

THE FUSION AND DIVISION OF LAND PARCELS FOR AN IMPROVEMENT OF THEIR INVESTMENT STRUCTURE

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Abstract

Land parcels with a bad geometric shape and too narrow are significantly less useful for investment purposes. In many countries, if such parcels are formally dedicated for development, like in Poland according to the rules of the Local Spatial Development Plan - LSDP – their bad geometry can lower or even disable any kind of development. Rules are slightly different in European countries, but there are some possibilities to improve that situation. In case of Polish regulations, the Act of 21 Aug 1997 about Real Estate Economy, Art. 98b, indicates that owners or perpetual usufructs (holders) of such parcels can apply accordingly for their parcels fusion first and then for division of the fused parcels in a one short procedure only (ACT, 1997). There is one condition, that all land holders must poses common homogeneous ownership rights. But there also second procedure possibility in old traditional way without applying the Art. 98b, going through a step by step procedure which is slightly longer but also applicable. So two different procedures can be performed obtaining the same final result and both legally accepted as methods. Surprisingly, in different parts of Poland, these two methods are in use parallely. Moreover, both methods are right from legal point of view, however, one of these two methods based on the Art. 98b is described by surveying regulations what can be regarded as a recommendation almost (RUDNICKI, BIENIEK, 2009). Another approach to these procedures is preferred by the mortgage register court judges. The procedure consisting of fusion first and then division is linked to so called "cadastral continuity" which is not necessary but can be helpful to clear whole procedure especially in a mortgage register. Is it really required? Let us try to answer that question and compare both procedures.

Key words: parcels structure, parcels fusion, parcels division, cadastral continuity, mortgage register records

Introduction

In many cases shape and size of land parcels are not suitable for development purposes. According to Polish regulations such parcels can be formally dedicated for development according to the Local Spatial Development Plan – shortly named LP. The bad parcels' shapes can lower or even disable any kind of development. Especially, on too narrow parcels is almost impossible to plan and build a house with required 4 m separations of walls referring to parcel borders. To improve the investment parcels structure the procedure consisting of their fusion firstly and division after that is suitable in many European countries. In Poland there are two different possible procedures but both accordingly to Polish regulations are legal. (RUDNICKI, 1995).

The Act of 21 Aug. 1997 about Real Estate Economy, Art. 98b, gives an opportunity to improve development conditions of such parcels by their fusion and the division of the fused parcel in a one step procedure. For example, it means that some parcels no 1 and 2 are fused and final parcels no 3 and 4 are obtained in a one step procedure. There is a legal requirement that owners or perpetual usufructs (holders) of such parcels can apply accordingly for their parcels fusion first and immediately the division after that through one decision only. (WOLANIN, 2010).

But there is also second possibility in old traditional way without applying the Art. 98b, going through a two steps procedure which is slightly longer but also applicable and the fusion and division steps are semi separated. It means that after a fusion, for example of three parcels with numbers 1, 2, 3, we can obtain at a first step a transition parcel no 4, which is then divided on for example five new parcel with numbers 5, 6, 7, 8, 9. In a such second procedure, the "cadastral continuity" is ensured but it is not necessary. According to the mortgage court judges it can be helpful to avoid in the mortgage register unclear steps of records of continuous parcels' history. Is it really needed? Let us try to discuss that problem using real samples of such procedures. To compare the procedures according to the Art. 98b rule

and without it, two sample cases were investigated which were performed in Swietokrzyskie and Malopolska districts in Poland.

There is also very important aspect of applicability of tax regulations. The tax rules were firmly explained by the Head of Tax Chamber in Warsaw through individual opinion concerning the fusion and division of parcels. (DYREKTOR, 2011). It is slightly complicated so will be as a topic of next, separate publication.

Case study with use of the Art. 98b concerning the Swietokrzyskie district sample procedure

The Pinczow case was performed accordingly to the Act of 21 Aug 1997 about Real Estate Economy, Art. 98b and gives an opportunity to improve development conditions of two parcels no 365 and 366.

In that case, parcels no 365 and 366 were fused and divided in a one step procedure obtaining two new parcels nos 1159 and 1160 respectively. Of course, there is requirement that owners of such parcels should apply accordingly for their parcels fusion first and the division after that in a one step through one administrative decision only.

As you can see an cadastral orthophotomap is very useful for presentation of vector boundaries during the fusion and division procedure as an compilation with raster photographic orthophotomap. (FLOREK-PASZKOWSKI, 2010).

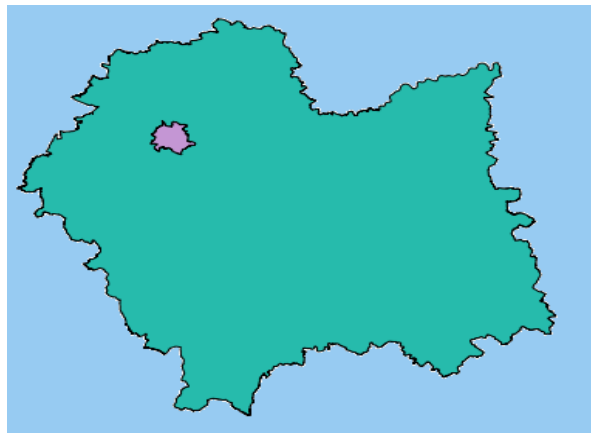


Fig. 1. Sample case located in Pinczow commune, Pinczow county, Swietokrzyskie district.
Source: Own study.



Fig. 2. Parcels no 365 and 366 unsuitable for development because of their bad shape.
Source: Own study.



Fig. 3. Initial situation before consolidation and division procedure.
Source: Own study.

Fortunately, there was no problem with an access to a public communal road so it was easier to design final situation after division.

Before fusion and division procedure the parcels areas were respectively:

- parcel no 1159 – area 0,5903 ha, owner A,
- parcel no 1160 – area 0,5773 ha, owner B,
- total area of both parcels was 1,1676 ha.



Fig. 4. Final situation after fusion and division procedure.
Source: Own study.

After fusion and division procedure the parcels areas were respectively:

- parcel no 365 – area 0,5903 ha, owner A,
- parcel no 366 – area 0,5773 ha, owner B,
- total area of both parcels was 1,1676 ha – exactly like before procedure of fusion and division.

Let us briefly describe above illustrated whole procedure as the required following actions.

- 1) *Positive opinion of the Pinczow's mayor about preliminary plan of fusion and division.*
- 2) *Preliminary notarial act of exchange – preliminary contract between owners of the parcels committing them to transfer their ownership rights to new parcels during one month after the validity of an administrative decision of the mayor accepting fusion and division of parcels.*
- 3) Signing the protocol of parcels borders points location and marking borders by surveying concrete marks by licensed land surveyor.
- 4) Preparation of a cadastral map in scale 1:1000 concerning fusion and division procedure and showing initial and final data of parcels referring to their numbers and areas.
- 5) Submission of whole documentation to the county office for a clause that documentation was correct, accepted and taken to the state surveying and cartographic resource.
- 6) *The Pinczow mayor conditional decision of the fusion and division. The condition is concerning commitment of owners described above in point no 2).*
- 7) *Final notarial act referred to the commitment described above in point no 2).*
- 8) Update of cadastral register at the county office and issuing the records for new parcels.
- 9) Update of court mortgage registers for new parcels.

** Points 1), 2), 6) and 7) are legal actions.*

Case study without use of the Art. 98b concerning the Malopolska district sample procedure

The Zabierzow case was performed without use the Act of 21 Aug. 1997 about Real Estate Economy, Art. 98b. Of course, as previously there is requirement that owners of such parcels should apply accordingly for their parcels fusion first and the division after that.

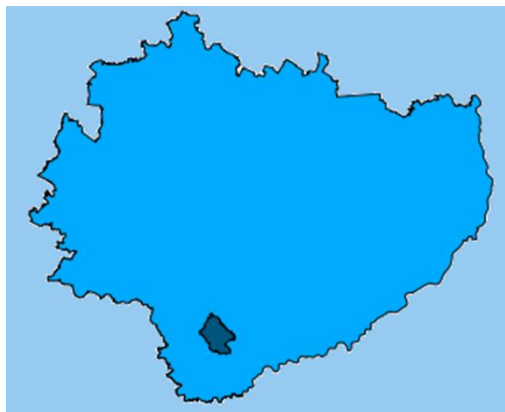


Fig. 5. Sample case located in Zabierzow commune, Krakow county, Malopolskie district.
Source: Own study.



Fig. 6. Parcels 1582/1 and 1582 with a bad shape as too long and too narrow for development.
Source: Own study.

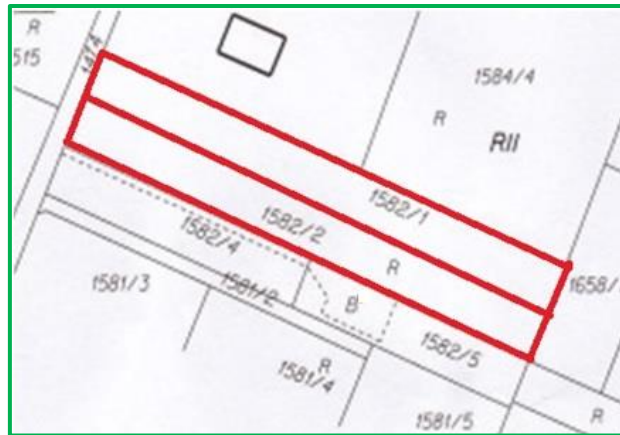


Fig. 7. Initial situation before the procedure first step fusing parcels 1582/1 and 1582.
 Source: Own study.

In that case, two parcels 1582/1 and 1582/2 were fused during first step giving a new intermediate parcel no 1740.

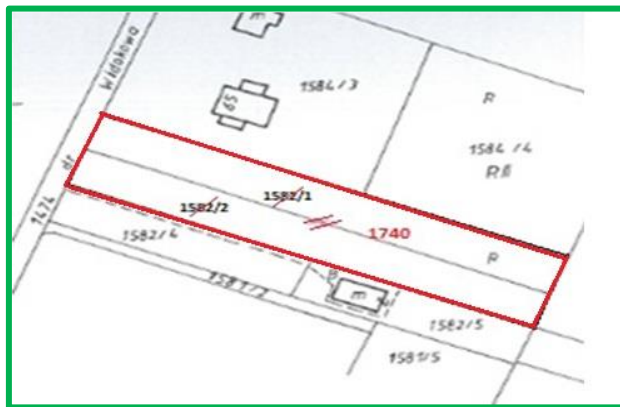


Fig. 8. Intermediate situation after fusing parcels 1582/1 and 1582 giving a new fused parcel no 1740.
 Source: Own study.

Before fusion procedure the parcels areas were respectively:

- parcel no 1582/1 – area 0,23 ha, owner A (rounded to 1 a),
- parcel no 1582/2 – area 0,22 ha, owner B (rounded to 1a),
- total area of both parcels was 0,45 ha (rounded to 1a) and 0,4499 ha, without rounding according to new surveying data.

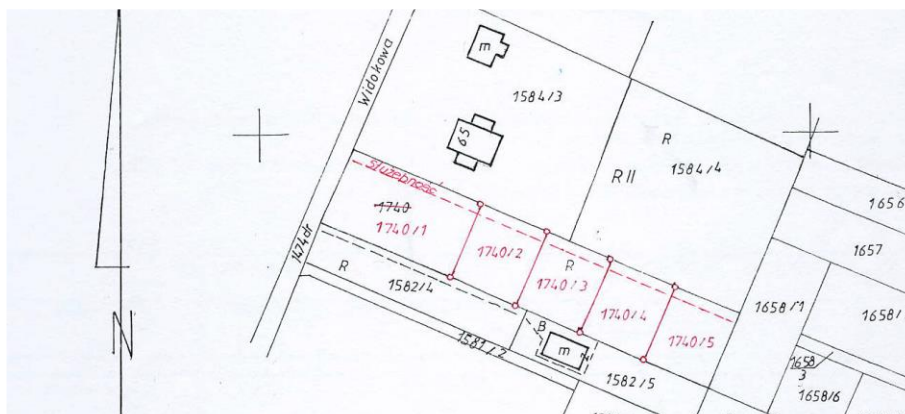


Fig. 9. Final situation after the procedure second step - division of parcel 1740 into five new parcels, in red.
 Source: Own study.

During a second separate step of procedure the parcels were divided, obtaining finally the five new parcels respectively as stated below.

- parcel no 1740/1 – area 0,1499 ha, owner A
- parcel no 1740/2 – area 0,0750 ha, owner A
- parcel no 1740/3 – area 0,0750 ha, owner B
- parcel no 1740/4 – area 0,0750 ha, owner B
- parcel no 1740/5 – area 0,0750 ha, owner B
- total area of both parcels was 0,4499 ha – exactly like before the procedure of fusion and division.

Let us describe above two steps procedure as the required following actions.

- 1) *Submission the parcels fusion documentation to the county office concerning creation of the new intermediate parcel 1740 and the starost decision.*
- 2) *Positive opinion of the Zabierzow commune head about preliminary plan of division of the parcel 1740.*
- 3) *Preliminary notarial act of exchange – preliminary contract between owners of the parcels committing them to transfer their ownership rights to new parcels during one month after the validity of an administrative decision of the commune head approving the division of parcel 1740.*
- 4) Signing the protocol of parcels borders points location and marking borders by surveying concrete marks by licensed land surveyor.
- 5) Preparation of a cadastral map in scale 1:1000 concerning the division procedure and showing initial and final data of parcels referring to their numbers and areas.
- 6) Submission of whole documentation to the county office for a clause that documentation was correct, accepted and taken to the state surveying and cartographic resource.
- 7) *The Zabierzów commune head conditional decision of the division. The condition is concerning commitment of owners described above in point no 3).*
- 8) *Final notarial act referred to the commitment described above in point no 3).*
- 9) Update of cadastral register at the county office and issuing the records for new parcels.
- 10) Update of court mortgage registers for new parcels.

** Points 1), 2), 3), 6), 7), 8) are legal actions.*

Recommendations and conclusions

Two different procedures concerning improvement of parcels investment structure by their fusion and division in Poland were presented with use and without use of the Act of 21 Aug 1997 about Real Estate Economy, Art. 98b. The following main conclusions can be stated as our recommendations concerning the efficient, economical and less time consuming:

1. The procedure based on application of Polish regulations stated in the Act of 21 Aug 1997 about Real Estate Economy, Art. 98b is better because is simply, faster and less time consuming than two-steps procedure with creation of an intermediate parcel.
2. Licensed land surveyor or cadastral surveyor can easy assure correctness of the fusion and division procedure by compatibility of initial and final areas of parcels in a one-step procedure.
3. During a one-step fusion and division procedure there is less administrative decisions. The only one decision must be taken approving a fusion and division at once.
4. The one-step procedure documentation gives possibility to reduce significantly volume of documents by half to one division map only and one list of cadastral data changes.
5. On the base of above can be suggested recommendation to use procedure based on the Act of 21 Aug 1997 about Real Estate Economy, Art. 98b.

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