Karolina Szuma*

Assigning agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes in the light of the Act of 10 July 2015 amending the Act on the Protection of Agricultural Land and Woodland

Przeznaczenie na cele nierolnicze i nieleśne gruntów rolnych stanowiących użytki rolne klas I–III w kontekście ustawy z dnia 10 lipca 2015 r. o zmianie ustawy o ochronie gruntów rolnych i leśnych

http://dx.doi.org/10.12775/PYEL.2016.005

Abstract

The need for a dissertation on the assigning of agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes arose

* Doctor of laws, Legal Counsel.

from numerous practical difficulties related to the decisions on land development conditions in the light of a modification of land use for non-forest purposes.

This paper highlights the most common problems in the interpretation of legislation concerning the assignment of agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes.

Pursuant to the currently applicable Act on the Protection of Woodland and Agricultural Land, if the total of a compact piece of agricultural land of class I-III assigned according to the investor's request for non-agricultural purposes lies within the area of a compact building settlement and the total area of that agricultural land of class I-III subject to the request does not exceed 0.5 ha, there is no obstacle to assigning that land for non-agricultural purposes under article 7 item 2a of the invoked Act.

Keywords:
Assigning agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes.

Streszczenie

Potrzeba podjęcia rozważań nad zagadnieniem przeznaczenia na cele nierolnicze i nieleśne gruntów rolnych stanowiących użytki rolne klas I-III jest efektem istnienia wielu problemów praktycznych związanych z wydaniem decyzji o warunkach zabudowy w kontekście zmiany przeznaczenia gruntów na cele nieleśne.

W opracowaniu wskazano na najczęstsze problemy interpretacyjne przepisów dotyczących przeznaczenia na cele nierolnicze i nieleśne gruntów rolnych stanowiących użytki rolne klas I–III.

Zgodnie z aktualnym brzmieniem ustawy o ochronie gruntów rolnych i leśnych, jeżeli całość zwartej części gruntu rolnego klas I-III podlegającej przeznaczeniu na cele nierolnicze zgodnie z wnioskiem inwestora zawiera się w obszarze zwartej zabudowy, natomiast łączna powierzchnia gruntów rolnych klas I-III objętych wnioskiem nie przekracza 0,5 ha, to nie ma przeszkód do przeznaczenia na cele nierolnicze danego obszaru w trybie wskazanym w artykule 7 ust. 2a tej ustawy.

Słowa kluczowe:
Przeznaczenie na cele nierolnicze i nieleśne gruntów rolnych stanowiących użytki rolne klas I–III.

Firstly, it must be highlighted that the need for this dissertation arises from legal issues concerning the intention to allow legal approval of numerous investments which could not have been legalized before the Act of 10 July 2015 amending the Act on the Protection of Woodland and Agricultural Land came into force[1].

A particularly debatable issue is the one connected with the issuance of decisions on land development conditions in the light of changing the land's purpose to non-forest ones. Such a decision may be issued only upon the fulfilment of all the conditions listed in the 5 points of article 61 item 1 of the Act on Spatial Planning[2]. One of them is that the area does not need a permission for the modification of the woodland or agricultural land purpose to non-agricultural or non-forest ones. Problems presented herein and arising from this issue in the light of the protection of agricultural land and in the light of social and economic progress and applicable provisions of law may raise interpretation doubts, as proved by numerous court rulings. The ambiguity in the application of law may in turn thwart the legislator's intention to maintain the continuity of agricultural land functions to the greatest possible extent. Therefore, for the legislator's intention to be fulfilled, the provisions concerning the protection of woodland and agricultural land must be applied correctly. Determining the use of the land in a local zoning plan is a factor that makes this protection particularly effective. If the use of the land has not been determined in the local zoning plan, a decision on land development conditions must be obtained, which may adversely affect the protection of woodland and agricultural land[3].

It must be noted that the issue of woodland and agricultural land protection covers many aspects which constitute basic legal instruments and set forth certain rules concerning woodland and agricultural land.

Additionally, current social and economic progress, and dynamic industrial development may imperil woodland and agricultural land. This is particularly the case with the land located in proximity to major and

[1] Journal of Laws of 2015 item 1338.

[2] Journal of Laws of 2016 item 778, with further amendments.

[3] See: Note on the results of the checks of the woodland and agricultural land protection in the process of industrial building development and other construction facilities in Lower Silesia in 2006-2009 (3 quarters), Supreme Chamber of Audit NIK – Branch in Wrocław, Wrocław, September 2010, p. 23.

developing towns and cities. Industrial development may even reduce woodland and agricultural land.

Polish legislator has found it necessary to protect woodland and agricultural land and in the quoted act it has set forth the rules protecting these lands, including a rule limiting the assignment thereof for non-agricultural and non-forest purposes, a rule excluding these lands from agricultural and forest production, and land reclamation rules.

This type of regulation is a difficult one since collisions may occur between the protection of woodland and agricultural land on the one hand, and a strong economic growth on the other. Therefore the legislator has had to smooth out the conflict and balance the goods whose protection is based on different axiological grounds. In the legislation protecting woodland and agricultural land the legislator applies a sustainable development principle expressed in the Constitution. We should, in particular, consider the welfare of future generations connected with the protection of woodland and agricultural land because the restoration of agricultural and wooded resources is a long-term and costly process.

It should be emphasized that the protection of woodland and agricultural land is a multiple-aspect issue wherefore this paper, due to its restricted frames, covers only the aspects governed by the Act on the Protection of Woodland and Agricultural Land and referring to the protection of the latter in a wider sense. The paper focuses on the key aspects of that protection.

It should be highlighted that pursuant to article 7 item 2a of the Act on the Protection of Woodland and Agricultural Land[4], the assignment of agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes does not require a permission from the minister competent for rural development, if the land meets all the following conditions:

1) at least half of the area of each compact piece of land lies within the area of a compact building settlement;
2) is located no further than 50 m from the boundaries of the nearest building plot within the meaning of the Act of 21 August 1997 on Real Estate Management[5];

[4] Journal of Laws of 2015, item 909, with further amendments; hereinafter the Act on the Protection of Woodland and Agricultural Land.

[5] Journal of Laws of 2015 item 1774, with further amendments.

3) is located no further than 50 m from the public road within the meaning of the Public Roads Act of 21 March 1985[6];
4) its area does not exceed 0.5 ha, regardless of whether it constitutes a whole or several separate pieces.

In practice very often the authority finds that less than a half of the compact piece of the land lies within the area of a compact building settlement.

What must be, however, taken into consideration is the definition of a "compact building settlement". Pursuant to article 4 item 29 and 30 of the Act on the Protection of Woodland and Agricultural Land, whenever the Act mentions "compact building settlement" this means a group of at least 5 buildings, excluding buildings which serve only farming purposes, where the shortest distance between the neighbouring buildings does not exceed 100 m; and whenever the Act refers to an "area of compact building settlement", this means an area outlined by an envelope delineated 50 m from the outer edge of the outermost buildings constituting the compact settlement or in line with the boundaries of the plots where those buildings are situated, if the distance from those boundaries does not exceed 50 m.

With this in mind, an envelope of a 50 m radius or covering the outer boundaries of the plots must be delineated to mark the boundaries of the area of a compact building settlement.

Public administration bodies are often of opinion that the condition referred to in article 7 item 2a point 1 of the Act on the Protection of Woodland and Agricultural Land is not met and thus they assert that "less than a half of the compact piece of the land – agricultural area of class III – lies within the area of a compact building settlement." This is because the authorities when applying article 7 item 2a point1 of the Act assume that a "compact piece of land" means a whole wide complex of land within which lies the plot which is to be assigned for non-agricultural purposes. The author hereof is of opinion that this interpretation is wrong.

First of all, the whole sentence of article 7 item 2a point 1 in fine of the Act on the Protection of Woodland and Agricultural Land must be taken into account. It states that "the assignment of agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes does not require a permission from the minister competent

[6] Journal of Laws of 2016.

for rural development, if the land meets all the following conditions: 1) at least half of the area of each compact piece of land lies within the area of a compact building settlement [...]."

An in-depth analysis of the quoted provision leads to the conclusion that it refers to agricultural land of class I to III assigned for non-agricultural and non-forest purposes. This is indicated in the wording "the land meets" which refers exactly to the "agricultural land which constitutes agricultural areas of class I to III assigned for non-agricultural and non-forest purposes". It means that the phrase "each compact piece of land" refers to all the compact pieces of land which fall within the scope of the application to have them assigned for non-agricultural purpose (in fact, application to have the land development conditions determined).

In other words, it should be assumed that article 7 item 2a point 1 of the Act on the Protection of Woodland and Agricultural Land refers to "each compact piece of land" within the area whose agricultural status is to be changed, and not to the whole complex of agricultural land.

Secondly, noteworthy are the grounds of the draft legislation of 10 July 2015 on the amendment of the Act on the Protection of Woodland and Agricultural Land (*Sejm* paper no 3157), where it is highlighted that the conditions set out in article 7 item 2a point 1-3 (despite certain modifications in the legislation process, their merits in comparison to the original project have not changed) refer to "the location of land whose purpose is to be changed" both at the micro- and macro-scale, and the aim of the act is to allow building construction within the rural layout and to prevent the dispersion of the building settlement. No argument raised in the grounds of the act leads to the conclusion that the size of the whole complex of agricultural land may be a condition of changing the land's status to non-agricultural one by way of an administrative decision. Also no such category appears either in the act or in the grounds thereof.

Thirdly, the interpretation presented above is supported by the interpretation settled on the basis of the previous wording of article 7 item 2a point 1 of the Act on the Protection of Woodland and Agricultural Land. It is worth reminding that until 25 May 2013 article 7 item 2 point 1 of the Act provided for an area-related criterion which allowed for the assignment of land of class I-III for non-agricultural purposes by way of an administrative decision, with this criterion based on the notion of "compact area" of the land.

Previously in administrative case law it was assumed that the area-related criterion as set out in the previous version of article 7 item 2 point 1 of the Act on the Protection of Woodland and Agricultural Land "refers not only to the area of the plot on which the investment is planned, but to the whole compact complex of agricultural land within which the plot is situated". Such was the stand of the Regional Administrative Court in Warsaw expressed in the judgment of 23 May 2006 [7] and it was repeated in subsequent judgments of the Regional Administrative Court in Warsaw of 21 March 2007[8] and 05 September 2008[9].

The concept so widely construing the area-related norm referred to in article 7 item 2 of the Act on the Protection of Woodland and Agricultural Land has not been supported in the Supreme Administrative Court judicature. Since 2008, the Supreme Administrative Court has consequently taken a stand that the "compact area" does not mean the area from which a piece of land is marked off to be assigned for non-agricultural and non-forest purposes, but the area subject to such new purpose.

The most often quoted and most characteristic in this scope are the judgments of 27 June 2008[10] and of 10 February 2010[11].

In the former, the Court stated that article 7 item 2 point 1 of the Act on the Protection of Woodland and Agricultural Land "expressly states (...) that the area-related criterion refers to the new area whose purpose is to be changed. The area-related criterion laid down in article 7 item 2 point 1 of the Act on the Protection of Woodland and Agricultural Land applies therefore only to the area whose purpose is to be changed from agricultural land or woodland to the land used for other purposes".

Also in judgment II OSK 299/09 the Supreme Administrative Court did not share the stand that the criterion of a "compact planned area" may be applied not so much to the plot which is subject to the procedure to have land development conditions determined, but to the whole "compact complex of agricultural land within which that plot is situated".

The Court highlighted that applying the requirement of the permission for the change of the land's purpose to the area larger than the plot which

[7] IV SA/Wa 1734/05.
[8] IV SA/Wa 30/07.
[9] IV SA/Wa 439/08.
[10] II OSK 738/07.
[11] II OSK 299/09.

is subject to the procedure to have land development conditions determined is based on a broad interpretation to the party's disadvantage. Whereas, in the opinion of the Supreme Administrative Court, the statutory term of a "compact area" does not leave it open to interpretation. It clearly links the boundaries of the considered area with the change of its purpose, i.e. it prescribes the limitation of the area whose purpose is to be changed to the investor's plots". The area-related criterion of 0.5 ha refers only to the plots whose purpose is to be changed, not including the area from which the plots have been marked off."

The interpretation presented in judgments II OSK 738/07 and II OSK 299/09 quoted above was repeated inter alia in the judgments of 25 February 2010[12], 6 May 2010[13], 10 February 2011[14] and 3 February 2012[15].

With the quoted judicature in mind, it should be assumed that also under the currently applicable Act the phrase a "compact piece of land" just like the former "compact area" refers to the land "assigned" for non-agricultural purpose, not to the whole complex of land from which the given piece of land is marked off.

In the new provision of article 7 item 2a point 1 of the Act on the Protection of Woodland and Agricultural Land, analogically to the previous article 7 item 2 point 1, the area-related requirement (this time in the light of being situated within the area of a compact building settlement) refers to the "compact pieces of land" subject to non-agricultural purposes.

Notwithstanding the above, it must also be pointed out that very often the requirement expressed in article 7 item 2a point 1 of the Act on the Protection of Woodland and Agricultural Land should be deemed met, even if we assume that the phrase a "compact piece of land" contained therein refers to the whole complex of land whose part is assigned for non-agricultural and non-forest purpose. According to article 4 item 29 of the

[12] II OSK 429/09.

[13] II OSK 670/09.

[14] II OSK 303/10.

[15] II OSK 2225/10. Judgments cited partly from J. Szuma, A. Zieliński, *Problemy interpretacyjne kryterium „zwartego obszaru przeznaczenia gruntu rolnego na cele nierolnicze i nieleśne*", in: J. Bieluk, A. Doliwa, A. Malarewicz-Jakubów, T. Mróz, *Z zagadnień prawa rolnego, cywilnego i samorządu terytorialnego – Księga Jubileuszowa Profesora Stanisława Prutisa*, Białystok 2012, p. 306 *et seq*.

Act, a "compact building settlement" is composed of at least 5 buildings where the shortest distance between any of them is 100 m."

Apart from the issue commented above, authorities often state that in a given case also the requirement laid down in article 7 item 2a point 4 of the Act on the Protection of Woodland and Agricultural Land is not met.

Pursuant to article 7 item 2a point 4 of the Act on the Protection of Woodland and Agricultural Land, "the assignment of agricultural land which constitutes agricultural areas of class I to III for non-agricultural and non-forest purposes does not require a permission from the minister competent for rural development, if the land meets all the following conditions [...]: 4) its area does not exceed 0.5 ha, regardless of whether it constitutes a whole or several separate pieces".

The author hereof is convinced that the 0.5 ha criterion refers not to the whole complex of agricultural land of class I-III but to the area of non-agricultural purpose.

The invoked article 7 item 2a point 4 of the Act on the Protection of Woodland and Agricultural Land implies that the phrase "its area" clearly refers to the land of class I-III assigned for non-agricultural and non-forest purposes.

The validity of such interpretation is evidently confirmed in the grounds of the draft legislation of 10 July 2015 on the amendment of the Act on the Protection of Woodland and Agricultural Land (Journal of Laws of 2015, item 1338) (*Sejm* paper no 3157) where it was pointed out that "the purpose of limiting a single modification to 0.5 ha is to ensure that the investments carried out under the exemption from the obligation to obtain the permission for the change of purpose of the agricultural area of class I-III will be restricted only to supplementing the existing building settlement."

In conclusion, it must be stated that in the light of article 7 item 2a point 1-4 of the Act on the Protection of Woodland and Agricultural Land regarding a given investment, if the total of a compact part of an agricultural land of class I-III assigned for non-agricultural purposes according to the investor's request lies within the area of a compact building settlement and the total area of that agricultural land of class I-III subject to the request does not exceed 0.5 ha, there is no obstacle to assigning that land for non-agricultural purposes under article 7 item 2a of the invoked Act.

Bibliography

Informacja o wynikach kontroli ochrony gruntów rolnych i leśnych w procesie zabudowy przemysłowej i innymi obiektami budowlanymi na terenie Dolnego Śląska w latach 2006-2009 (3 kwartały), NIK – Delegatura we Wrocławiu, Wrocław, Wrzesień 2010 r.

Klat E., *Ochrona gruntów rolnych a miejscowy plan zagospodarowania przestrzennego*, Rejent 1996, No. 9.

Szuma J., Zieliński A., *Problemy interpretacyjne kryterium „zwartego obszaru przeznaczenia gruntu rolnego na cele nierolnicze i nieleśne"* in: J. Bieluk, A. Doliwa, A. Malarewicz-Jakubów, T. Mróz, *Z zagadnień prawa rolnego, cywilnego i samorządu terytorialnego – Księga Jubileuszowa Profesora Stanisława Prutisa*, Białystok 2012.

Zieliński A., *Orzecznictwo sądowo administracyjne w sprawach odrolnienia gruntów, „Zeszyty Naukowe Sądownictwa Administracyjnego"* 2010, No. 5-6, p. 498.

E-mail:
karolinaszuma@gmail.com