

Changes to local zoning plans adopted before 1 January 1995

Article 87 of the Polish Act on Spatial Planning and Development, dated 27 March 2003 (Journal of Laws of 2015, item 199, as amended) (the "Act") stipulates that "local zoning plans which were adopted before 1 January 1995 and are binding as of the date of the Act remain effective until new plans are adopted but no longer than until 31 December 2003." However, what if a local zoning plan (*miejscowy plan zagospodarowania przestrzennego*) adopted before 1 January 1995 was changed after that date but before 31 December 2003, and no new zoning plan was adopted for the area concerned? The question arises whether the zoning plan, in the scope in which it was changed, remains in effect. This issue may seem no longer current, but in fact it may pose difficulties in a number of investment projects carried out in Poland.

Neither the article quoted above (the interpretation of which does not really raise any problems) nor any other provision of the Act regulates the issue of changes to zoning plans adopted before 1 January 1995 or specifies if such plans remain in effect. Since there are no clear laws regulating that matter, the issue was handled by administrative courts. The line of their rulings, for the time being, is rather consistent. The judiciary states that if the resolution changing the local zoning plan adopted before 1 January 1995 clearly shows that the change is separate in nature and can legally function independently of the original zoning plan (in other words, it can comprehensively specify the purpose and manner of development of the area concerned), the change should be recognised as effective even after 1 January 2004. In other words, the change has the same legal consequences as the original zoning plan, even after the plan had expired. Such an interpretation was shared, for example, by the regional administrative courts in Cracow, Gliwice and Lodz in their rulings, respectively: of 10 March 2008, court docket no.: II SA/Kr 218/06, 9 July 2009, court docket no.: II SA/GL 318/09 and 5 February 2010 court docket no.: II SA/Łd 1088/2009. A similar opinion was also expressed by the Supreme Administrative Court in its ruling of 31 May 2010, court docket No.: I OSK 1077/09.

The criteria to be taken into account in order to determine whether a change to

a zoning plan adopted before 1 January 1995 could be considered as separate and independent include:

establishing the determination and conditions of development of the area, in a way that allows the change to be applied without referring to the original zoning plan; including in the resolution amending the original zoning plan: a textual part, establishing the determination of the area as well as a graphic part pertaining to the fragment of the original plan, including the boundary lines between areas of different functions; establishing a uniform wording to the detailed arrangements in the changes to the zoning plan pertaining to particular planning units, which are areas of different functions.

It must of course be remembered that the most basic requirement of whether a resolution to change a local zoning plan adopted before 1 January 1995 may be considered as still effective is the resolution having been duly adopted, i.e. in accordance with the rules specified in the Act.

If a local zoning plan adopted before 1 January 1995 ceases to be legally valid and no new plan is adopted, then from 1 January 2004 the area concerned in the plan may only be developed after a planning decision (*decyzja o warunkach zabudowy*) (or, in the case of public-purpose project, a decision on the location of the public-purpose project (*decyzja o lokalizacji inwestycji celu publicznego*) is obtained. In the light of the established line of rulings of administrative courts, it is

clear that if a local zoning plan was changed in the meantime (i.e. after 1 January 1995) and no new plan was adopted, then a resolution to change the zoning plan is legally effective (in other words, it defines how the area concerned can be developed), provided that it can be applied separately and independently. This legal effectiveness is rather obvious in theory, but may prove quite problematic in practice, especially when the relevant municipality had failed to confirm in any official document that the changed zoning plan was legally effective. Therefore, it may happen that a potential investor does not know if he should apply for a planning decision or a decision on the location of a public-purpose project (in the case of public-purpose projects), or maybe his project should be carried out in accordance with the zoning regime defined in the resolution on changing the local zoning plan. The issue is important, because if a local zoning plan is effective in a given area, then the decisions listed above are invalid.

If an investor does not agree with a decision of an administrative body as to whether the area where his project is planned is or is not covered by a local zoning plan (because it is not clear if a change to the plan which was effective until 1 January 1995 is sufficiently independent to determine the zoning regime in the area concerned), he may of course take legal action, e.g. file a complaint to the competent administrative court, or the Supreme Administrative Court later on, the rulings of which should resolve the matter in a final way. However, this may prolong the entire investment process, which is usually an inconvenience to the investors.

Thus, before an investor starts planning a new project, shall first apply to the local municipal authorities for a valid extract from the local zoning plan or, in the absence thereof, for a certificate confirming that no zoning plan is binding for the area concerned. The above shall at least minimize the risk of having any inaccuracies later on.

Katarzyna Sasiak

Attorney at Law

Kancelaria Adwokatów i Radców Prawnych

Miller, Canfield, W.Babicki, A.Chelchowski

i Wspólnicy sp. k.