

DARIUSZ REŚKO

Nowy Sącz Graduate Business School – National-Louis University

TOMASZ WOŁOWIEC

University of Information Technology and Management in Rzeszow

THE AREA DEVELOPMENT PLAN AS A TOOL OF MANAGING THE GMINA DEVELOPMENT

Abstract: This article deals with the issue of the area development plan as a key instrument of managing the gmina development. It presents the essence of the spatial planning process, the binding legal regulations and procedures of developing the plan together with the description of competencies of individual public authorities and institutions in the process of planning the area development. Moreover, the article offers the statistical presentation of how plans function in the whole country. Special attention has been paid to negative consequences of not using this instrument in the context of development processes of local government units.

Key words: Development plan, planning, government units, tools, managing.

Introduction

Development generally consists in positive qualitative and quantitative changes. It is a process based on endogenous and exogenous factors. Local development is a process of harmonized and systematic activity of the community, public authorities and other entities functioning in a given territorial unit, aiming at creating the new and improving the existing useful qualities in a given local government unit, creating favorable economic conditions and ensuring spatial and ecological order. According to the provisions of *the Act on the principles of development policy*, development policy is defined as a set of interrelated activities undertaken and implemented in order to provide stable and sustained development of the country, social, economic, regional and spatial coherence and to improve the economic competitiveness and create new jobs. A complex approach is required to shape the local development policy. It is a process which should be planned, deliberate, co-ordinated and steered by local structures, such as gmina authorities. It is usually a long-term process, as the effects of pro-development activities are often distant in time. The development policy should be based on the ac-

tivity of local communities. It is a time-consuming and novel process, sometimes even innovative one. Creating the development policy is exposed to risk, therefore, it requires continuous supervision of effects and evaluation of the progress made. This process requires integration and co-ordination, mostly due to correlations which appear in the development process, specific nature of units taking part in development initiatives and the need to get the local population interested in development [cf. Parysek 2008]. The gmina development policy should reflect, among other elements, its geographic location, structure of economy and its specificity, demographic situation and local labor market, technical and social infrastructure, natural environment, available resources that could be used, leading areas of development and features of local community.

Planning documents are made in the gmina in order to co-ordinate activities and to standardize the approach to solving key development problems. They support the sustainable development policy. The main instruments in enforcing the local economic policy include the programme of local development of a given territorial unit, the study on land use conditions, the area development plan and the budget.

1. Spatial planning – threats

It should be remembered that planning and spatial order are important determinants of the quality of social and economic life. In Poland, spatial order is still understood as an aesthetic concept, not as a way of organizing the community life.

The lack of area development plans accounts for the fact that investment activities in our country are often performed based on accidental, unco-ordinated decisions. Buildings that are dispersed and devoid of functionality not only generate high costs but also limit the possibilities of future investment and development. Therefore, it is necessary to organize the processes of construction and developing the space and to implement the principles of spatial order. Contrary to popular beliefs, it is not area development plans that hinder investment but their lack. As the main tool of spatial development, these plans create stable conditions for investment and allow to avoid social conflicts at the investment implementation stage. It is absolutely necessary to give more importance to the role of spatial planning in order to improve the effectiveness of the spatial development system and to eliminate barriers to its development in the future [Gwiazdowicz 2010, p. 1]. The current planning chaos can be traced down to the economic transformation times, when, as a reaction to years of centrally-planned economy, the concept of economic planning was rejected, while the system of spatial planning was greatly reduced [Kowalewski 2009]. These trends were supported by strengthening the private ownership right and transfer of power to local governments which supported the achievement of its inhabitants' individual interests and needs. The rejection of planning constraints was demonstrated by the introduction of the possibility to locate private investments based on only an administrative decision, that is without the area

development plan. The obligation to create the Local Area Development Plan (LADP) was also abolished, which led to dissolution of gmina planning units. This accounted for the fact that the possibilities of influencing orderly area development and protecting public interest were limited.

In addition, as a result of the implemented regulations, on 1 January 2004 all area development plans adopted before 1 January 1995 became invalid. In many places this led to disruption of the continuity of planning and construction in areas allocated for various public investments. A particularly negative phenomenon is the dispersed development. It reflects the fact of ignoring the principles of rational spatial development, whose main objective is to use the space effectively and to protect open areas. This type of chaotic urbanization is visible not only in suburban areas but also in rural areas. Such use of space generates additional costs which can be avoided if the town or housing district were compact and rationally planned. The consequences are visible in increased expenditure on construction, upkeep and maintenance of technical infrastructure: roads, pipelines, cables, lighting, networks for energy transmission, water supply, waste discharge. This is accompanied by increased consumption of energy, more intensive use of means of transport, greater air pollution. Dispersed development of Polish villages makes it difficult to conduct an effective water and waste management. Irrational use of space also accounts for increased costs of removing waste, which hinders the creation of an effective system of gmina waste disposal.

The effect of dispersed development is the continuing degradation of landscape and deterioration of its quality. It is quite common these days not only to overlook the quality of landscape but also to ignore its importance as an element of natural and cultural heritage which shapes our national identity. Chaotic land development and architecture which is not connected with local cultural context irreversibly change landscapes typical for different parts of Poland. An extreme example of this would be the changes to the traditional landscape of the Podhale region, for example near Zakopane, where landscape is being destroyed by uncontrolled development of open areas and unlimited variety of architectural forms. Unfortunately, instead of strengthening the spatial planning system, the recently adopted solutions favour the uncontrolled use of space and further dispersion of land development. The amendment to the Act of 19 December 2008 on the protection of arable and forest areas repealed the regulations preventing uncontrolled allocation of arable areas for non-agricultural purposes. As a result, the Act does not cover any arable areas located within administrative borders of towns and cities. As there are no area development plans in force, the resignation from statutory protection of arable areas in towns and cities will aggravate the spatial chaos and facilitate development on areas without any infrastructure development.

The LADP is a tool of implementing the gmina's spatial policy. It determines the purpose of the areas and defines the ways of their development. The adoption of the plan is a prerequisite for conducting rational spatial policy at the local level. However, in order to evaluate the effectiveness of this policy, not only the size of the area

covered with such plans but also the characteristics of the area covered with plans and the planning details are important. In practice, we can observe that, despite a growing number of plans, spatial degradation cannot always be prevented.

The Central Statistical Office (GUS) conducted research on planning work in gminas. It turned out that at the end of 2007, on average 24.2% of the area of Poland was covered with spatial plans and the figure exhibited a growing trend: in 2006 it amounted to 22.0%, while in 2005 – only to 19.7% [*Report...* 2008]. The changes go in the undoubtedly positive direction. We should, however, be aware that the data do not reflect significant differences in plan coverage between individual regions of the country. Moreover, not every area needs a plan (for example if it is to remain without any buildings); therefore, we do not always have to aim at 100% coverage with spatial plans. Plans should allow to conduct rational spatial policy. The research indicates that this objective is not always fulfilled, as the planning work usually does not cover the areas with the largest investment pressure. The problem of the lack of plans for intensely developed areas is particularly acute in gminas located in the suburban area of large metropolitan centers and large agglomerations and in gminas which are attractive for tourists and located in the vicinity of protected natural areas. It often happens that plans are drawn up only for fragments of the area or for very small areas (less than 1 hectare). As a result of the fragmentation of the area, neighboring pieces of land may differ considerably as far as planning arrangements are concerned. This situation hinders rational spatial policy.

Where there is a deficit of plans, permits for investments are usually issued based on individual administrative decisions which were introduced into the planning system in mid-1990s. Initially they were a tool supplementing local plans, but over time they began to be used instead of plans. Most building permits are issued currently on the basis of the decision on building conditions. In 2007 over 200,000 applications for the decision were submitted, with over half of them (108,000) concerning the residential housing development. Only 3% of the applications were rejected, which shows that applying for such a decision is just a formality [*ibidem*]. The decision on building conditions is practically useless as a potential tool of eliminating improper investment concepts and shaping the spatial order. The replacement of the local law acts (area development plans) with administrative decisions is a major problem of spatial development management and the cause of spatial chaos.

The directions of the required reform of the spatial planning system in Poland should focus around the following proposals:

- Apart from specification of the content of area plans, one of the key proposals is to introduce a new planning instrument – the so-called local urban regulations (local law act), allowing to specify the conditions of development where there is no area development plan.
- Widely criticized decisions on building conditions would be eliminated and replaced by a new solution – the so-called urban realization plan, taking into account the requirements of spatial order.

- The present role of the planning document – that is the study on conditions and directions of spatial development of the gmina would significantly be extended and strengthened. By clearly indicating the areas with the ban on land development and areas of land development, the study would provide restrictions on chaotic sprawl of the cities.
- To ensure the implementation of public utility investments of the trans-local level, in a situation when the area was not covered by the local area development plan and urban regulations, there would be a possibility of establishing the land reserve by means of local enactment.
- Covering closed areas (such as the area belonging to Polish Railways) with spatial planning would allow the cities to pursue a coherent spatial policy.
- A new solution which could streamline the process of drawing up planning documents would be the introduction of a mediator – a person facilitating solving conflicts that always appear when such document are created.

2. The study on conditions versus the local area development plan (hereinafter called: LADP)

Formulation and implementation of spatial policy in the gmina is a task and obligation of local authorities. The right to independently decide on how infrastructure, buildings and recreation will develop in the area of the gmina was not granted discretionarily. The activities in this scope are determined by the Act of 27 March 2003 on spatial planning and development (hereinafter called SPD), which specifies the procedure for work, first on the study on conditions and directions of spatial development of the gmina and then on the local area development plan.

The study on conditions and directions of spatial development (hereinafter referred to as the study) is a fundamental act of spatial planning which is binding for the head of the gmina administration (the mayor or the president) while developing LADP¹. The study generally determines the planned way of developing the whole area of the gmina, taking into account information on the location of areas allocated for development, the course of the main communication routes or protected areas.

The study is adopted by the Gmina Council in a form of a resolution, but it does not have the status of local enactment (similarly to the strategy of gmina development). It is an internal document imposing an obligation on the gmina authorities to take action in accordance with the directions determined therein. The owners of gmina real estate should bear in mind that the solutions adopted in the study do not directly influence

¹ For example, the Council of gmina x adopted a new study, as a result of which a few hectares of arable area (classified as grassland) belonging to an inhabitant were described in the study as an area allocated for single-family housing development. The farmer decided to start planning his house. He will not be able to carry out the planned investment until the current local area development plan is changed according to the guidelines from the study.

their legal situation, do not determine their rights and therefore do not decide on the acceptable way of area development. Each LADP must be consistent with the arrangements in the study, otherwise it will be invalid. Therefore, if the gmina determines in the study that a particular area is allocated for single-family housing, and then, without changing the study, determines in the area development plan that a given area is allocated for agricultural purposes, its inhabitants may successfully appeal against the LADP and apply for its annulment. Without the changes in the study the gmina cannot freely change the allocation of a particular area (plots of land)².

As the Voivodeship Administrative Court (VAC) in Poznań emphasized, the study serves the purpose of developing a new LADP. This objective is accomplished through the annulment of the currently valid LADP. Therefore, the provisions of the study referring to the directions of LADP must be understood as referring to the plan which was valid at the moment when it was developed or when the study was adopted. Otherwise, it would mean that the entities developing the new plan have absolute discretion or that there would be no regulations concerning directions of development [*Judgment of VAC in Poznań from 4 September 2007*].

3. Developing the project

The preparation of the study consists of several stages. First, the Gmina Council adopts a resolution on initiating the work on study preparation. This is a declaration of intent, and then the head of the gmina administration (the mayor or the president) develops the study project. When formulating spatial policy, the head of the gmina administration should take into account all types of activity (social and economic activity) developed in the area of the gmina, both the current and the planned ones which may affect a given area (forms of development, territorial development in technical infrastructure). According to Article 10(1) of the SPD, the study reflects the conditions resulting from the current destination, buildings and infrastructural development of the area as well as its legal status. This does not mean that you cannot change the destination of a particular area [*Judgment of VAC in Poznań from 15 October 2008*]. For example, the gmina authority has the right to change the current intended use of the arable area into sports and recreation function, with the possibility of constructing open sports objects surrounded by green areas. The change of the direction of spatial development of particular areas is usually beneficial to their owners and rarely raises their objections. It may happen that the current use of the area is changed to the one less attractive for its owners. It should be remembered that the Constitution allows to limit the ownership

² For example, gmina x adopted the change of the study without submitting the study to public consultation and without the opinion of the Regional Director for Environmental Protection (RDEP). The resolution was sent to the Voivode, who, by means of his superior decision, declared it invalid. The gmina authorities have an obligation to comply with the above requirements.

rights, but this limitation must be stipulated in the Act and may not infringe the essence of the ownership right. The resolution on adopting the study belongs to the statutory planning authority and as such – if it is consistent with the law – may determine the scope of ownership rights. That is why the change of the intended use of arable land into forest must be consistent with the law. It does not deprive the citizen of their ownership of the property and only limits the possibilities of exercising their rights.

4. Components of the study

The study is a document consisting of the text (description) and the graphic part. The content of the study is determined in the resolution of the Minister of Infrastructure from 28 April 2004.

The resolution stipulates that the draft study should comprise:

- 1) a part determining the conditions described in Article 10(1) of the Act, presented in text and graphic forms;
- 2) text containing arrangements concerning directions of gmina spatial development;
- 3) a drawing presenting graphically the arrangements determining directions of the gmina's area development, including the borders of the areas described in Article 10(2) of the Act;
- 4) justification containing the reasons for adopted solutions and a synthesis of study arrangements.

The draft study must also determine the impact of conditions on determining the directions and principles of the gmina's spatial development defined in Article 10(2) of the Act, that is the current use, housing and territorial development, the state of spatial order and requirements for its protection, the condition of the environment, including the state of agricultural and forest production space, the size and quality of water resources and requirements of environment, nature and cultural landscape protection, the state of cultural heritage, monuments and objects of contemporary culture, conditions and quality of living, including health protection, threats to inhabitants' life and property, needs and development opportunities of the gmina, legal status of the area, existence of protected objects and areas, existence of areas of natural geological dangers, existence of documented fossil deposits and underground water resources, the state of communication and technical infrastructure systems, including the condition of water and sewage, energy and waste management or tasks aiming at achieving public goals of trans-local level.

The draft drawing is made on a copy of a topographic map from the state geodesic or cartographic resources or on a copy of a military topographic map of 1:5000-1:25,0000 scale.

The study takes into consideration the conditions resulting from:

- 1) changes in spatial structure of the gmina and area function;

- 2) directions and indicators concerning development and use of areas, including areas with a ban on land development ;
- 3) areas and principles of protecting the environment, its resources, nature, cultural landscape and health resorts;
- 4) areas and principles of protecting cultural heritage and monuments as well as contemporary culture objects;
- 5) directions of development for communication and technical infrastructure systems;
- 6) areas where local public utility investments will be located;
- 7) areas where trans-local public utility investments will be located,
- 8) areas for which it is necessary to draw up a local area development plan pursuant to separate regulations, including areas requiring consolidation and division of properties, as well as areas where commercial objects with sales area over 400 m² and public space areas are to be located;
- 9) areas for which the gmina intends to draw up a local area development plan, including areas requiring the change of arable and forest areas into non-arable and non-forest areas;
- 10) directions and principles of shaping agricultural and forest production space;
- 11) areas at risk of flood and landslides;
- 12) objects or areas for which the protection pillar is established in the fossil deposit;
- 13) areas with monuments documenting the extermination and their protection zones and limitations concerning economic activities in them;
- 14) areas requiring transformation, rehabilitation or reclamation;
- 15) borders of closed areas and their protection zones;
- 16) other problem areas, depending on development conditions and needs in the gmina.

Article 10(2) of the SPD contains typical elements of the regulatory part of the study. It seems that, contrary to norms stipulated in section 1, the study does not contain an obligation to refer to each direction of area development of the gmina listed in Article 10(2). If, however, the planning intentions indicate that the formulation of the spatial policy of the gmina covers the intentions listed in section 2 or if they are outside the catalogue comprised in this regulation, the resolutions on implementation of the planned ventures should be precise enough to allow to draw up the LADP on their basis or to issue a decision on building and land development conditions in line with the intentions of the authors of the study [Bąkowski 2004]. A similar opinion was expressed by the Supreme Administrative Court (SAC) in one of its judgments issued when the Act on the SPD was still valid. According to the SAC, the requirements concerning information and regulatory elements “*should be interpreted not only linguistically, but comprehensively, taking into account the purpose the study is to serve. It cannot be accepted, then, that the requirement of including a given element is met if something was written about it or if it was somehow determined. This requirement is fulfilled only when it was written about so that concrete directives can be inferred for the future, which allow to draw up a local area development plan*”

coherent with the study. The study stipulations are therefore contrary to the Act when they do not follow the instructions of a particular norm of the act and also when their 'general' and 'slogan' nature does not allow to achieve the objectives which the study is to attain" [Judgment of SAC of 25 June 2002].

Therefore, the content of the gmina study may include the provisions concerning the obligation of drawing up the LADP for some areas. This obligation results either from 'separate' regulations or from intentions included in the study (introducing consolidations and division of property, locating commercial buildings with sales area of over 2000 m², planning areas of public space in territories determined in the study). The obligation to draw up the LADP cannot be concluded from the content of the regulations with reference to areas for which the gmina is planning to draw up the LADP, including the areas requiring the change of the use of arable and forest areas into non-arable and non-forest ones.

5. Inhabitants' motions

After the Council adopts the resolution to start work on the study on conditions, the head of the gmina administration (the mayor or the president) has an obligation to publish an announcement in the local press and in form of a notice, and in any other form traditionally accepted in the gmina, about the start of work on the study. It determines the form, place and deadline for submitting motions concerning the study. The deadline cannot be shorter than 21 days after the announcement is made and it is counted from the day the announcement was published in any form stipulated by the law and by tradition. As emphasized by the SAC, the right to submit motions is not based on legal interest of the applicants, and they do not obtain the status of a party in such proceedings. This results from Article 7 of the SPD which stipulates that the decision of the head of the gmina administration (the mayor or the president) not to take into account the motions concerning the study on conditions (as well as comments concerning the draft study at later stages of the planning procedure) cannot be appealed against to the administrative court. The fact that the inhabitant has the ownership right in the area covered by the study does not mean that there is the legal interest protected with specific legal means available or the owner in the planning procedure [*Judgment of SAC of 4 September 2009*].

6. Issuing opinions about the document

After disseminating the information about the resolution the head of the gmina administration (the mayor or the president) notifies in writing the competent institutions and authorities for accepting and issuing opinions on the draft study. Then they start

drawing up the draft study, examining motions of the interested parties and taking into account the provisions of the voivodeship area development plan. If there is no such plan or if government tasks are not stipulated in the voivodeship area development plan, they take into account the provisions of government programmes facilitating the implementation of public utility investments of national importance. After making the study project the head of the gmina administration (the mayor or the president) must obtain the opinion from an appropriate committee of gmina council which provides consultation and issues opinions. The head of the gmina administration (the mayor or the president) applies for the project acceptance to the voivodeship board to the extent in which the draft conforms to the provisions of the voivodeship area development plan and to the voivode to verify whether the project is in line with the national programmes. They also apply for an opinion on solutions adopted in the study project to numerous institutions and entities listed in the Act (Article 11(6)(a)-(m)), that is:

- a) head of the poviast administration;
- b) neighboring gminas;
- c) competent voivodeship conservation officer;
- d) competent military authorities, border guards and national security offices;
- e) head of the competent maritime office as far as the development of the technical and protection belts and sea ports and harbors is concerned;
- f) competent mining supervisory authority concerning the development of mining areas,
- g) competent geological administration authority;
- h) minister in charge of health issues concerning development of health-resort protection areas;
- i) head of the regional water management board as far as development of areas exposed to particular risk of flooding is concerned;
- j) head of the regional environmental protection authority;
- k) President of the Electronic Communication Office – in telecommunication matters;
- l) competent body of the State Fire Service and voivodeship inspector for environmental protection;
- m) competent voivodeship sanitary inspector.

It should be assumed that when the form of co-operation mentioned in Article 11 of the SPD is an opinion, the authority preparing the study must analyze the opinion of the issuing authority as an element of evidence material, but does not have to take it into consideration. If, on the other hand, the head of the gmina administration (the mayor or the president) had an obligation to consult the draft study with the entities listed in Article 11 of the SPD, the opinion obtained should be considered as binding in its entirety [Bąkowski 2004a]. As a result of the above remarks the opinions of: urban and architecture committee – head of the poviast administration, neighboring gminas, voivodeship officer, military authorities, border guards and national security officers, head of the competent maritime office, competent mining supervisory authority, *etc.*, are necessary

to make relevant decisions concerning the content of the developed study, including possible changes of its provisions, and the conclusions reached are to be assessed by the authority conducting planning proceedings. On the other hand, the agreements of the voivodeship board and the voivode are binding for the content of the presented draft.

The requirement to obtain an opinion on the draft study depends on the area conditions, its location and properties. For example, the opinion of the head of the maritime office or competent mining supervisory body is necessary in cases when the area covered with the draft study includes territories under jurisdiction of maritime administration or mining areas. On the other hand, the draft study must be consulted with the voivodeship board to verify its conformity with the voivodeship area development plan, when the given area is covered by such plan. Similarly, the consultation with the voivode on the conformity of the draft study with the provisions of programmes comprising government tasks which serve the implementation of public utility investments of national importance will be justified and required only when the implementation of these tasks was planned on the area covered with the draft study. In this case the government tasks should be included in the voivodeship development plan. Otherwise (when there is no voivodeship plan or when it is not taken into account in the provisions on tasks), there is a risk that the gmina authority might not have had the information about the government projects. Therefore, in order to exercise due diligence the head of the gmina administration (the mayor or the president) should each time apply to the voivode to compare the project with potential government tasks. When the stage of issuing opinions and consultations on the draft study is completed, the head of the local administration (the mayor or the president of the town) compares the content of the agreements and considered opinions with the current draft study and if any discrepancies between these documents are found, makes necessary adjustments of the draft study. The final version of the future study is then presented for public examination.

The participation of local community and other entities interested in planning intentions in the area of the gmina consists in the right to examine the project. An undisputable novelty here, introduced into the procedure of drawing up the gmina study, is 'public discussion' on solutions adopted in the draft study. The Act does not define the term 'public discussion' and does not stipulate any special formula for the discussion. It can be assumed then that the formula of the discussion, the organization of which is one of obligatory elements in the procedure of the study formulation, depends on the organizer, that is the head of the gmina administration (the mayor, the president). Another new form of social participation in formulating the gmina study are comments to the draft submitted by individuals, legal persons and organizational units which do not have the status of a legal person. The comments on the draft plans made by public administration entities also refer to the LADP drafts, replacing previous objections and charges. Taking into consideration the provisions of Article 18 of the SPD, we could assume that the comment on the draft study expressed disapproval (questioning) of the arrangements adopted in the draft. It is submitted to the authority drawing up the draft.

The authority, that is the head of the gmina administration (the mayor, the president) is also the authority of 'first instance' examining such comments. The comments may present alternative solutions concerning particular areas covered by the draft, which is the subject of the future content of the study. It seems that there are no obstacles to include also formal suggestions in the comments, for example comments questioning the arrangements adopted in the draft. The decision made by the head of the gmina administration (the mayor, the president of the town) is determined by the principles of the gmina's discretion in planning and its planning powers. It means that the criteria for evaluating the relevance of the comment should include a broadly understood planning policy of the gmina, which complies with commonly binding legal regulations, including the stipulations of the SPD and acts on spatial planning issued by public administration bodies of trans-local and central level inasmuch as the law requires the study to conform to these acts. So, if a different solution presented in the comment complies with the above requirements, it should be taken into consideration and incorporated into the draft study.

7. Identification of comments

The next stage is thus the introduction of changes resulting from obtained opinions and agreements concluded. After taking them into consideration, the head of the gmina administration (the mayor, the president) publishes the information about the submission of the draft study for public examination at least 7 days before making it available to the public. Then the draft is presented for public examination and published on the gmina's website for at least 21 days and the gmina organizes public discussion on the assumptions made in the draft. The form of the announcement must be the same as the form of the announcement about the commencement of work on the study on conditions. In addition, the announcement must contain information on the period when legal and natural persons and organizational units may submit their comments to the draft study. The period cannot be shorter than 21 days from the day of making the study available to the public. After recapitulation of the work and taking into account the objections, the head of the gmina administration (the mayor or the president) presents the draft study to the gmina council with a list of comments which were not taken into account. The adoption of the study must always take place according to the procedure stipulated in the Act.

8. Procedure for adoption of the study

According to Article 12 of the SPD, the study is adopted by the gmina council which also determines the way of proceeding with the comments that were not taken

into account by the head of the gmina administration (the mayor, the president). The text of the study and the drawing included therein, as well as the decision on how the comments will be dealt with constitute appendices to the resolution on adoption of the study. The legislator stipulated the two stage procedure for deciding about the comments to the draft study on conditions which is binding for the relevant authority. First the decision is made by the body that drew up the draft (the executive body of the gmina) and then the constituting body (with regard to the comments which were not taken into account) [*Judgment of SAC of 4 September 2009*]. The possibility of submitting the comments is to allow every citizen whose legal interest or rights will be infringed by the future LADP could present their comments (proposals, arguments) at the stage of drafting the plan. The gmina council is obliged to examine the infringement of legal interest or the right of the person who submits the comment by confronting individual interest with the interest supporting the arrangements adopted in the draft plan and taking into account the circumstances described in Article 1(1) of the SPD. The above comments also concern the study on conditions and directions of the gmina's spatial development.

9. Voivode's supervision

After the study is adopted by the gmina council, the head of the gmina administration (the mayor, the president) presents the resolution to adopt the study together with attachments and documentation of planning work to the voivode. If the council did not adopt the study, did not initiate its change or when adopting the study did not determine the areas for locating public utility investments of national and voivodeship importance reflected in the voivodeship area development plan or in government programmes, the voivode must call on the gmina council to adopt the study or to amend it within a specified period of time. The voivode does so after performing the activities aimed at including the dates and conditions of these investments' implementation in the study. When the specified period of time passes ineffectively, the voivode draws up the LADP or amends it for a particular area which is omitted by the gmina to the extent necessary to implement the public utility investment and issues a substitute order. The plan adopted according to this procedure has legal effects which are the same as legal effects of the LADP. In this case the costs of the plan formulation are incurred fully by the gmina whose area is the subject of the substitute order.

10. Costs of the gmina's spatial policy

Financial consequences of the gmina's spatial policy can be divided into two categories [Czekiel-Świtalska 2005, pp. 90-91]. The first one comprises direct expenditure connected with the plan formulation or its change, *i.e.* the costs of paying

compensation, expropriation of a real estate destined for public use in the plan or a decline in revenue from property tax. Potential benefits may come from the planning fee or increased revenue from property tax. The second category are indirect financial effects of the spatial policy. They occur in longer term and are connected with the construction of necessary technical infrastructure (investment expenses and charges related to a rise in property value), revenue from local taxes and fees, revenue from the gmina's share in income tax or decreasing or increasing the local unemployment rate (new or limited investment in the area covered with the plan).

Czekiel-Świtalska [2005] describes the financial effects of adopting or changing the LADP with the following formula: $B = Kp + Pn \pm O \pm Rp$, where: B – change in gmina's budget caused by adoption or amendment of the plan, Kp – costs connected with the plan elaboration, Pn – difference in property tax (revenue from tax before the adoption of the plan minus value of tax collected after the adoption or amendment of the plan), O – profits or losses resulting from Article 36 of the SPD, Rp – costs and profits related to the implementation of the plan or its amendment in a specified period of time (for example – 5 years); this value can be expressed, depending on the needs, with the following formula $Rp = \pm Po \pm S - I + A$, where: Po – income tax from individuals and legal persons, S – difference in the selling price of the property before and after the adoption or amendment of the plan, I – costs of building technical infrastructure, A – charges for a rise in the value of land.

The costs of the plan elaboration are born by the gmina regardless of the content of the adopted LADP and cannot be spread over a defined period of time [Piórecki 2012, p. 118].

11. The area development plan and the planning fee

The adoption of the new plan or the amendment of the existing one is usually associated with the growth in property value. When selling the property, its owner is obliged to pay a special fee (planning fee) due to an increased value of their property. The fee is collected by the head of the gmina administration (the mayor or the president) and cannot exceed 30% of the increased value of the property. In practice, the fee causes a lot of misunderstandings and problems. They all start with inaccurately calculated and inflated differences in the property value which leads to unjustified claims of the gmina against the property owner. Articles 36 and 37 of the Act of 27 March 2003 on spatial planning and development (SPD) imply the following conditions must be met in order to collect the one-off fee (planning fee):

- increased value of the real estate as a result of the adoption of the new local area development plan or amendment to the existing one;
- the percentage rate of the property value growth must be defined in the local plan, which is the basis for calculating the amount of the planning fee;

- the sale of the property by its owner or perpetual usufructuary.

The regulations of the SPD also govern the issues associated with the change in the property value as a result of the implementation of a new LADP or amendments to the existing one. The concept of the decreased value of property is defined by Article 37(1) of the SPD. Article 36, on the other hand, governs the situations when the consequence of the new LADP is an increase in the value of the real estate in the area covered with the plan. The fee paid to the gmina is defined as the planning fee. It is a specific form of gmina's participation in profits resulting from the sale of the property whose value has grown due to the changes of the regulations in the LADP. This provisions specifies only the upper limit of the fee, while the exact interest rate is to be determined by the gmina council. The Supreme Administrative Court in its judgment of 6 September 2002 assumed that "*the obligation to make a one-off payment of the so-called planning fee collected when selling the property whose value has grown due to the adoption of a new plan or amendment of the existing one, excludes the possibility of determining the zero percentage rate for calculating this fee in the local area development plan*" [Judgment of the Supreme Administrative Court in Wrocław of 6 September 2002].

The amount of compensation due to the decreased value of property and the amount of the fee due to the increased value of real estate are defined at the day of the sale. Both the decrease and the increase of the property value are the difference between the property value determined while taking into account the intended use of the area after the adoption of the new local plan or amendment of the existing one and its value is determined taking into account the use of the area before the change of this plan or the actual use of the property before the plan was adopted.

The amount of compensation due to the decreased value of property and the amount of the fee due to the increased value of real estate should reflect the difference between the property value before the adoption of the LADP and its value on the day of sale. On the other hand, this difference and the related compensation or planning fee should be linked to the objective change of the property value and not to the price agreed by two parties of the sale contract [Cisek, Kremis 2001].

The legal grounds for determining the amount of the planning fee are the provisions included in the resolution on the LADP. The fee for the increased value of property is not collected when its percentage rate was not determined in the resolution of the gmina council. The decision of the head of the gmina administration (the mayor, the president) determining the amount of the planning fee when there is no percentage rate defined in the resolution on the LADP is at risk of invalidity [Janeczko 2001, p. 61; Wolanin 1996, p. 124]. This position was weakened due to the fact that an obligatory element of the LADP is the determination of the percentage rate. Therefore, the situation where the head of the gmina administration (the mayor, the president) decides on the amount of the fee, since there are no relevant provisions in the LADP, is incredibly rare if not hypothetical.

On 10 August 2011 the Act of 16 May 2011 amending the Act on spatial planning and development came into force (Dz.U. [Journal of Laws] No. 153, item 901). Its provisions introduce changes concerning the planning fee [Kaczmarek 2011]. The amendment introduced in the Act of 16 May 2011 stipulates that when the local area development plan was adopted after 31 December 2003 since the previous local area development plan adopted before 1 January 1995 had become invalid, the rule of calculating the planning fee based on an increased value of property will not be applied if the property value (determined taking into account the intended use of the area in the local plan adopted before 1 January 1995) is higher than the property value determined based on the actual use of the area after that plan had become invalid.

In this case the growth of property value is a difference between the property value determined taking into account the intended use of the area after the adoption of the new local plan and its value determined based on the intended use of the area in the local plan adopted before 1 January 1995. The change introduced by the amendment boils down to the fact that the obligation to pay the planning fee will not arise when the value of the area determined according to its intended use specified in the local plan adopted before 1 January 1995 was higher or did not change as a result of the adoption of the local area development plan after 31 December 2003.

However, in order to apply this exception, the value of the property determined taking into account the intended use of the area in the local area development plan adopted before 1 January 1995 must be higher than the value of the property determined based on the actual use of the area after the plan became invalid. Such a situation takes place when local plans expired in the time determined above pursuant to Article 87(3) of the SPD. It stipulates that local area development plans adopted before 1 January 1995 which were valid at the moment of implementing the Act of 2003 on SPD remained in force until new plans were passed, not longer, however, than until 31 December 2003.

The introduced exception will concern the cases which we may deal with until the local plans cover all areas where the planning policy had been conducted before 1 January 1995, but where later on the competent authorities did not adopt the relevant resolution³.

³ The amendment is a fulfillment of an obligation to adjust the legal system to the judgment of the Constitutional Tribunal of 9 February 2010 (case file number P 58/08) declaring the inconformity of the provisions of Article 37(1) of the Act on spatial planning and building development with Articles 2 and 32 of the Polish Constitution. In the Constitutional Tribunal's analysis, the local area development plan became invalid pursuant to Article 87(3) of the SPD. Upon adoption of another local plan, almost a year after the previous plan had expired, property owners had an obligation to pay the fee due to increased value of property after the adoption of the new local plan or amendment of the existing one (Article 36(4) of the SPD). The Constitutional Tribunal stated that the situation of the owners of properties located where new local plans were passed after the previous ones had become invalid, differed from the situation of other owners of properties located where, in accordance with the Act, new plans replaced old ones while the latter were still in force. According to the Constitutional Tribunal, the increased value of the property should be perceived as an effect of the adoption of the new local plan directly following the old one, not as an effect of discontinuing planning and creating a situation where there is no such plan, which affects the available fees.

The above deliberations clearly indicate that the area development plan is the key, though by no means the only, instrument of local development management. It should be noted that, although only at the gmina level it is a local law enacted by appropriate gmina bodies, a special role in the process of spatial planning is played by other public authority bodies at both national and voivodeship level.

Thus according to Article 46 of the Act on SPD of 27 March 2003 (Dz.U. No. 80, item 717) the minister in charge of construction, spatial and housing development co-ordinates the conformity of voivodeship area development plans with the concept of national area development and in consultation with the competent minister of regional development ensures cross-border and border co-operation in the field of spatial development and draws up progress reports on the state of national spatial development. Article 47 of the above Act describes the tasks of the minister of regional development, whose role in the process of spatial planning is also significant. Pursuant to the article, the minister of regional development takes into account the objectives defined in government strategic documents and:

- 1) prepares a concept of national spatial development which reflects the principles of sustainable development based on natural, cultural, social and economic conditions defined in separate provisions, and is responsible for international co-operation in this regard;
- 2) performs analyses and studies, develops concepts and draws up programmes concerning the areas and issues belonging to strategic planning and projecting the economic and social development, co-operation with competent ministers and with central authorities of government administration.

The concept of national spatial development determines the conditions, objectives and directions of sustainable development of the country and actions necessary to achieve such development, in particular:

- 1) basic elements of the country's network of settlements, excluding metropolitan areas;
- 2) requirements related to environmental protection and monuments protection, including protected areas;
- 3) distribution of social infrastructure of international and national importance;
- 4) distribution of technical and transport infrastructure facilities, strategic water resources and water management facilities of international and national importance;
- 5) problem areas of national importance, including endangered areas requiring detailed studies and plans;
- 6) the Council of Ministers approves the concept of spatial development of the country and progress reports on the country development. Upon approval of the concept, the Council of Ministers determines to what extent it will be the basis for elaborating programmes determined in Article 48(1).
- 7) the Prime Minister presents the concept of national spatial development and progress reports on the national spatial development to the Polish Parliament (*the Sejm*);

- 8) the Prime Minister may appoint the National Council of Spatial Development as an advisory body, and determine, by means of an order, the rules defining its tasks, organization and operating procedure.

As we have already mentioned, the voivodeship government also plays an important role in the process of spatial planning in Polish legal system. According to Article 38 of the Act of 27 March 2003 on spatial planning and housing development (Dz.U. No. 80, item 717), voivodeship authorities perform analyses and studies and develop concepts and programmes concerning the areas and issues of spatial development according to the needs and purposes of the work initiated in this respect. Article 39 of the above-quoted Act determines the scope of the plan. According to this provision, the voivodeship parliament passes a resolution on initiating the work on voivodeship spatial development plan which is drawn up for the administrative borders of the voivodeship.

Article 39(3) is of particular significance for development processes of individual regions. The legislator clearly defined the relation between strategic planning of regional development and the process of spatial planning: the area development plan of the voivodeship takes into account the development strategy of the voivodeship, in particular:

- 1) basic elements of the settlement network of the voivodeship and their communication and infrastructure links, including directions of cross-border links;
- 2) system of protected areas, including areas designated for protecting the environment, nature and cultural landscape, protection of health resorts and cultural heritage as well as contemporary culture artifacts;
- 3) distribution of public utility investments of trans-local importance;
- 4) problem areas and principles of developing them and metropolitan areas;
- 5) areas of support;
- 6) areas at a particular risk of flooding;
- 7) borders of closed areas and their protection zones;
- 8) areas with documented deposits of fossils.

Thus regional planning is a spatial expression of regional development strategy and has features of structural plans which have the function of co-ordinating social trans-local tasks [Potoczek 2003, p. 276]. The spatial development plan of the voivodeship is one of the most important planning documents of the voivodeship. It contains some guidelines for actions which fulfill tasks determined by the regional development strategy. It is also a major instrument of co-ordinating spatial policy in the region.

Summing up, we must state that the essence of planning at the local (*gmina*) level is the creation of formal and legal foundations for undertaking ventures projected for all levels of spatial planning. As Potoczek claims, the basic planning function at this level is to regulate and implement programmes and tasks which requires detailed arrangements concerning the forms and methods of using and exploiting the area. Three areas of spatial planning are complementary to each other. They constitute a hierarchic system, but without arbitrary subordination. Respecting mutual arrangements is in the interest of each level and the state as a whole [*ibidem*].

The above analysis clearly demonstrates that the area development plan is one of the most important instruments of local development policy, determining its level and dynamics, which is also reflected in the social and economic development of the region where a given gmina is located and, to some extent, at the country level.

The arguments presented above confirm the vital role of the spatial planning processes in improving the living standards of local communities as demonstrated by the gminas where they are in force. We can precisely indicate the area of Poland which is covered with valid local plans.

According to the data quoted by Śleszyński from the Institute of Geography and Spatial Development of the Polish Academy of Sciences, at the end 2010 there were 38,184 valid plans in Poland, 1882 more than the year before. Of these, 15,152 plans were developed pursuant to the Act from 2003. The area covered with local plans at the end of 2010 increased to 8.2 million hectares, including 4.2million hectares based on the 2003 Act. This means that the so-called planning coverage ratio was 26.4% of the territory of the country and that in the period of 2004-2010 it grew by 9.2% [Śleszynski 2010]. The data are presented in Table 1.

A vital role of the area development plan in the development processes of local government units, especially in gminas, allows to conclude that local government units should treat this instrument as their priority in management processes. As the data presented in Table 1 above show, the situation in Poland is far from satisfactory. At the end of 2010 only slightly over 25% of the country area was covered with local plans.

Undoubtedly, one of the barriers hampering the planning processes is the high cost of drawing up the plans, which is borne only by gminas which perform their own tasks. This argument, often voiced by local government representatives, is not very convincing. The authors of this paper believe that all expenses, even very high, on preparing the area development plan should be treated not only in spatial but also

Table 1

Number and area covered by valid local plans in 2004-2010.
State at the end of the year

Year	Number of plans		Area covered by plans		Average area covered by the plan (hectares)
	total	based on the 2003 Act	thousands of hectares	% of country territory	
2004	28,567	1,375	5,391	17.2	188.7
2005	29,642	3,407	6,168	19.7	208.1
2006	31,620	5,640	6,872	22.0	217.3
2007	33,360	7,797	7,557	24.2	226.5
2008	35,885	10,410	8,008	25.6	223.2
2009	36,302	12,662	7,962	25.5	219.3
2010	38,184	15,152	8,243	26.4	215.9

Source: [Śleszyński 2010, p. 89].

in investment categories, with a specified, attractive rate of return. By using this instrument, the gmina not only achieves so badly needed spatial order, but also obtains the possibility of effective sale of its property, whose price is greatly affected by the intended use of the area determined in the area development plan, which offers the possibility of increasing budget revenues. Moreover, having adopted the area development plan, a gmina government unit has the possibility of performing activities in territorial marketing, economic promotion, that is the possibility of shaping and positioning investment offers and finally attracting investors that will bring a number of benefits to local communities by implementing planned investments (more jobs, tax revenues of various type for the gmina budget, *etc.*).

It should also be emphasized that the area development plan plays a special role in the implementation of investment processes in time – the time of investment preparation is shortened to the minimum, which is also an important factor for the gmina development.

Summary

The authors of this paper believe that one of the reasons for low planning coverage in Poland is the reluctance on the part of local authorities of many units due to the fact that executive bodies of gminas do not want to deprive themselves of the influence on investments carried out in their area. They want to decide about the activities of all entities, *i.e.* investors, individuals, institutions, *etc.*, using their discretionary instruments which are not always based on objective criteria. The results of such practices are extremely negative and include dominant power of officials, official or political discretion of the head of the gmina administration (the mayor or the president), investment and spatial chaos, possible bribing practices, lower income for the budget due to the limited sale of property and other budget revenue (taxes, fees, planning fee), extended time of investment processes. In spite of these negative consequences of the lack of spatial planning, there are no provisions in the Polish law that would force the authorities to use this instrument. An exception to this rule is the provision of Article 38b of the Act of 28 July 2005 on health resort treatment, health resorts and areas of health resort protection and on health resort gminas (Dz.U. No. 167, item 1399 of 1.09.2005), which requires the gminas that have the possibility of offering health resort treatment in their area to adopt the area development plan for the so-called health resort Zone "A".

Summing up these analyses, we would like to emphasize once again the importance of the area development plan as a key element of local development policy in gminas. This tool to a large extent determines the level and rate of social and economic development at all levels of local government administration and in the whole country.

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