

“Common Communal Commotions”

According to the Public Roads Act, the construction or reconstruction of an exit is only possible after obtaining a permit from the road administrator for the location or reconstruction of the exit, which should be in a form of an administrative decision. The regulation seems to be clear and leaves no doubt as to the form of settling the matter. However, the administrative offices make creative interpretations of the regulations and instead of administrative decisions, they issue so called “arrangements” (PL: *uzgodnienia*), which are unknown to the administrative procedure. An administrative decision is the only legal form of deciding on the location of an exit from a public road to a private property, which gives the investor full rights, including the possibility to appeal to a higher level authority. These “arrangements” most often do not contain all the elements that a decision should consist of and for this reason cannot be recognized as a decision. Consequently, this means that investors may face further difficulties.

It should be noted that a zoning decision may be issued on the condition that the plot has an access to a public road. The absence of a decision on the location of an exit may result in a refusal to issue a zoning decision. It should be taken into account that in order to ensure access to a public road, it is not sufficient for a given plot to be located in the immediate vicinity of a public road. It is also necessary to have a legal exit from the plot to a public road, which cannot exist without a correct administrative decision in this respect. The next stage in the investment process at which access to a public road is verified is the issuance of a construction permit. Thus, even if a given investment is pursued on the basis of a local zoning plan or if the existence of actual and legal access to a public road has been overlooked by the authority issuing the zoning decision, this circumstance is again examined by the authorities proceeding with the construction permit application. If, at this stage, the authority incorrectly concludes that the arrangement constitutes an administrative decision - this circumstance does not mitigate the risk of the construction permit being revoked under the extraordinary procedures.

In addition, if the investor has started construction works without a formal decision on the location of the exit, there is a risk that construction works may be stopped as a result of the intervention of the construction supervisory authorities. In extreme cases, this may lead to an order to demolish part of the project, which entails additional costs and delays.

The above proves that the problem we have addressed is not just a legal "clinginess" about insignificant issues - on the contrary, it turns out that the title common and communal commotions imply a number of seriously negative consequences for the investor.

In our practice, in addition to "arrangements" we have also encountered another interesting product of the clerical imagination used instead of issuing a decision on the location of the exit - that is, a printed map with a plan of the exit marked with the stamp of the Head of the Municipality with the note "I agree". We do not know under what rules the clerks proceeded when issuing this type of document. Perhaps based on the principle that silence is golden. It turns out, however, that universal and socially established principles should not always be applied in official practice. Let us remember, after all, that speech is silver and, although this metal is cheaper than gold, in this case its use is required. The law leaves no choice. A saving in the written word can expose investors to serious problems and, instead of saving money, cause them a lot of trouble.

Do you want to know more? Contact us!

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