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## **EVALUATION OF THE PROCEDURE FOR EXCLUDING LAND FROM AGRICULTURAL PRODUCTION IN THE CONTEXT OF DISCLOSURE OF CHANGES IN THE USE OF LAND IN LAND AND BUILDING RECORDS**

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### *Abstract*

The purpose of this article was to evaluate the procedure for excluding land from agricultural production in the context of disclosing land use changes in the land and building records. In order to examine the problem presented, a descriptive analysis of existing legal acts and publications was performed, and a case study was analyzed. The research was based on data from 2010-2019 obtained from the District Eldership and District Center of Geodetic and Cartography Documentation in Kazimierza Wielka (Świętokrzyskie Voivodeship). The work presents subsequent stages related to the disclosure of changes in land development created on the land as a result of the start of the investment process. Attention was drawn to the extension of the investment process by the applicants for excluding land from agricultural production. Studies have shown that only 15% of decisions authorizing the exclusion of land from agricultural production in the Kazimierz District in the years 2010-2018 were actually implemented and completed with updating the land and building records. However, this is not a value corresponding to the real number of excluded areas, because based on the field interview, it can be indicated that only on 12% of the analyzed plots, the investment process was not started on the land. This is primarily due to the obligation to pay a fee for the sole exclusion of land

from agricultural production, but also to a change in the method of calculating the tax from agricultural tax, to a several times higher property tax.

**Keywords:** exclusion of land from agricultural production, registration of land and buildings, change of land use, protection of agricultural land

## INTRODUCTION

The civilization development of the society, population growth and the expansion of industry and cities contribute to the systematic increase in land demand (Górska and Michna 2010). Demand for the land can only be satisfied by the transfer of land between particular sectors of the economy and a change in their purpose. Unfortunately, it usually takes place in one direction, from agriculture to non-agricultural departments (Instruments ... 2009, Kwartnik-Pruc *et al.* 2010, Jasińska 2017, Benduch 2017). Although the change of use process will change to a large extent unavoidable, its dynamics and spatial location should be constantly monitored (Woch 2014). Lack of control by the district foreman over the implementation of the exclusion of land from agricultural or forestry production causes abuse of regulations related to the protection of agricultural land (Gałuszka and Hanus 2011). This state of affairs has important consequences for the budgets of municipalities, both due to the lack of income from land-dwelling fees, as well as income related to real estate taxation (Maćkiewicz and Motek 2014, Fencenloben 2009, Benduch and Pęska 2016).

Excluding land from agricultural production is becoming an increasingly frequent phenomenon in Poland. At present, the protection of agricultural land is to be guaranteed by the Act on the protection of agricultural and forestry land adopted in 1995 (Act 1995). Under it, only land intended for non-agricultural and non-forest purposes in the local spatial development plan may be excluded and this is connected with obtaining an administrative decision. In the absence of a local spatial development plan, an application should be submitted to the competent office for its development or for a decision on the terms of development of the property. In addition, high fees for excluding land from agricultural production were introduced to reduce the number of land excluded. The protection of agricultural land is important because lands of grades I-II are most often excluded, i.e. the most valuable, and at the same time covering the smallest area of Poland compared to other valuation classes.

The purpose of this article was to evaluate the procedure for excluding land from agricultural production in the context of disclosing land use changes in the land and building records. In order to examine the problem presented, a descriptive analysis of existing legal acts and publications was performed, and a case study was analyzed. The research was based on data from 2010-2019

obtained from the Poviát Eldership and Poviát Center in Kazimierza Wielka (Świétokrzyskie Voivodeship).

## **EXCLUSION OF LAND FROM AGRICULTURAL PRODUCTION IN THE LIGHT OF LAW**

The current legal act regulating the exclusion of agricultural and forest land from agricultural production is the Act of February 3, 1995. on the protection of agricultural and forest land. According to it, the exclusion of land from production is understood as the commencement of land use other than agricultural or forestry. However, to start the entire procedure, several conditions have to be met. First of all, lands that are subject to exclusion should be designated for non-agricultural and non-forest purposes in the local spatial development plan. If a plot is intended for agricultural purposes, it is necessary to submit an application for changes to the existing plan. If there is no local plan, an application should be submitted to the competent authority for its preparation, or for a decision on the conditions of real estate development. Typically, the competent authority to give consent to change the purpose of the land is the municipal council, however, for some lands, the Act (Act 1995) obliges the municipality to obtain the consent of higher-level bodies.

The next step is the administrative procedure concluded with the issue of a decision authorizing the actual exclusion of land from production. The authority competent in this proceeding is the district foreman, Director of the Regional Directorate of State Forests, or the director of the national park, while the entities that may submit an application to initiate such proceedings are: the owner, perpetual usufructuary, self-employed, administrator, user or lessee.

Pursuant to the Act (Act 1995), permission for exclusion in the form of a decision issued by the foreman is granted in the case of agricultural lands made of soils of mineral and organic origin, classified in classes I, II, III, IIIa and IIIb, and agricultural lands in classes IV, IVa, IVb, V and VI produced from soils of organic origin, as well as forest land and other land mentioned in art. 2 clause 1 points 2-10 of the Act (Act 1995). According to statistical data, in 2016, 2967 ha were excluded for non-agricultural purposes in Poland, of which bonitation classes from I to III accounted for 64%, class IV lands 32%, and class V and VI lands – 4% (GUS 2017). For soils of classes IV, IVa, IVb, V and VI not produced from soils of organic origin, no decision is taken to exclude land from agricultural production.

For forest land designated for non-agricultural and non-forest purposes, the decision is issued by the director of the regional management of the State Forests, and for the land included in the national parks, the director of the national park. In the case of other lands, only the foremans certificate is required stating

that the land is not protected and does not require exemption from agricultural production under the provisions of Chapter 3 of the Act (Act 1995). However, this does not release the authorized entity from submitting the application. In addition, since 2013, pursuant to the amendment to the Act (Act 1995), art. 10a, which specifies that the provisions of the Act do not apply to agricultural land located within the administrative boundaries of cities.

The exclusion may take place for a specified period or be permanent. After receiving the decision allowing the exclusion from agricultural production, there is a one-time payment obligation and annual fees (for a period of 10 years). The amount of fees depends on the class of land and the area excluded from production (Table 1), and the payment obligation takes place when the land is actually excluded from agricultural or forestry production.

**Table 1.** The amount of fees for excluding 1 ha of agricultural land from production

Soils of mineral and organic origin.	Soil of organic origin
<ul style="list-style-type: none"> <li>• Class I – 437 175 zł.ha<sup>-1</sup></li> <li>• Class II – 378 885 zł.ha<sup>-1</sup></li> <li>• Class IIIa – 320 595 zł.ha<sup>-1</sup></li> <li>• Class IIIb – 262 305 zł.ha<sup>-1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Class IVa – 204 015 zł.ha<sup>-1</sup></li> <li>• Class IVb – 145 725 zł.ha<sup>-1</sup></li> <li>• Class V – 116 580 zł.ha<sup>-1</sup></li> <li>• Class VI – 87 435 zł.ha<sup>-1</sup></li> </ul>
<ul style="list-style-type: none"> <li>• Permanent meadows and pastures I – 437 175 zł.ha<sup>-1</sup></li> <li>• Permanent meadows and pastures II – 361 398 zł.ha<sup>-1</sup></li> <li>• Permanent meadows and pastures III – 291 450 zł.ha<sup>-1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Permanent meadows and pastures IV – 174 870 zł.ha<sup>-1</sup></li> <li>• Permanent meadows V – 145 725 zł.ha<sup>-1</sup></li> <li>• Permanent pastures V – 116 580 zł.ha<sup>-1</sup></li> <li>• Permanent meadows and pastures VI – 87 435 zł.ha<sup>-1</sup></li> </ul>

Source: Own study based on Act ... (1995)

The one-time fee is reduced accordingly by the value of the land, determined according to market prices applied in a given place in the land trade, on the day of the actual exclusion. It must be paid within 60 days from the date on which the decision became final. In contrast, the annual fee is 10%. In the case of permanent exemption, the obligation to pay it lasts 10 years, whereas in the case of temporary exclusion for the period of exclusion, however, not longer than 20 years. The introduction of such high rates is aimed at discouraging the exclusion of the most valuable lands from agricultural production (Kwartnik-Pruc *et al.* 2010).

However, the Act exempts from the fees land excluded from agricultural or forestry production for housing purposes, if the excluded area does not exceed 0.05 ha in the case of housing and 0.02 ha for each apartment, in the case of a multi-family building. Exemptions also apply to the exclusion of land with an area of up to 1 ha in order to implement public utility investments in education and upbringing, culture, religious worship or health care and social welfare, if

the investment is to meet the needs of the local community, or to expand or establish cemetery, and it is not possible to implement this investment on non-protected grounds. However, there are no legal regulations specifying exactly how to determine this area.

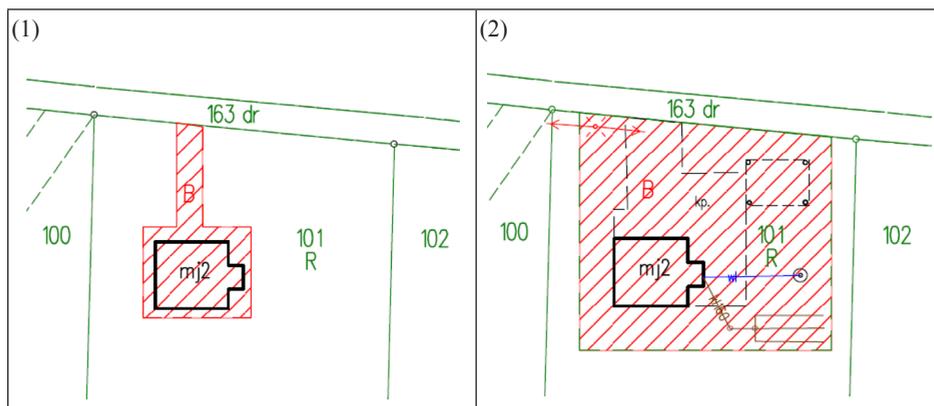
### **DETERMINATION OF LAND AREA INTENDED FOR EXCLUSION FROM AGRICULTURAL PRODUCTION**

At present, the land surface subject to exclusion from agricultural or forestry production is determined in three stages. The first of them takes place at the planning level and is performed by the designer. While preparing a construction project, on the map, apart from the necessary elements of development and utilities, the designer applies the boundaries of the planned area to be excluded. Due to the lack of top-down guidelines regarding its shape and boundaries, it is usually as small as possible to avoid charging.

The next stage, in which the area excluded from agricultural and forestry production is determined, takes place as part of geodetic works related to the demarcation of a building object. After setting out the building, the surveyor should prepare a technical survey, including list of land changes related to the plot in question. The demarcation of the building begins the construction process, which means that the use of Bp should be disclosed in the land and building records, i.e. urbanized undeveloped areas or during development. In Annex 6 to the Regulation (Regulation 2001), it is indicated that urbanized areas, whether built up or under development, include land for which construction has begun but has not been completed resulting in excluding these lands from agricultural or forestry production within the meaning of the Act (Act 1995), or which, as a result of development, were excluded from agricultural or forestry production, but on which previously existing buildings were demolished, and at the same time the land is intended for development. In addition, the annex specifies that when determining the outlines of the use of Bp, the provisions of decisions issued under the Act (Act 1995) and the content of the plot development project are taken into account. At this stage, the area of use of Bp should be consistent with the area for which the decision to exclude from production was issued. It should be emphasized that due to the inaccuracy of existing law, in the Kazimierz district, works related to the demarcation of buildings are reported, however, most often the survey is not submitted from the work done. In the records of land and buildings, in very few cases, disclosed use of Bp.

The third stage when determining the land surface occurs after the decision authorizing the exclusion and completion of the investment. This time it is done by a surveyor during the geodetic as-built inventory. Pursuant to the provisions of law, there is then a change of land use to B as residential areas or Br as built-up

agricultural land. The land surveyor should report this change when submitting the survey to the district center of geodetic and cartographic documentation. It then encloses with it a list of soil changes containing the surfaces of old and new land and the coordinates of the break points of the changed contours. The new use area of the land surveyor should be determined on the basis of Annex 6 to the Regulation on the registration of land and buildings (Regulation 2001), i.e. exclude the entire area of land not subject to permanent cultivation, or unsuitable for cultivation, nor occupied for equipment and structures supporting agricultural production or gardening. Therefore, it is not uncommon for the land area determined by the designer before the decision to exclude whether the land disclosed in the land registry database as part of stake-out, and the area shown in the records during the inventory by the surveyor may vary. Figure presents an example illustrating the differences in determining the range of land excluded from production. Figure 1 shows the range of exclusion and area of approximately 0.03 ha highlighted by the designer and duplicated by a surveyor during stakeout. In figure (2), the surveyor took into account the existing land development, among others shelter, ground hardening, utilities and on this basis and in accordance with the guidelines of regulation (Regulation 2001), determined the surface of the land, which should be disclosed as B – residential areas. It is an area of about 0.13 ha.



Source: Own study

**Figure 1.** Differences in determining the range of land excluded from production

## ANALYSIS OF EXCLUSION FROM AGRICULTURAL PRODUCTION IN THE KAZIMIERSKI COUNTY

The district of Kazimierz was chosen to analyze the exclusion of land from agricultural and forestry production. It is located in the Świętokrzyskie Voivodeship, on the border with the Małopolskie Voivodeship. It consists of five municipalities, three urban-rural ones: Kazimierz Wielka, Opatowiec and Skalbierz, and two rural ones: Bejsce, Czarnocin and Opatowiec. Due to the geographical location, loess ground and local traditions, 90% of the district area is covered by arable land. The highest percentage share of arable land in the municipality area of 92% occurs for the municipality of Skalbierz, the lowest in the order of 83% for the commune of Opatowiec. The number of forests in the Kazimierz district is small compared to the voivodeship, as the degree of forest cover is only 2.9%, with the provincial index of 28.4%. The smallest forest area is in the Skalbierz commune, while the largest one covers over 9% of the commune's area in the Opatowiec commune. In addition, over 5,000 farms will be found in 34 thousand residents. In the Kazimierz powiat one of the highest average size of agricultural land on a farm in the voivodeship is recorded, amounting to 6.06 ha, with the provincial average of 3.90 ha. The largest group, however, are farms much smaller, with an area of 1 – 5 ha. On the basis of GUS data, however, we can observe a continuous decline in both the number of farms and agricultural land in the Świętokrzyskie Voivodeship (Table 2), which translates into trends in the Kazimierz district.

**Table 2.** Agricultural land excluded for non-agricultural purposes and the number of farms in the Świętokrzyskie Voivodeship

Year	Excluded areable lands by bonitation class (ha)						Total	Numer of farms
	Mineral			Organic		Other soil		
	I-II	III	IV	IV	V-VI			
2016	5	10	7	-	3	73	98	85308
2015	3	11	5	-	2	43	64	No data available
2014	2	20	14	-	1	28	65	90241
2013	3	8	7	-	-	22	40	96672

Source: Own study based on (Statistical Yearbook of Agriculture 2018)

Information on the exclusion of land from agricultural production was obtained from the register kept by the Department of Agriculture and Environmental Protection of the Foreman in Kazimierza Wielka. An additional source of information was the geoportal of the Kazimierz district and aerial photographs

made available in the Google Earth program, because they were more up-to-date than orthophotomaps placed on the geoportal.

In the district of Kazimierz in the years 2010-2018, there were 147 applications for excluding land from agricultural production. The largest number of them – 74 in the commune of Kazimierza Wielka, 24 in the Skalbmierz commune, 15 in the municipalities of Bejsce and Czarnocin, and the least – 9 in the commune of Opatowiec. Most applications were received in 2010-2012 and in 2017, while the lowest in 2014-2015. The total area of the excluded area was 5.26 ha, while the average size of a single plot is 0.04 ha. (395,57 m<sup>2</sup>). The largest area declared for excluding was 1930 m<sup>2</sup>, while the smallest area was 11 m<sup>2</sup>. The areas most frequently reported in the application for exclusion were between 350 m<sup>2</sup> and 450 m<sup>2</sup>.

These amounts result from the fact that the obligation to pay the receivables does not apply to the case of excluding land for a single-family building, when the area of land excluded from agricultural or forestry production does not exceed 0.05 ha or 0.02 ha, for each dwelling, in the case of a multi-family building. Therefore, the majority of owners include areas not exceeding 500 m<sup>2</sup> in their applications for exemption. It is worth emphasizing, however, that these areas often do not correspond to the actual area excluded from production and later disclosed in the land and building records during the as-built inventory. Extreme values constituted only a small percentage of all applications. The largest number of lands were RII, RIIIa, and the least RIVb (Table 3).

**Table 3.** Share of individual classes of arable lands excluded from production in 2010-2018 in the district of Kazimierz

Soil class	Area (m <sup>2</sup> )	Share (%)
RII	18933	36.00
RIIIa	17009	32.30
RI	11276	21.40
RIIIb	2796	5.30
S-RII	582	1.10
ŁIII	544	1.00
PsIII	499	0.95
ŁIV	450	0.86
S-RIIIa	278	0.53
RIV	128	0.24
RIVb	116	0.22
<b>TOTAL</b>	<b>52611</b>	<b>100.00</b>

Source: Own study

In 2010-2018, 147 applications were submitted in the analyzed area, of which 133 were issued for the exclusion of land from production. For 16 decisions, the annual fee for the exclusion was set, however 2 of them were discontinued. Interestingly, for almost half of the decisions issued on the plot, the use of “Br” was already disclosed – it was built-up land. Land is included in land use “Br” if it is covered by farm buildings within the existing plot, and in particular occupied for buildings intended for agricultural production. What is more, it also includes areas located between these buildings and facilities or in their immediate vicinity if they are not used for other purposes. The situation of submitting the application for the exclusion of land from agricultural production for the parcels on which the use of Br was previously disclosed raises many doubts. If the designed building is connected with an existing agricultural holding, there is no need to submit an application for excluding land from agricultural production, since such land will not be excluded from agricultural production.

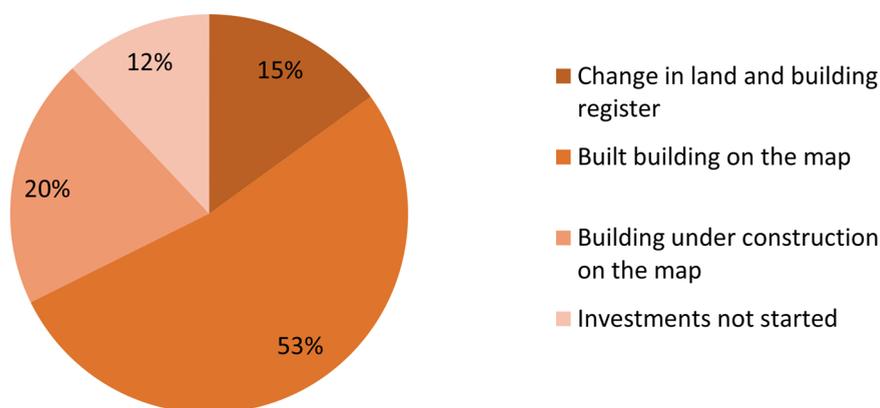
This situation results from the fact that the decision on the exclusion of land from agricultural or forestry production does not decide on the use of land located on the plot, and the purpose of such an exemption. Therefore, if the construction project planned on the plot was related to some non-agricultural activities, then the necessity to exclude the land was necessary. Another case from which the situation may have arisen is the fact that submitting an application for exclusion is preceded by the issuance of a decision on the Conditions for the Development and Land Development (WZZT). If the interested party in the application for WZZT as a planned construction project indicated a single-family house without specifying that he is in a farm building, then the authorities admitted in advance that he is not related to running a farm and indicated the necessity to apply for land exclusion from agricultural production. Due to the possibility of such a situation, it was decided in the research to separate the cases in which the exclusion related to the use of “Br”.

At the first stage, it was decided to analyze the land exclusion process. To this end, it was first checked whether the change was disclosed in the land and building records, and thus the building was built and then inventoried, and there was a documented change in use in the EGiB database. For plots for which there was no change in the records, it was checked whether the building being the reason for the exemption application was disclosed on the maps as a building under construction. In addition, for plots at which no changes were noted at this stage, the orthophotomaps were checked in Google Earth (current as at 8-01-2017) and the buildings appearing on it were classified as buildings under construction (Table 4).

**Table 4.** Number of decisions on the exclusion of land from agricultural or forestry production, taking into account the level of investment implementation related to the exclusion of a given plot in the district of Kazimierz

Degree of investment implementation	Plots with no use „Br”	Plot with „Br” use	Total number of decisions issued
Change in the land and building database (change of use, disclosure of the building)	20	-	20
Built building on the map (not disclosed in the EGIB descriptive part, no change of use)	18	52	70
Building under construction on the map (not disclosed in the EGIB descriptive part, no change of use)	16	11	27
Investments not started	14	2	16
<b>Total</b>	<b>68</b>	<b>65</b>	<b>133</b>

Source: Own study



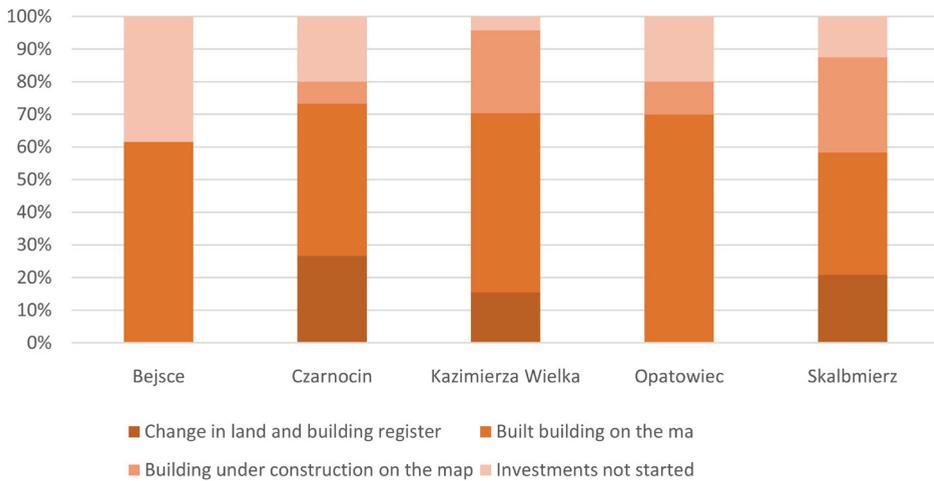
Source: Own study

**Figure 2.** Percentage structure of individual implementation stages for all applications for excluding land from agricultural production in the district of Kazimierz

Based on the Figure 2, we can see that only 15% of the decision was actually implemented. Taking into account the fact that the examined period concerns up to 9 years, it gives only 2 completed applications per year. It is also worth noting that over half of the plots covered by the exemption are unfinished investments. What's more, 75% of cases (Table 4) in which the building is disclosed on the map of the Kazimierz district geoportal as a building constructed, that is,

an as-built inventory for it, concerns cases when the investment was carried out on the “Br” use. This may confirm the earlier conclusion that the applicant out of ignorance applied for a WZZT for the construction of a residential building, without adding that it concerns the farm building.

Taking into account the location, the majority of decisions were issued in the commune of Kazimierza Wielka, the largest commune of the Kazimierz district. The least in the commune of Opatowiec. Most changes in the land and building register related to the exclusion of agricultural and forestry production were carried out in the municipality of Czarnocin. In the municipalities of Bejsce and Opatowiec, none of the switch-off decisions affected the change of land use. It was also in the Bejsce commune that the most conclusions were not implemented in any way, and thus did not affect the changes on the ground. The exact structure of changes related to the exclusion of land from production is shown in Figure 3.



Source: Own study

**Figure 3.** Percentage structure of the implementation of applications for the exclusion of land from agricultural production in individual communes of the Kazimierz district

In addition, the trends related to the exclusion of land from agricultural production were analyzed, taking into account the degree of investment implementation. Based on the analysis (Fig. 4), it can be seen that the majority of decisions authorizing the exclusion of land from agricultural production were recorded in 2010-2012. It can also be noted that the number of completed applications for which a change in the records has been made is proportional to the number of all applications submitted. There are no temporary trends here.



Source: Own study

**Figure 4.** The number of decisions and the degree of their implementation in individual years

## CONCLUSIONS

In the Kazimierz district, 147 applications for excluding land from agricultural production were recorded in the years 2010-2018. The total of the excluded area was 5.26 ha, while the average size of a single land was 0.04 ha. (395,57 m<sup>2</sup>). In most cases, the area of land notified for exclusion was within the allowable amount exempting from paying fees for this.

The analyzes carried out showed that the use of “Bp” was not disclosed for any of the examined plots. This demonstrates the ineffectiveness of existing regulations regarding the performance of works related to the demarcation of the building, and changes resulting from this work are not disclosed in the EGIB database. Studies have shown that only 15% of the decision to exclude land from production was actually implemented and the changes were disclosed in the land and building records database.

Analyzing the discussed procedures, it can be seen that applicants are in no hurry to implement the investment process, as well as to report changes arising in the records. This is not only related to the emergence of the obligation to pay a fee for the sole exclusion of land, but also to a change in taxation. Real estate tax is several times higher than agricultural tax, and the basis for changing the method of calculating it is only the information contained in the records of

land and buildings. Failure to specify in the Act (Act 1995) the exact moment at which land is actually excluded means that this period is extended as long as possible by the applicants. Theoretically, the date of excluding land from agricultural production should be associated with the commencement of the investment process on land, which affects the cessation of agricultural land use. In practice, however, it is only at the time of the as-built inventory of construction objects that a surveyor, when submitting a technical survey at a geodetic and cartographic documentation center, reports changes in the records.

In terms of investors' tardiness, the solution would be to impose on surveyors an obligation to submit a survey of the demarcation of the building. The current regulations are ambiguous in this matter: they indicate the need to submit a job, but they do not explicitly require the submission of a survey. The obligation to disclose the use of Bp after the demarcation of the building would involve a change in the size of the tax and the investor would not achieve any benefits by extending the investment process, and the land and building records would meet one of his basic postulates regarding the timeliness of data collected in this database.

It is also important to note the size of areas reported for exclusion from agricultural production. In most cases, this value was within the statutory value exempting from exemption fees, i.e. less than 500 m<sup>2</sup>. Due to the small number of actually implemented decisions to exclude land from agricultural production, no detailed analysis of the discrepancies in the context of the area applied for exclusion from production and actually excluded was carried out, however, this phenomenon was noticed. The reasons for discrepancies in determining the area of land excluded from production and investors' tardiness in disclosing the current state of land use in the records can be found in imprecise legal regulations. The provisions on the protection of agricultural land are not directly linked to the provisions on the registration of land and buildings. The method of determining the area excluded from production should be consistent in legal acts regarding both issues. There should be statutory mechanisms for verification of the excluded area, disclosed in the land and building records, with the area indicated in the application for excluding land from production, and mechanisms obliging owners to pay the exemption fee for land excluded from production exceeding the declared area.

As a result of the tests it can be concluded that the procedure for excluding land and buildings does not fulfill its tasks. The lack of consistency of regulations and the implementation of appropriate mechanisms means that in many cases this procedure does not protect agricultural land, and the area actually excluded is larger than the declared one. Lack of precision of regulations delays the disclosure of the actual state in the land and building records, which affects the understatement of the tax rate and losses for the commune budget. These issues should be regulated by amending existing laws.

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