Parties involved in the building permit application process

Pursuant to the general regulations on administrative procedure, a party to proceedings is anyone whose legal interest or obligation the proceedings concern as well as anyone who demands a body's action because of their legal interest or obligation. This rule was introduced into the Polish legal system by Art. 28 of the Code of Administrative Procedure. The provisions of the Article stipulate that the range of parties to administrative proceedings is specified by the authority, which is required to assess whether the proceedings concern the given person's legal interest.

The exception to this general rule is stipulated in Art. 28.2-4 of the Act of 7 July 1997 – Building Law (consolidated text: Journal of Laws of 2013, item 1409, as amended), pursuant to which, in principle, parties to the building permit procedure include the investor and the owners, perpetual usufructuaries or managers of properties located in the impact zone of works. An interpretation of the Article supports the conclusion that the investor is always a party to the proceedings, regardless of whether the investor holds the real property title or the right of perpetual usufruct of the property. Parties to the procedure will also include owners and perpetual usufructuaries of properties on which the structure is to be constructed. The manager of the property is also a party to the proceedings, though it should be noted that the notion 'manager' is not defined in the regulations in an explicit manner. The concept definitely includes entities exercising permanent management of properties within the meaning of the regulations on real estate management. A property manager should also be considered a person holding a personal right to the property which involves a specific kind of possession of the property (lessor, tenant).

Furthermore, owners, perpetual usufructuaries and managers of properties neighbouring the property on which the project is to be located and which are located in the impact zone of the structure should also be considered parties to the building permit procedure. The area is determined based on specific provisions (including in particular technical and construction regulations and fire protection regulations). The impact zone is determined by the designer in the construction design. However, the administrative body is not bound by the designer's study and it is required to specify the impact zone on its own. Any omission of the administrative body regarding the marking of the impact zone may result in incorrect designation of the range of the parties and, thereby, give the green light to entities excluded from the procedure to reopen proceedings that have been finally closed.

Moreover, Art. 28.3 stipulates that, in principle, the provisions of Art. 31 of the Code of Administrative Procedure are not applicable to the building permit process – under Art. 31, social organisations may request admission to administrative proceedings concerning matters that fall within the scope of their articles of association.

These regulations make the lives of both investors and administrative bodies significantly easier by decidedly narrowing the range of parties involved and reducing the risk of third parties challenging decisions issued. These simplifications are also aimed at streamlining the investment process.

Concurrently, Art. 28.3 of the Building Law sets forth the principle that the procedural simplifications referred to above do not apply to the procedure relating to a building permit that requires public participation pursuant to the Act of 3 October 2008 on Access to Information on the Environment and Its Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments, hereinafter referred to as the Environmental Act (Journal of Laws of 2013, item 1235, as amended). In such an event, the administrative body is required to define the range of parties to the building permit application process not on the basis of the structure's impact zone, but it is required to permit all parties with a legal interest to participate in the proceedings. Social organisations are also permitted to take part in the proceedings on the terms defined in the general regulations on administrative procedure. This regulations greatly complicate administrative proceedings and enhance the likelihood of decisions issued in the course of administrative proceedings being challenged in appeal proceedings or administrative-court proceedings. Therefore, it is crucial for the investor that it is specified what type of proceedings is referred to in Art. 28.3 of the Building Law. The scope of the application of the said provision is not wide, though. Contrary to what is sometimes claimed, the provision does not apply to all building permit application processes which required a decision on environmental conditions to be obtained in advance. The very fact of that assessment being carried out during the procedure for issuing the decision on environmental conditions does not forejudge that the range of parties must be determined according to the general regulations on administrative proceedings. The procedure referred to in Art. 28.3 of the Building Law is only a procedure as part of which a reassessment of the environmental impact is being carried out (Art. 3.8 of the Environmental Act). Whether the building permit application procedure requires an environmental impact reassessment is determined by the contents of the decision on environmental conditions or by the investor's actions. Pursuant to Art. 82.1.4 of the Environmental Act, the body issuing decision on environmental conditions may, in its position on environmental impact reassessment as part of the building permit application procedure, decide that a reassessment is required. Moreover, the environmental impact reassessment may also be conducted at the investor's request or if the investor introduces modifications to the construction design compared to the requirements defined in the decision on environmental conditions. The environmental impact reassessment should be carried out if it cannot be determined, at the stage of issuing the environmental decision for power installations, that the installation is carbon capture ready (but this applies only to fuel combustion plants designed for production electricity with electrical nameplate capacity of at least 300 MW).

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