

Nicolaus Copernicus University in Toruń
Faculty of Law and Administration

Karolina Rokicka-Murszewska

Planning fee – study in administrative law

Abstract

Principles of town and country planning policy by local government units and governmental authorities, as well as the scope and ways of procedure in matters of allocation of land for specific purposes and setting the principles of land development, are stipulated in the Act of 27 March 2003 on Town and Country Planning¹ [u.p.z.p.]. On the territory of a borough, according to the legislative authority, the borough authorities are competent to take care of the town and country planning, at the same time specifying the borough's task to create and implement its own town and country planning policy on the territory of a borough, including the adaptation of local town and country development plans².

The local plan significantly influences a financial situation of a local government unit. A voivode, mayor or a president of a city, is obliged to assess the influence of regulation of town and country planning rules on a borough financial situation, and the assessment is made in the prognosis of financial effects. An entity making the prognosis of financial effects of the local plan is obliged to take into account provisions of art. 36 u.p.z.p., stipulating financial effects of the implementation of a new local plan, or of an adoption of the amendment of a town and country development plan. Art. 36 u.p.z.p. specifies two groups of events which occur as a result of the adoption of a new local

¹ Act of 27 March 2003 on Town and Country Planning (i.e. Dz.U. of 2016 item 778 as amended), hereinafter: u.p.z.p.

² Hereinafter also: local plan.

plan, or amendment of a previous town and country development plan: an impediment or limitation of a possibility to enjoy an immovable property or part thereof, or enjoying an immovable property in the previous way with a simultaneous decrease or rise of its value. The analysis and assessment of the last mentioned institutions, meaning a fee specified in art. 36(4) u.p.z.p. constitutes the main subject of this dissertation.

The dissertation is divided to six chapters. The first chapter presents a characteristics of legal regulations constituting the grounds for the planning fee. Therefore, on the one hand, analyzed are historical conditions of town and country planning since 1918 – on the other hand – the current legal grounds of the planning fee. Deliberations contained in the second chapter regarding terminological issues are to answer the question what term is the most adequate for the fee specified in art. 36(4) u.p.z.p. The third chapter contains findings regarding a legal character of the planning fee, which means deciding whether the planning fee is a tax, a charge, or maybe a surcharge, meaning a non-tax budget payment. The fourth chapter presents a legal construction of the planning fee, based on the following elements: entities (limited to entities obliged to pay it), the subject of the fee and percentage rates. The fifth chapter contains substantive law premises for the imposition of the planning fee, whose detailed analysis, undoubtedly, is one of the most important parts of this dissertation. And the ascertainment of the existence of premises constitutes the grounds for issuing an administrative decision setting the fee's amount. Consequently, in the sixth chapter the attention is drawn to the issue of the administrative decision and its substantive law aspects, also taking into account deliberations concerning decisions issued upon a request. The dissertation's ending contains above all final conclusions of the dissertation. Also the legislative authority's proposals regarding changes or liquidation of the planning fee are presented and analyzed. Against such a background an attempt shall be made to formulate *de lege ferenda* postulates.