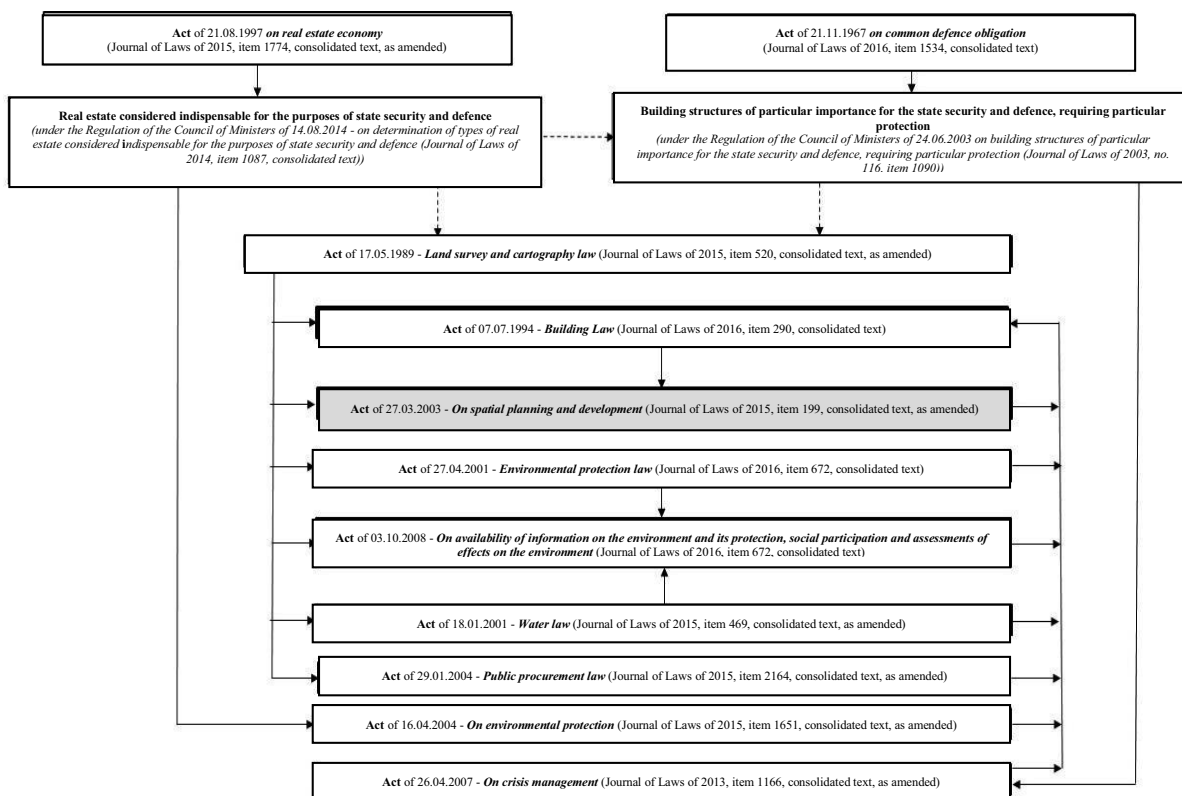


Fig. 1. Provisions of the law referring to the notion of a closed area determined according to the act – *Land survey and cartography law* [12] and to the issues of building structures necessary for state security and defence purposes.

security and defence [8, 9] that are localised in closed areas and outside the said areas.

2. Issue of closed areas in regulations regarding spatial planning and development

2.1. Introduction

State security and defence are strictly related to the territory of the county, its environmental conditions in natural terms as well as its anthropogenic conditions connected with the method of its spatial development as well as the quality of building structures erected by people to satisfy their various needs [1, 2, 5, 8, 9]. The most important regulations regarding the issue of building structures used for the purposes of state defence and security, as exposed in fig. 1, include: act – *Building Law* [10] and act *on spatial planning and development* [11]. Art. 1 section 2 of the act [11] stipulates the basic (general) principles within the scope of spatial planning that must be provided for in spatial planning and development. One of the basic goals of rational spatial planning and development is providing for the needs of state security and defence. As arises from the papers [5, 6], the spatial planning and development system in Poland contains legal mechanisms allowing to provide for the needs of state security and defence in planning of development of space and its further development.

This article focuses on exposure of the provisions of the act [11] within the scope referring to the issue of closed areas and building structures necessary for the purposes of state security and defence.

2.2. Closed areas in the spatial development plant

The act [11] determines the most important principles of development and implementation of spatial policy in the scope of closed areas:

I. The voivodship spatial development plan provides only for the borders of closed areas and their protection zones (cf. Art. 39 section 3 point 7 of the Act [11]).

Development and implementation of spatial policy in the territory of a commune in the scope of closed areas does not fall within the scope of own tasks of the commune (Art. 3 section 1 of the Act [11]).

II. The commune land use plan determines, in particular, the borders of closed areas and their protection zones (Art. 10 section 2 point 15 of the Act [11]).

III. The commune local plan determines, as needed, the borders of closed areas and borders of the protection zones in which limitations in development and land use are determined, including building ban (cf. Art. 4 section 3 and Art. 15 section 3 point 7 of the Act [11]). **No local plan is prepared for the closed areas**, except for closed areas established by the minister competent in transport matters (cf. Art. 14 section 6 of the Act [11]). It must be emphasised that this type of establishment

of the local plan does not contain information within the scope of conditions of development of the closed area and if building structures are to be erected in the said area for the purposes of state security and defence, decision regarding conditions of development of the given closed area is required (cf. fig. 2).

The decision on conditions of development of closed areas is issued by the voivodship administrator, upon agreement with authorities referred to in Art. 53 section 4 of the act [11] and having obtained agreements or decisions required by separate laws (Art. 60 section 3 of the Act [11]).

2.3. Public interest investments in the spatial development plans

The act [11] determines the most important principles of development and implementation of spatial policy in the scope of public interest which include, inter alia, facilities necessary for state security and defence:

I. The voivodship spatial development plan (pursuant to Art. 39 section 3 point 3 of the above act) provides for, inter alia, establishment of the voivodship development strategy and determines, in particular, **location of the public interest investment of supralocal significance**.

II. The commune land use plan (pursuant to Art. 10 of the Act [11]) provides for, in particular:

- areas where the **public interest investments of local significance** will be located (Art. 10 section 2 point 6 of the Act [11]);
- areas where the **public interest investments of supralocal significance** will be located, according to the provisions of the voivodship spatial development plan and programs referred to in Art. 48 section 1 and Art. 10 section 2 point 7 of the Act [11]).

III. The local spatial development plan for the communes:

- **determines** intended application of the land, **location of the public interest investment** as well as establishes the methods and conditions of land development in the local spatial development plan (pursuant to Art. 4 section 1 of the Act [11]);
- **determines, as needed**, (according to Art. 15 section 3 of the Act [11]):
 - **the borders of areas of location of the public interest investment** of local significance (point 4a);
 - **the borders of areas of location of the public interest investment of supralocal significance**, entered in the voivodship spatial development plan or final decisions regarding location of the national, voivodship or poviats road, railway line of national significance, public use airport, investment regarding a terminal (point 4b).

Furthermore, pursuant to the provisions of the Act [11]:

- **a public interest investment** shall be localised on the basis of the local plan, and if there is no such

- plan – by way of **decision on localisation of the public interest investment** (Art. 50 section 1 of the Act [11]).
- the decision on localisation of the **public interest investment** is not required for construction works (Art. 50 section 2 of the Act [11]):
 - consisting in repair, installation or re-development if they do not result in change of the method of land development and use of the building structure, if they do not change its architectural form and if they are not classified as projects requiring a procedure assessing their effect on the environment under the environmental protection law, or
 - not requiring a building permit.
 - the investor implementing the **public interest investment**, as referred to in Art. 50 section 2 of the Act [11], can submit a petition for issue of the decision on localisation of the public interest investment related to state security and defence or protection of the national border (Art. 50 section 2c of the Act [11]).
 - the provisions providing for the prerequisites of the possibility of issue of development conditions specified in Art. 61 section 1 points 1-4 of the Act [11] do not apply to a public interest investment in cases justified by reasons of state defence or security or protection of the national border (Art. 61 section 2a of the Act [11]).**

Since the provisions of the local plan do not contain information within the scope of land development conditions for a **public interest investment of supralocal significance**, in case of intention to erect building structures

in such an area for the purposes of state security and defence, **a decision on public interest investment localisation is required**, according to Art. 51 section 1 of the act [11], providing for the possibility of determination in the form of a **decision on localisation of a public interest investment** in relation to:

- public interest investment of national and voivodship significance** – by the voivodship administrator, mayor or president of the city, in agreement with the voivodship marshal;
- public interest investment of poviat and commune significance – by the voivodship administrator, mayor or president of the city;
- public interest investment in closed areas** – by the voivodship administrator.

Fig. 2 illustrates the procedure of determination of requirements in the scope of land development conditions for building structures being a public interest investment, including facilities necessary for the purposes of state security and defence – at the stage of investment process preparation.

3. Summary

- The provisions of the act [11] relating to closed areas determined pursuant to the provisions of the act [12] provide for solutions aimed at protection of information connected with the said areas as a place of localisation of the abovementioned building structures.

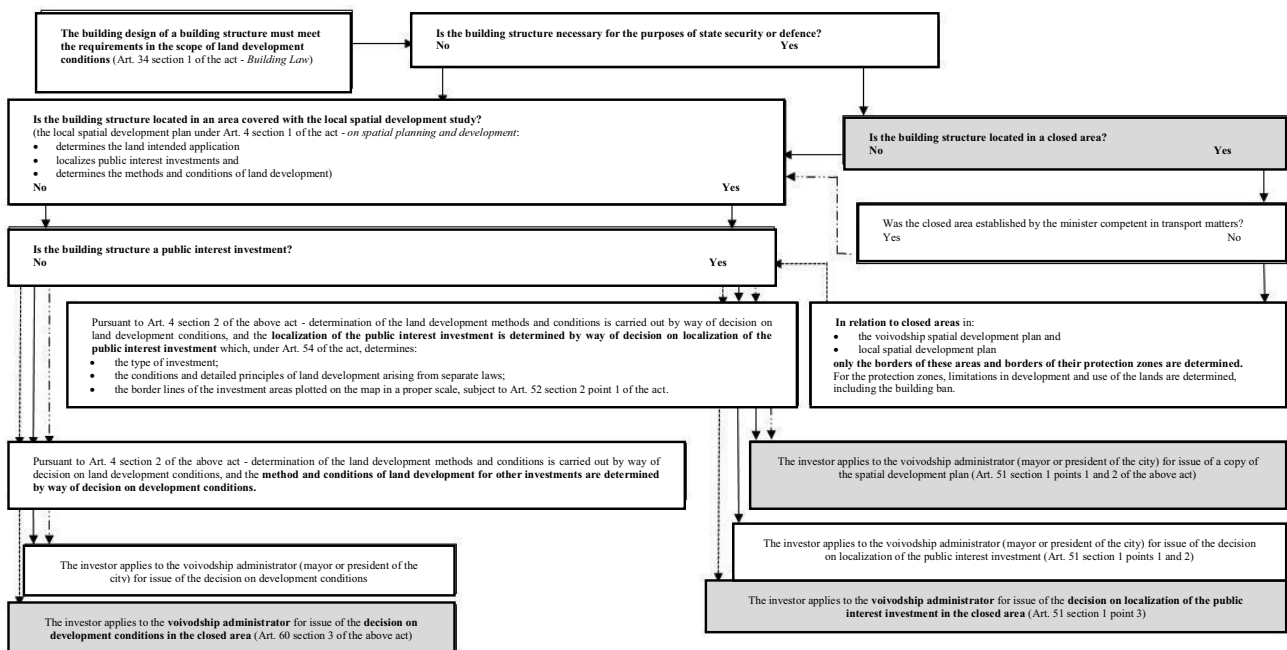


Fig. 2. Procedure of determination of requirements in the scope of land development conditions for building structures being a public interest investment, including facilities necessary for the purposes of state security and defence – at the stage of investment process preparation.

2. The provisions of the act [11] do not contain an explanation of the process of introduction of closed areas in the spatial development plans or a procedure of establishment of the closed area protection zones.
2. Knowledge of regulations relating to spatial planning and development in the scope of building structures necessary for the purposes of state security and defence.
3. The issues regarding obtaining building conditions and decision on localisation of the public interest investment for building structures necessary for the purposes of state security and defence are a complex problem that requires a separate study.

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