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## Legal Bases of Decisions Subdividing Real Property – Case Study\*\*

### 1. Introduction

Subdivision of real property is one of the most important land surveying and legal processes which in effect is a separation of new entities in the cadastre. The subdivision is regulated by relevant laws. The subdivision procedure depends on its purpose and on type of real property [1].

The subdivision of real property is examined often. The subdivision procedure is very well described in [2–4]. Undoubtedly, the subdivision is most frequently performed on the basis of the Act of 21 August 1997 on real property management [5]. According to its provisions, subject to some exceptions, the subdivision can be performed on real properties which are not located in agricultural or forestry areas in the local zoning plan, and in the case of an absence of a zoning plan on real properties which are not used in agricultural or forestry purposes. The agricultural or forestry areas are the real property indicated in the cadastre as farmland or woodland, areas overgrown with trees and brushes, as wells surface mining areas, wasteland and roads included in the farmland if no land use permit has been specified for them. The subdivision possibilities are indicated in Table 1.

**Table 1.** Possibilities of real property subdivision according to the Act on real property management

Article	Content
art. 93 par. 1	Real property can be subdivided if the subdivision is in accordance with local zoning plan
art. 93 par. 2a	Subdivision of real properties located in agricultural or forestry areas in the local zoning plan, and in case of absence of such plan – properties used in agricultural or for forestry purposes, causing separation of a plot smaller than 0.3000 ha, is acceptable provided such plot will be used to enlarge a neighbouring real property or there will be an adjustment of borders between neighbouring real properties

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**Table 1 cont.**

Article	Content
art. 94 par. 1	In case of absence of local zoning plan, if the real property is located in the area for which there is no obligation to draw up such plan, the subdivision can take place if it does not contradict separate regulations or conforms to the conditions specified in the land use permit
art. 95	Regardless of the local zoning plan, and in case of its absence thereof regardless of the land use permit, real property can be subdivided in order to: <ol style="list-style-type: none"> <li>1) abolish co-ownership of real property with at least two buildings erected on the basis of building permit, if the subdivision involves separation of buildings with plots for the co-owners necessary for correct use of these buildings;</li> <li>2) separate a building plot, if the building was erected on that plot by an owner-like possessor in good will;</li> <li>3) separate a part of the real property which ownership or usufruct was lawfully acquired;</li> <li>4) satisfy claims for a part of the property resulting from this Act or separate acts;</li> <li>5) enforce the regulations on ownership changes or liquidation of companies owned by the state or local governments;</li> <li>6) separate a part of real property included in the decision to locate a public road;</li> <li>6a) separate a part of real property included in the decision to locate a railway line;</li> <li>6b) separate a part of real property included in the decision on permit for a public airport in the meaning of the Act of 12 February 2009 on particular rules for preparation and performance of public airport projects;</li> <li>6c) separate a part of real property included in the decision on permit for a project in the meaning of the Act of 8 July 2010 r on particular rules for preparation and performance of anti-flood structure projects;</li> <li>7) separate a building plot necessary for use as residential building;</li> <li>8) separate plots on closed areas</li> </ol>

Source: on the basis of [5]

The subdivision according to the Act on real property management is an administrative procedure performed by a municipality commune head, mayor or president of a city with competent jurisdiction for the said real property.

The subdivision is approved by the final administrative decision in which, in addition to the basis (Tab. 1), there are other references to the Act [5]. The most important references are given in Table 2.

**Table 2.** Legal basis of the property subdivision decision

Article	Content
art. 96 par. 1	The subdivision of real property is performed on the basis of decision of municipality commune head, mayor or president of a city
art. 97 par. 1	The subdivision of real property is performed upon request and at cost of the person who has a legal interest in it
art. 97 par. 3	The subdivision of real property can be performed ex officio if it is necessary to achieve public goals or when the real property is owned by the municipality and has not been given to perpetual usufruct

**Table 2 cont.**

art. 98	The plots of land separated for public roads (municipal, county, provincial, national) from real properties which were subdivided upon request of the owner, become by law property of the municipality, county, province or State Treasury as of the day when the subdivision decision becomes effective
art. 99	If providing access to a public road involves an easement, the real property subdivision is performed on the condition that easement is established during the disposition of separated plots

Source: on the basis of [5]

The authors intended to find out what legal bases are used in the decisions to subdivide real property.

## 2. Legal Bases Used in Real Property Subdivision Decisions

In order to achieve this goal, the authors reviewed all property subdivision cases between 1998 and 2014 in two municipalities. Only the decisions issued by the executive branch of municipalities were reviewed.

1 January 1998 was chosen as the start date because on this day the Act on real property management became effective which imposed on the executive branch of municipalities the obligation to perform the division procedures.

The reviewed documents came from one municipality with city status (Municipality 2) and one rural-urban municipality (Municipality 1), both located in southern Poland. Both municipalities are similar in terms of area and population.

### 2.1. Case 1

The documents provided by Municipality 1 indicate 927 property subdivisions in the above-mentioned time interval, including 172 subdivisions within the city limits and 742 in the rural part.

A review of documents revealed that in 819 cases it is possible to determine the method of subdivision and its exact legal basis. It was possible in 169 cases in the urban part, and in 650 cases in the rural part, of which a so-called “agricultural” method was applied in 2 and 17 cases, respectively. The basis for subdivision was specified for the remaining 800 cases (Tab. 3).

As seen in Table 3, the majority of the subdivision in Municipality 1 was performed on the basis of the basic procedure provided for the Act, i.e. according to the local zoning plan. It comes as no surprise, as this municipality has always had a zoning plan.

The number of subdivisions effected in individual years was compared in Table 4 in order to verify if the amendments of zoning regulations in 2003 had any impact on the number of subdivisions in the municipality.

**Table 3.** Basis of subdivisions in Municipality 1

Legal basis	The number of decisions on subdivision
art. 93 par. 1	649
art. 93 par. 2a	70
art. 94 par. 1	1
art. 95 par. 1	8
art. 95 par. 2	3
art. 95 pkt. 3*	0
art. 95 par. 4	4
art. 95 par. 5	8
art. 95 par. 6	0
art. 95 par. 6a	0
art. 95 par. 6b	0
art. 95 par. 6c	0
art. 95 par. 7	49
art. 95 par. 8	8
Sum	800

\* Although Table 3 includes art. 95 par. 3, it should be remembered that subdivisions performed in order to separate a part of the real property whose ownership or usufruct was lawfully acquired are approved by the orders of the common courts.

**Table 4.** Subdivisions in Municipality 1 in individual years

Year	City	Part of the country	Sum
1998	13	26	39
1999	14	44	58
2000	15	32	47
2001	11	26	37
2002	16	22	38
2003	3	21	24
2004	4	3	7
2005	9	11	20
2006	2	22	24
2007	9	44	53

**Table 4 cont.**

2008	10	86	96
2009	7	61	68
2010	22	56	78
2011	10	39	49
2012	11	55	66
2013	9	41	50
2014	2	44	46
Sum	167	633	800

As we can see, there was a slight stagnation in subdivisions in Municipality 1 in 2004. According to the authors, however, it was the effect of waiting for new zoning plans which were adopted in 2007 (a significant increase in number of subdivisions) and not an absence of them. According to the Act of 27 March 2003 on spatial planning and development [6], the old zoning plans were still in effect. It is however possible that new zoning plans introduced solutions more favourable to the owners of subdivided plots.

In addition, the authors verified other references in the decisions issued in Municipality 1 (Tab. 5).

**Table 5.** Other references in the subdivision decisions

Legal basis	The number of vocations in decisions on subdivision
art. 96	781
art. 97	514
art. 98	10
art. 99	14

Table 5 indicates that almost 98% of decisions referred to art. 96 which ordered the issuance of the subdivision-approved decision. 64% of the decisions mentioned whether the decision was upon request of the interested party or ex officio (art. 97).

The decisions mention also the legal basis for takeover by local governments or State Treasury of the plots subdivided for new public roads or for widening the existing roads (art. 98). But these decisions are very few, only 10.

In addition, the reviewed documents include conditional decisions on the basis of art. 99, according to which the subdivision is allowed, but in the case of the disposition of one of the subdivided plots it will be necessary to establish an easement to provide access to the plot.

### 2.2. Case 2

Documents provided by Municipality 2 indicate 699 subdivisions between 1998 and 2014, performed according to the Act on real property management. The legal bases of these subdivisions are given in Table 6.

**Table 6.** Basis of subdivision in Municipality 2

Legal basis	The number of decisions on subdivision
art. 93 par. 1	317
art. 93 par. 2a	39
art. 94 par. 1	253
art. 95 par. 1	3
art. 95 par. 2	1
art. 95 par. 3*	0
art. 95 par. 4	15
art. 95 par. 5	0
art. 95 par. 6	0
art. 95 par. 6a	0
art. 95 par. 6b	0
art. 95 par. 6c	0
art. 95 par. 7	71
art. 95 par. 8	0
Sum	699

\* Vide note under Table 3.

Because the table shows that the subdivision decisions in Municipality 2 were made almost with the same frequency on the basis of the zoning plan and on the basis of a land use permit, the authors decided to verify the distribution in time (Tab. 7).

**Table 7.** Basis of subdivisions in Municipality 2 in individual years

Year	art. 93 par. 1	art. 93 par. 2a	art. 94 par. 1	art. 95 par. 1	art. 95 par. 2	art. 95 par. 4	art. 95 par. 7	Sum
1998	58	0	0	0	0	0	0	58
1999	64	0	0	0	0	0	0	64
2000	42	0	0	0	0	0	0	42
2001	47	0	0	0	0	0	0	47
2002	28	0	0	1	0	0	0	29
2003	34	0	0	0	0	0	1	35
2004	1	0	2	0	0	0	1	4

**Table 7 cont.**

2005	5	1	10	1	1	2	8	28
2006	4	6	26	0	0	0	3	39
2007	1	2	30	0	0	0	2	35
2008	2	0	49	0	0	0	4	55
2009	10	4	22	1	0	0	7	44
2010	4	4	21	0	0	10	14	53
2011	1	6	19	0	0	0	14	40
2012	5	6	24	0	0	1	3	39
2013	5	4	21	0	0	1	6	37
2014	6	6	29	0	0	1	8	50
Sum	317	39	253	3	1	15	71	699

An analysis of the legal bases of subdivisions indicates that between 1998 and 2003 almost all of them were made according to the local zoning plan. After 2003, the number of these subdivisions fell sharply. The reasons was that the Act on spatial planning and development [6] according to which the zoning plans adopted after 1 January 1995 and valid on the day the Act became effective (i.e. 11 July 2003) remained in full force, but the plans enacted before 1 January 1995 were valid until new plans were adopted, however no longer than until 31 December 2003. Until 2003, the whole area of Municipality 2 was covered by a local zoning plan, hence only 2 subdivisions had a different legal basis (in 2002 and 2003). After 2003, the majority of zoning plans expired, so the subdivisions were mostly performed according to the land use permit.

### 3. Summary

The administrative subdivisions in the reviewed municipalities:

- were performed most often according to the local zoning plan,
- farmland subdivisions constituted over 5% in Municipality 2 and almost 9% in Municipality 1,
- subdivisions not based on the local zoning plan or a land use permit were made in 10% of cases in Municipality 1 and 12% of cases in Municipality 2,
- subdivisions not based on valid planning documents are most often made in order to separate a building plot necessary to use a residential building;
- there are conditional subdivisions (14 decisions in Municipality 1 impose the obligation to establish an easement for new plots) and subdivisions which change the legal status of real property (10 decisions in Municipality 1 transferred to relevant public-law entities the rights to plots subdivided for the building of new roads).

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## References

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