

"GENERAL PLAN" IN REAL ESTATE VALUATION FOR SELECTED PLANNING PURPOSES

Lidia Piotrowska*¹

¹ *University of Economics and Human Sciences in Warsaw, ul. Okopowa 59, 01-043 Warszawa, Poland; e-mail: lidia.piotrowska@onet.com.pl, ORCID: 0000-0002-9401-5080*

* *Corresponding author*

ARTICLE INFO	ABSTRACT
<i>Keywords:</i> general plan of the commune, local general plan, general spatial development plan of settlement units, spatial planning act, spatial development plan, local spatial development plan, real estate valuation, intended use in the local plan	The article presents considerations on the importance of the provisions of the municipality's general plan referred to in the Act of March 27, 2023 on Spatial Planning and Development, as well as the importance of the provisions of the local general plan, referred to in the Act of July 12, 1984 on Spatial Planning when estimating real estate for the purposes of determining the amount of compensation and fees referred to in Art. 36 section 3 and 4 of the Act on Spatial Planning and Development. Due to the fact that the Act of 1984 refers to the general spatial development plan of settlement units (called the general plan), prepared and adopted on the basis of the Act of January 31, 1961 with the same name, the article also discusses this type of plan. Moreover, activities related to determining the value of real estate were indicated, including the above-mentioned planning purposes, and the understanding of concepts such as "real estate data" and "intended use in the local plan" were presented. Attention was also focused on the essence of the above-mentioned types of plans, as well as the differences between the general plan of the commune and the local general plan and general spatial development plan of settlement units.
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1. Introduction

The main aim of spatial planning is to seek out locations in space for various aims and activities. Feature-based localization depends on many factors and conditions, but also on limitations (Kurowska et al., 2014). Planning goals are defined in planning documents and decisions, including the plans that are the focus of this article and which define the division into spatial development (land use) functions/zones and guidelines regarding the above. They are to ensure the appropriate development of the settlement structure and the protection of valuable spatial values (Nadin et al., 2018, 2021; Liu et al., 2022). In different countries, plans implement the above in different ways (Getimis, 2012; Nowak et al., 2022). When defining such goals, one should keep in mind, among others: the requirements of spatial order (including urban planning and architecture) and the need for

sustainable development (Kurowska et al., 2021)¹, which development was aptly defined by Miszewska, Niedostatkiewicz and Wiśniewski (2023) as intergenerational solidarity in the search for solutions that guarantee further development and allow for the active inclusion of the development of all social groups, while giving them the opportunity to benefit from economic growth. Both spatial order and sustainable development constitute the basis for the activities of public authorities (Niedziałkowski, 2017).

It is also important to remember that these plans should be relatively flexible, as the lack of flexibility in spatial development plans results in difficulties in or even blocks the possibility of developing the area (Moroni, 2007; Buitelaar et al., 2010; Granqvist et al., 2021; Nowak et al., 2023). The level of flexibility in spatial planning significantly determines the direction

¹ The term "sustainable development" came into use in political circles after the publication of The Brundtland Commission Report on the Global Environment and Development in 1987.

of this planning. According to some authors, this also translates into the development of individual areas (Tasan-Kok, 2008).

The article focuses on the following plans: the general plan of the commune (a new planning tool), the local general plan (historical plan) and the general spatial development plan of settlement units (historical plan).

The general municipal plan, which is an element of the currently applicable spatial planning system specified in the Act of March 27, 2003 on Spatial Planning and Development (Journal of Laws of 2023, item 977), was introduced into this system recently, i.e. via the Act of July 7, 2023 Amending the Acts on Spatial Planning and Development and Certain other Acts (Journal of Laws of 2023, item 1688). It can therefore be said that it is a new legal creation, although when analyzing historical normative acts regulating spatial planning and development it should be noted that general plans were already an element of previously existing frameworks. The previous act, i.e. the Act of July 7, 1994 on Spatial Development (Journal of Laws No. 89, item 415), did not provide for such plans and referred to the local spatial development plan (without making a distinction between detailed and general plans) and to the study of the conditions and directions of the spatial development of the commune. However, its predecessor, the Act of July 12, 1984 on Spatial Planning (Journal of Laws No. 35, item 185), did. The predecessor of this Act, i.e. the Act of January 31, 1961 on Spatial Planning (Journal of Laws No. 7, item 47), also included regulations referring to general plans. These plans, apparently with a slightly similar name, were, however, prepared in different forms and contained different arrangements.

It should be noted that the Act on Spatial Planning and Development, in addition to the regulations regarding the above-mentioned general municipal plans, also applies to local plans prepared before January 1, 1995², i.e. prepared on the basis of the above-mentioned Spatial Planning Act, which in turn also applies to plans prepared on the basis of the Act of the same name of January 31, 1961. It should be noted, however, that the act currently in force only refers to a detailed local spatial development plan, as

the plan prepared before January 1, 1995, and the provisions of this plan are treated as those taken into account in the valuation of real estate for the above-mentioned planning purposes. The planning and spatial development Act does not mention local general plans or general spatial development plans for settlement units whatsoever. In the context of the general municipal plan, it only indicates that, to determine the value of the property in the case referred to in the art. 37 section 1 point 2 of this Act, changes in the value of real estate resulting from the adoption or amendment of the general plan are not taken into account. However, this is currently the case. Previously, in accordance with the original wording of Art. 87 section 3a of this Act, the valuation of real estate for planning purposes took into account the provisions of the local development plan adopted before January 1, 1995, i.e. both the general and detailed plan (if there was one). This situation changed when the legislator, in 2022, replaced the words "local spatial development plan adopted before January 1, 1995" with the words "detailed local development plan adopted before January 1, 1995" - Act of November 16, 2022 Amending the Act on Spatial Planning and Development (Journal of Laws, item 2747). The legislator explained the above by saying that the above-mentioned provisions of the Act should be adapted to the judgment of the Constitutional Tribunal of May 22, 2019, reference number SK 22/16 (Journal Set item 1009), which ruled that Art. 37 section 1 of the Spatial Planning and Development Act (Journal of Laws of 2018, item 1945 and of 2019, items 60, 235 and 730), understood to mean that it allows for the determination of a less favorable purpose for the property than in the local development plan, adopted before January 1, 1995, is inconsistent with Art. 64 section 2 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws No. 78, item 483). It should be noted, however, that, in this judgment, the Court did not refer to only a detailed local plan, but to a local spatial development plan, which was prepared both as a general and a detailed one.

Taking into account the above, the research goal was to examine the significance of the provisions of the municipal general plan referred to in the Act on Spatial Planning and Development and the relevance of the provisions of the local general plan referred to in the Act of July 12, 1984 on Spatial Planning, as well as the relevance of the general spatial development plan of settlement units referred to in the Act of

² Pursuant to art. 87 section 3 of the Spatial Planning and Development Act "Local spatial development plans in force on the date this Act enters into force which were adopted before 1 January 1995, remain in force until new plans are adopted, but no longer than until December 31, 2003."

January 31, 1961 on Spatial Planning, and to which the Act of 1984 refers directly when appraising real estate value for the purposes of determining the amount of compensation and fees referred to in Art. 36 section 3 and 4 of the Act on Spatial Planning and Development.

These two planning goals were chosen due to the fact that these are the goals referred to in Art. 37 section 1 above the Act, i.e. the provision regarding the examination of whether, in connection with the entry into force of an act of local law, such as the local spatial development plan, the value of the property has changed (increased or decreased) - including the examination of the actual use of the property before the entry into force of this act. This change in value is determined in the opinion of a property appraiser.

The following research hypotheses were formulated:

- 1) the provisions of the general municipal plan referred to in the Spatial Planning and Development Act are taken into account in the valuation of real estate, but they are not taken into account when estimating real estate value for the purposes of determining the amount of compensation for the reduction in the value of real estate resulting from the entry into force of the local plan and when determining the amount of the planning fee (fee for the increase of real estate value resulting from the entry into force of the local plan or its amendment),
- 2) the local general plan referred to in the Spatial Planning Act of 1984 and the general spatial development plan of settlement units referred to in the 1961 Act of the same name are no longer local plans recognized by the Planning and spatial development Act as those prepared before 1 January, 1995, the findings of which should be taken into account in the valuation of real estate for the purposes of determining the amount of compensation for the reduction in the value of real estate in connection with the entry into force of the local plan and when determining the amount of the planning fee (fee for the increase of real estate value resulting from the entry into force of the local plan or its amendment) because these are not deemed to be plans for that purpose.

The research method used is the method of analysis of legal provisions, literature and case law.

Due to the fact that the provisions of the Act of July 7, 2023 Amending the Spatial Planning System in

Poland entered into force on September 24, 2023 and are fairly recent, there is not much literature available on the subject. However, that available includes the publication by Sługocka (2024), which refers to new definitions, the general municipal plan, the planning procedure for local spatial development plans, the integrated investment plan, and also new rules for issuing decisions on conditions for development frameworks. The second work is the publication authored by Daniel, Kafar and Pawlik (2023) referring to new provisions of the Act on Spatial Planning and Development. Neither in the first, nor in the second publication, did the author find any details about taking (or not taking) into account the provisions of the municipality's general plan when valuating real estate, including the above-mentioned planning purposes.

The analysis presented in this article therefore provides fresh insight which will contribute to the development of knowledge in this field, i.e. it will show, among others, the importance of the new general municipal plan, and will also indicate the differences between this plan (which is a new document) and historical plans with a similar name. It will also present the importance of these general plans in the context of real estate valuation for the above-mentioned planning purposes. This analysis may also be helpful for employees of administrative bodies, as well as all participants of the investment process who, as Sługocka (2024) points out in the above-mentioned publication, will have to deal with the application of new provisions of planning and spatial development law.

2. The substance of the general municipal plan, as an Act of Spatial Planning, within the meaning of the Act of March 27, 2003 on Spatial Planning and Development

Pursuant to art. 2 point 22 of the Act on Spatial Planning and Development, the general plan of a commune is an Act of Spatial Planning, i.e. a specific source of law relating to space. As justification to the government's draft of the act amending the Acts on Spatial Planning and Development and certain other acts³, it has been said that the general municipal plan is introduced as a mandatory planning document covering the entire commune and an act of local law replacing the study of conditions and directions of spatial development of the commune. Local spatial development plans as well as administrative decisions,

³ <https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=3097>

such as decisions defining conditions for construction and land development will be examined in the context of compliance with provisions of such a plan (which was not the case with the above-mentioned study). However, pursuant to Art. 65 section 1 of the Act amending the Act on Spatial Planning and Development and certain other acts, the above studies remain in force until the date of entry into force of the general municipal plan in a given commune, but no longer than until December 31, 2025, and the existing provisions shall apply to them.

Adoption of municipal spatial planning acts (with some exceptions)⁴, i.e., including the adoption of the general municipal plan, is the commune's own task. Such a plan is adopted by the commune council for the commune area, excluding restricted areas other than those determined by the minister responsible for transport.

The general municipal plan should have a concise form and a limited number of provisions in order to enable standardization and, consequently, easy comparison of the content of individual plans (Daniel et al., 2023). The general municipal plan should define planning zones and communal urban planning standards, i.e. standards covering the list of communal planning zones and which may include communal standards for social infrastructure accessibility. Such a plan may also specify areas of supplementary developments and areas of downtown developments. The Act on Spatial Planning and Development lists 13 planning zones, which include 3 multifunctional zones [multifunctional zone with multi-family residential buildings (SW), multi-functional zone with single-family residential buildings (SJ) and multifunctional zone with farm buildings (SZ)], as well as 10 other zones [service zone (SU), large-scale trade zone (SH), economic zone (SP), agricultural production zone (SR), infrastructure zone (SI), green zone and recreation (SN), cemetery zone (SC), mining zone (SG), open zone (SO) and communication zone (SK)]. The area covered by the general municipal plan is divided separately into the above-mentioned planning zones. The characteristics of individual planning zones, including

their functional profiles, are specified in the ordinance of the Minister of Development and Technology of December 8, 2023 on the draft general municipal plan, documenting planning works within the scope of such a plan and issuing extracts and drawings therefrom (Journal of Laws, item 2758). In line with the Annex No. 1 to the above-mentioned regulation, the functional profiles of each of the above-mentioned planning zones are divided into a basic profile and an additional profile. Moreover, the regulation assigns a minimum share of biologically active areas (in %) to 10 out of 13 planning zones. However, such a minimum share provision does not apply to three zones, i.e. the mining zone (SG), the open zone (SO) and the communication zone (SK).

The provisions of the municipal general plan are defined taking into account the conditions of the commune's spatial development, in particular taking into account the provisions of the voivodeship spatial development plan. Such arrangements will also include the commune's spatial policy specified in the commune's development strategy (Nowak et al., 2023)⁵ or supra-local development strategy (however the provision regarding this policy will enter into force on January 1, 2026). Nevertheless, pursuant to Art. 51 of the Act Amending the Acts on Spatial Planning and Development and Certain other Acts, the provisions of the commune's general plan should be defined by December 31, 2025, taking into account the commune's spatial policy specified in the commune's development strategy or supra-local development strategy, provided that the commune has a commune development strategy or supra-local development strategy, the development of which was initiated on or after the date of this Act entering into force.

The assessment of compliance with the legal provisions of the adopted general municipal plan will be made by the voivode after receiving a resolution on the adoption of the above-mentioned plan with annexes and documentation of planning works from the commune head, mayor or city president.

The general municipal plan, in terms of defining planning zones and communal urban standards, as well as in terms of defining downtown development, should be taken into account when preparing a local spatial development plan. In this respect, this plan also constitutes the legal basis for decisions on the conditions of development and development of the

⁴ "Shaping and implementing spatial policy in the commune, including the adoption of municipal spatial planning acts, with the exception of internal sea waters, the territorial sea and the exclusive economic zone and restricted areas determined by an authority other than the minister responsible for transport, are the commune's own tasks" – art. 3 section 1 of the Act on spatial planning and development.

⁵ "Strategy" understood as a set of common values and principles of cooperation developed for the development of the commune.

area. The general municipal plan, in terms of defining areas of construction, constitutes the legal basis for decisions on the conditions of development.

It is noteworthy that the general municipal plan, in the hierarchy of sources of law, is on equal footing with the local spatial development plan (Nowak, 2023)⁶, which means that there is no relationship between these local legal acts, such as between the provision authorizing the issuance of an implementing act and the implementing act. The relationship between these plans is therefore regulated by the provisions of the Act on Spatial Planning and Development, which expressly state that the local spatial development plan must be consistent with the general municipal plan (one local legal act must be consistent with another local legal act). The adoption of the general municipal plan does not invalidate the existing local plans - no provision of the above-mentioned Act also obliges the existing local plans to be adapted to the general municipal plan, but it should be remembered that the existing local plan should be changed if it is inconsistent with the general municipal plan⁷.

3. The essence of the Local General Plan, as a Spatial Development Plan, within the meaning of the Act of July 12, 1984 on Spatial Planning

Based on the Act of July 12, 1984 on Spatial Planning - Journal of Laws No. 35, item 185 (Kolipiński, 2015)⁸ local spatial development plans (local plans) were prepared as general and detailed plans. Both types of plans constituted the basis for land management, issuing decisions on the use of land for investment purposes and decisions on changing the way land is used and on excluding land designated for non-agricultural or non-forestry purposes from agricultural or forestry production. As Jasiński (2007) rightly pointed out, the local plan (i.e. general and detailed), in accordance with the aforementioned Act, was the basic tool for spatial management.

⁶ A plan that is a key instrument of spatial planning at the local (municipal) level.

⁷ <https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=3097>

⁸ The assumptions of the 1984 Act were created in the wake of a critical discussion about the state of spatial order in Poland, conducted as part of the general political revival caused by the August events in 1980. It can be assumed that it was an act announcing the beginning of the end of the centralized and economic planning system subordinated to spatial planning. This may be evidenced by the provision on the interdependence of spatial planning and socio-economic planning.

In accordance with Article 25(2) of this Act, the local general plan determined the natural, social, economic, cultural and landscape conditions for the spatial development of a city, commune (city and commune) or their parts, as well as the goals and principles of the spatial policy of the aforementioned units. In particular, the aforementioned plan determined the conditions and methods of land management and use, health protection, environmental protection, protection of cultural goods and landscape values, shaping of technical and social infrastructure and shaping of spatial structures, as well as architectural and construction solutions. The plan had to take into account the provisions of the national and regional plan, and also determine the conclusions for these plans.

The local detailed plan, on the other hand, determined the purpose of the land and designated the boundary lines of the aforementioned land, as well as establishing the principles governing land development and the construction of buildings. If necessary, the aforementioned plan also determined other conditions and guidelines. The areas for which a local detailed plan was to be prepared were determined by the local general plan. A local detailed plan was prepared for a part of the city or commune (city and commune). However, if the local general plan did not specify the aforementioned areas, then a local detailed plan was prepared as needed.

It is worth noting the provision of Article 45 of the Act on Spatial Planning, according to which decisions on determining the location or changing the way land is used and containing decisions inconsistent with the local spatial development plan were invalid. This provision therefore required the decision to be consistent with the local plan, i.e. both general and detailed.

4. The essence of the General Spatial Development Plan of Settlement Units, as a Local Spatial Development Plan, Referred to in the Act of January 31, 1961 on Spatial Planning

It should be noted here that, according to Article 48 of the Act of July 12, 1984 on Spatial Planning, spatial development plans prepared in accordance with the provisions of the previous act, i.e. the Act of January 31, 1961 on Spatial Planning (Journal of Laws No. 7, item 47)⁹, became spatial development plans within

⁹As the author of this article points out in her other publication (2021) it was the 1961 Act that "after years of decline reactivated spatial planning in a systemic approach.

the meaning of the 1984 Act. In view of the above, this article also refers to local spatial development plans prepared on the basis of the 1961 Act on Spatial Planning, which divided local spatial development plans into general spatial development plans of settlement units (called general plans), spatial development plans of areas constituting complexes of settlement units¹⁰ and detailed spatial development plans of parts of settlement units, and, in justified cases, the entirety of these units (called detailed plans).

General plans comprehensively determined the directions and scale of development and the principles of spatial development of the area for the entire planning period, as well as the program and method of spatial development of the settlement unit in the period of the nearest multi-annual national economic plan. General plans constituted the basis for land management and determination of investment needs in the area of a given settlement unit - they included basic guidelines for the development of detailed plans in this area, and also determined the areas requiring such development in the appropriate order. As the Supreme Administrative Court pointed out in its judgment of June 4, 1982, case file I SA 235/82 (ONSA 1982/1/52, Lex No. 9684), the general plan was primarily the basis for detailed planning decisions.

According to the provisions of the 1961 Act on Spatial Planning, the general plan should be prepared, in principle, for all periods provided for in Article 3 of this Act, i.e.:

- 1) For a period exceeding the period of the perspective plan for the development of the national economy, with particular consideration given to the period of this plan and with the distinction of the period of the multi-annual national economic plan (guiding plans).
- 2) For the period corresponding to the period of the perspective plans for the development of the national economy, with particular consideration given to the period of the multi-annual national economic plan (perspective plans).

Work on it lasted for several years and was carried out in the spirit of the post-October thaw".

¹⁰ Spatial development plans of areas constituting complexes of settlement units were mentioned in the same point of the article (art. 13 point 1) as general spatial development plans of settlement units, however they were not defined as general plans.

- 3) For a period corresponding to that of the current and nearest multi-annual national economic plan (stage plans).

For small towns and villages, this plan could be prepared as a perspective and stage plan, or only as a stage plan. Detailed plans, on the other hand, determined the use of the land for individual purposes in detail, designated the boundary lines of these areas, established the principles of land development and equipment, and also determined the building line and the permissible height of buildings, and, if necessary, also established other conditions and guidelines for the development of buildings. Detailed plans were prepared on the basis of the provisions of the general plan.

5. Comparison of the provisions of the General Municipal Plan, the Local General Plan and the General Spatial Development Plan of Settlement Units

The comparison of the provisions of the general municipal plan, referred to in the current Act on Spatial Planning and Development, and the local general plan, referred to in the 1984 Act on Spatial Planning, and the general spatial development plan of settlement units, referred to in the 1961 Act on Spatial Planning, is presented in Table 1.

The comparison aims, among others, to: indicate different legal statuses and different roles of these plans when issuing administrative decisions, as well as to serve as an indication of whether the findings of these plans were and still are taken into account in the valuation of real estate.

As Table 1 shows, these plans differ in both name (although at first glance they may seem similar) and substantive content (scope, provisions, etc.). The local general plan and the general spatial development plan of settlement units were drawn up at a time when there was a completely different planning system than the one currently in place. The only similarity can be seen between the local general plan and the general spatial development plan of settlement units, as both these plans formed the basis for land management (areas). A slight similarity is also visible between the commune's general plan and the local general plan in terms of constituting the basis for issuing administrative decisions (different decisions, but decisions nonetheless).

The differences between these two historical plans can also be seen by comparing the so-called graphic provisions contained in the drawings of these plans

(analogue - paper versions). To confirm this fact is a drawing from the stage below and directional plan of Warsaw approved by the resolution of the Presidium of the National Council of the capital city of Warsaw No. 4/13 of January 31, 1961 (Fig. 1) and the local

general plan of spatial development of the capital city of Warsaw, approved by the resolution of the Council of the capital city of Warsaw of September 28, 1992. No. XXXV/199/92 (Fig. 2).

Table 1

Comparison of Planning Decisions of Three Different Types of General Plans			
Description:	General Municipal Plan (Current Act on Spatial Planning and Development):	Local General Plan (Act of July 12, 1984 on Spatial Planning):	General Spatial Development Plan of Settlement Units (Act of January 31, 1961 on Spatial Planning):
legal status:	a local law, not constituting a local spatial development plan (the general plan of the commune is equal to the local development plan)	a local plan	a local development plan
the role of the plan in issuing administrative decisions:	in terms of defining planning zones and communal urban standards, as well as in terms of defining downtown development, the general municipal plan must be taken into account when preparing a local spatial development plan. In this respect, this plan also constitutes the legal basis for decisions on the conditions of development and land development. In terms of defining areas of development completion, this plan constitutes the legal basis for decisions on the conditions of development	constituted the basis for land management, issuing decisions on the use of land for investment purposes and decisions on changing the way land is used, as well as on excluding from agricultural or forest production land designated for non-agricultural or non-forestry related purposes	constituted the basis for land management and determination of investment needs in the area of a given settlement unit - it included basic guidelines for the development of detailed plans in this area, and also determined the areas requiring such development in the appropriate order
functions/zones specified in the plan:	defines planning zones and communal urban standards. May also define areas of development completion and downtown development areas	defined the natural, social, economic, cultural and landscape conditions of the spatial development of a city, commune (city and commune) or their parts, as well as the goals and principles of the spatial policy of these units. In particular, it determined the conditions and methods of land management and use, health protection, environmental protection, protection of cultural goods and landscape values, shaping of technical and social infrastructure and shaping of spatial structures, as well as architectural and construction solutions	comprehensively defined the directions and scale of development and the principles of spatial development of the area for the entire planning period, as well as the program and method of spatial development of the settlement unit in the period of the nearest multi-annual national economic plan
taking into account documents	the provisions of this plan are determined taking into account the conditions of spatial development of the commune, in particular, e.g. the provisions of the spatial development plan of the voivodeship. Such provisions will also include the spatial policy of the commune defined in the development strategy of the commune or the supra-local development	the plan should take into account the provisions of the national and regional plan, and also define the conclusions to these plans	the provisions of the plan should be based on the perspective plans for the development of the national economy, on the multi-annual

developed at higher levels of administration:	strategy - however, if the commune has a development strategy of the commune or a supra-local development strategy, then the provisions of this plan should be determined taking into account the spatial policy of the commune defined in such a strategy by December 31, 2025	national economic plans and on the results of research on the natural, demographic, economic and social conditions of the given area, as well as on the necessary technical studies
using the plan when valuing real estate:	the plan is important in the valuation of real estate in accordance with Art. 154 of the Act on Real Estate Management, however, its findings are not taken into account when appraising real estate for the purposes of determining the amount of compensation for the reduction in the value of real estate in connection with the entry into force of the local plan or its amendment, and when determining the amount of the planning fee	these plans were first taken into account when determining the value of real estate for various, usually judicial/official purposes, by the so-called court experts and experts from voivodeship lists who performed property valuation activities in accordance with the rules established by the presidiums of voivodeship national councils, and then by persons with professional qualifications to estimate real estate granted under the Act of May 17, 1989, Geodetic and Cartographic Law (Journal of Laws . U. No. 30, item 163). Pursuant to art. 38 section 1-2 of the Act of April 29, 1985 on Land Management and Expropriation of Real Estate (Journal of Laws of 1991, item 127, as amended) "experts appointed and entered by the voivode on the voivodeship list or other persons authorized to evaluate real estate determine the value of undeveloped and developed land, and as well as buildings and other facilities and premises located on these lands." The value of land is determined taking into account current prices in land trade, expenditure made, the function designated in the spatial development plan for these lands, their location and the degree of equipment in municipal, energy and gas facilities, as well as the state of development of these lands". Pursuant to Art. 36 section 14 of the Act of July 7, 1994 on Spatial Development (Journal of Laws No. 89, items 414 and 415), introducing compensation for the reduction in the value of real estate in connection with the entry into force of the local plan or its amendment as well as a planning fee, rules for determining the value of real estate and persons authorized to determine this value values were determined by regulations on land management and expropriation of real estate regarding the valuation of sold state properties, i.e., among others above art. 38 section 1-2. In accordance with the railway regulations contained in Art. 87 section 3a of the Act on Spatial Planning and Development, in the valuation of real estate for planning purposes that were adopted by the local spatial development plan adopted before January 1, 1995, i.e. both the general and detailed plan (if there was one). Currently, only the provisions of the detailed plan are taken into account.

Source: Own study based on a detailed analysis of the laws and regulations.

In accordance with § 5(1) of the Regulation of the Minister of Development and Technology of December 8, 2022 on the draft of the general municipal plan, documentation of planning work in the scope of this plan and issuing extracts and copies thereof (Journal of Laws item 2758), the draft of the general municipal plan should be prepared in the form of spatial data - in a digital form (Izdebski et al., 2016; Baranowski, 2012)¹¹, with the data constituting

an annex to the resolution adopting this spatial planning act. Spatial data created for the general municipal plan should include the spatial location of the area covered by the act in vector form in the applicable national spatial reference system and attributes containing information about the act and the spatial location of planning zones, the area of development completion, the area of downtown development and areas referred to in art. 13f(7)(4) of the Act on Spatial Planning and Development, in vector form in the applicable national spatial reference system, as well as attributes containing information about the spatial objects specified above (Kurowska

¹¹ Spatial data describe real-world objects, defining their location and shape, and thus create a model used to visualize the reality around us". Spatial data is a formalized representation of spatial objects, phenomena and processes, describing their characteristics, location and shape, i.e. in essence a synonym for geographic data.

et al. 2022).¹² It should undoubtedly be recognized that this form (spatial data) is more legible, also for a property appraiser. Since the entry into force of the Act amending the Act on Spatial Planning and Development and some other acts, i.e. the act referred to as the act introducing a revolution in spatial planning, a small number of municipalities¹³ have adopted resolutions on the commencement of the preparation of general municipal plans (this fact may result, among other things, from the lack of financial resources, including the waiting for EU funds from the National Recovery and Resilience Plan: KPO)¹⁴.

6. Valuation of real estate as activities related to determining the value of real estate, including for the purposes of determining the amount of compensation and fee referred to in Article 36(3) and (4) of the Act on Spatial Planning and Development

As Klusek (2006) rightly noted, "the real estate valuation process, in order to be correct, should be carried out in accordance with certain principles that result from the provisions of law." To understand this process, one must first understand the definition of "real estate valuation." The Act of August 21, 1997 on Real Estate Management (i.e., Journal of Laws of 2023, item 344) defines "real estate valuation" (Kucharska-Stasiak, 2004) as activities related to determining the value of real estate. "Determining the value of real estate" is nothing more than determining the value of real estate as an object of ownership and other rights to real estate (e.g., the right of perpetual usufruct). As

Dydenko and Telega (2016) aptly noted, sometimes the value of several rights is determined for the same property. As Żróbek, Kucharska-Stasiak and Renigier-Biłozor (2020) point out, the value of real estate should be determined, for example, for the purposes of market transactions.

If there is a need to determine the value of real estate, such value is determined by property valuers, i.e. natural persons with professional qualifications in the field of real estate valuation. The property valuer prepares an opinion on the value of the real estate in the form of a valuation report. It is the property valuer who chooses the appropriate approach, method and technique for valuing the real estate, taking into account, in particular, the purpose of the valuation, the type and location of the real estate, its intended use in the local spatial development plan, the condition of the real estate and the available data on prices, incomes and characteristics of similar real estates. In the absence of the above local plan, the property valuer determines the intended use of the real estate on the basis of the decision on the conditions of development and land development. In the absence of both - the above plan and the decision, the property valuer takes into account the actual use of the real estate or the provisions of the general municipal plan, i.e. the general plan, which was given special attention in Part I of this article.

In the context of accepting the intended use of the valuation object, as a general rule, Article 154 of the Real Estate Management Act applies. However, it is necessary to remember about the provisions of the Act on Spatial Planning and Development, which contains guidelines for the valuation of real estate for the purposes of determining the amount of compensation for the reduction in the value of real estate due to the entry into force of a local plan or its amendment, and determining the value of real estate for the purpose of establishing the amount of the planning fee (a fee for the increase in the value of real estate due to the entry into force of a local plan or its amendment).

¹² Advanced technologies (e.g. GIS tools) are increasingly used for spatial analyses around the world. Such analyses are much easier to perform on plans prepared in the form of spatial data.

¹³ <https://samorzad.pap.pl/kategoria/aktualnosci/mrit-juz-62-gminy-rozpoczely-opracowywanie-planow-ogolnych> - According to the data as of February 2024, only 62 municipalities (out of 2477) have started preparing such a plan.

¹⁴ <https://www.gov.pl/web/planodbudowy/o-kpo> - on March 28, 2024, the Ministry of Development and Technology is to start collecting applications for support for municipal bodies for the implementation of the reform of spatial planning and development and for universities to conduct postgraduate courses for local government employees and urban planners (spatial planners). In total, the Ministry has planned over PLN 868 million for assistance in the implementation of the above reform - <https://www.prawo.pl/samorzad/dofinansowanie-przygotowania-planow-ogolnych-w-gminach,525461.html>.

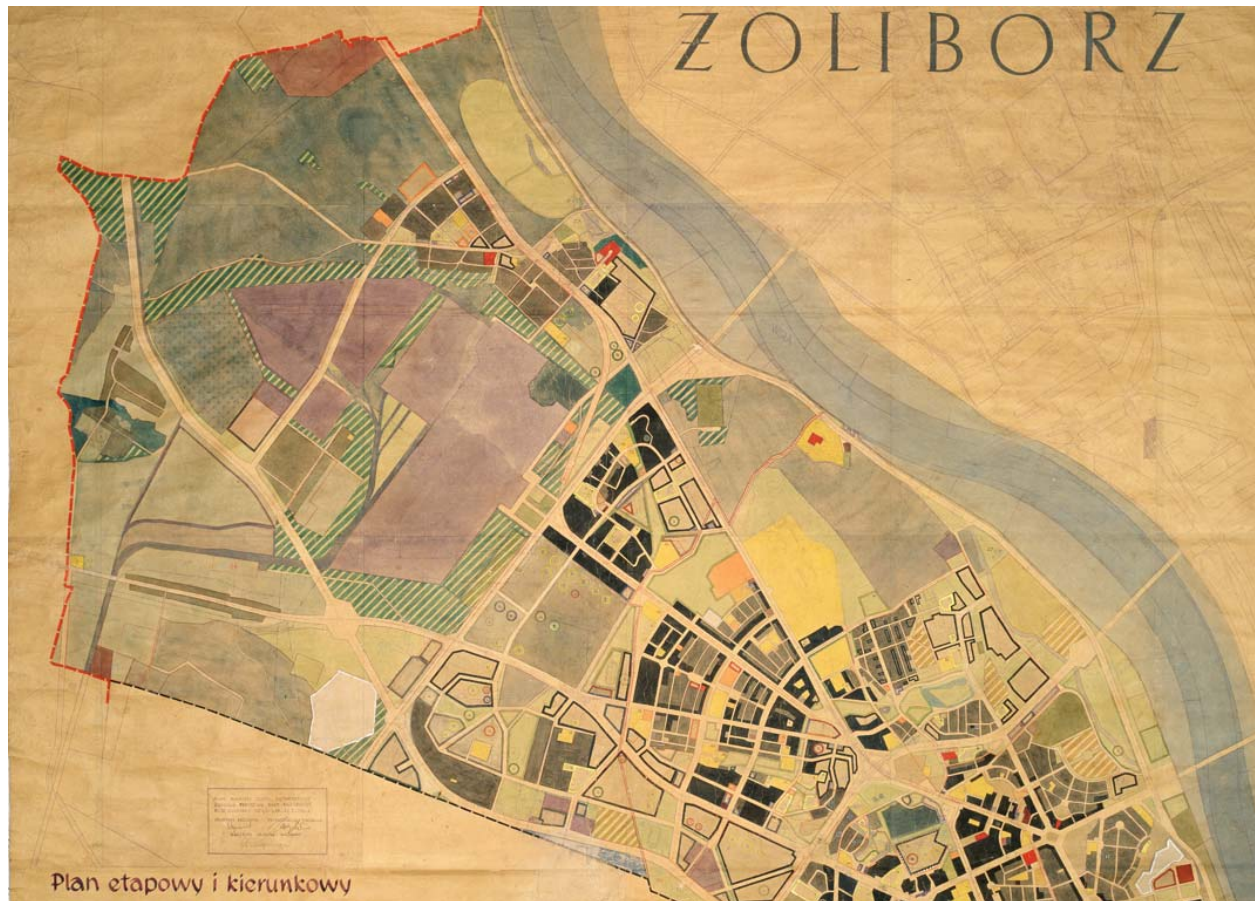


Fig. 1. Stage and directional plan for Warsaw Żoliborz approved by the resolution of the Presidium of the National Council of the capital city of Warsaw No. 4/13 of January 31, 1961. Source: Materials obtained from the Archives.

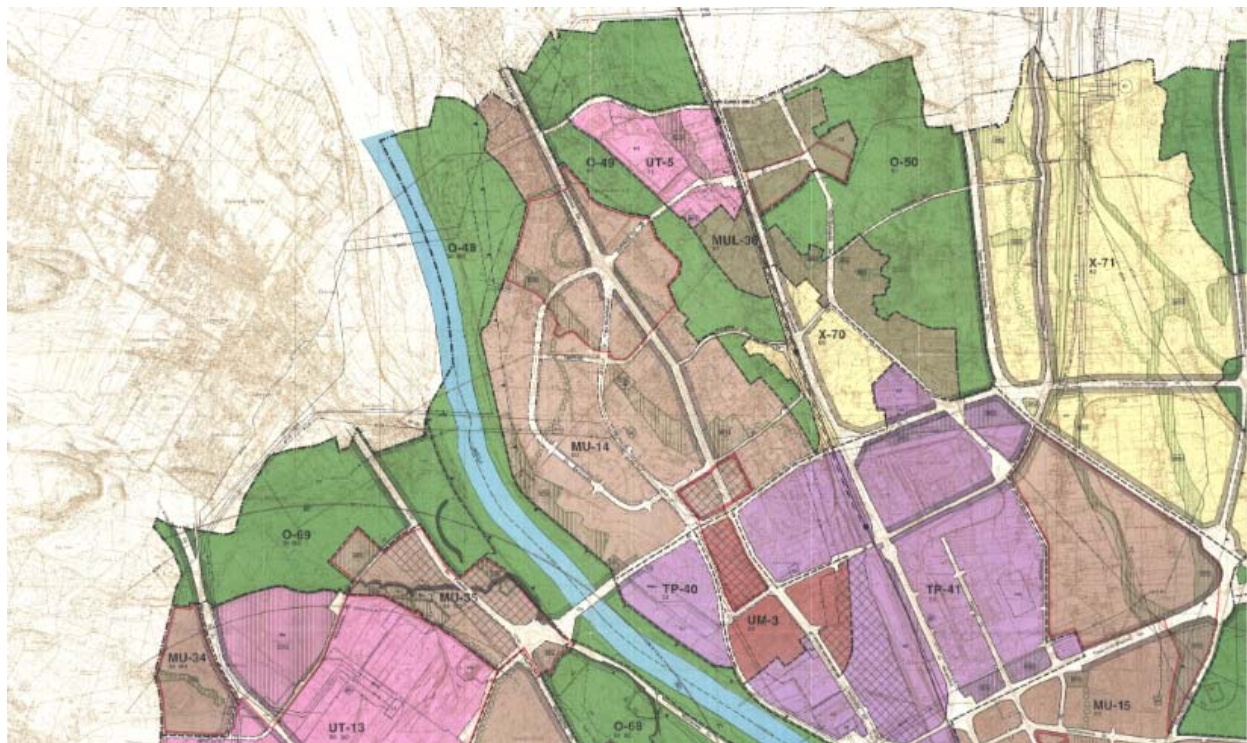


Fig. 2. Local general plan of spatial development of the capital city of Warsaw approved by the resolution of the Council of the capital city of Warsaw of September 28, 1992, No. XXXV/199/92. Source: <https://architektura.um.warszawa.pl/-/plan1992>.

According to Article 37(12) of the said Act, the provisions of the Real Estate Management Act apply to the principles of determining the value of real estate and to the persons entitled to determine such values, unless the provisions of this Act provide otherwise. It therefore follows from the above provision (read in conjunction with others, e.g. Article 36 of the Act on Spatial Planning and Development) that the valuation of real estate for the above purposes is carried out by property valuers in the form of a valuation report. However, as the Provincial Administrative Court in Poznań pointed out in its judgment of July 24, 2019, case file IV SA/Po 387/19 (Lex No. 2722375), "the opinion issued by the property valuer on the amount of compensation is not binding, it is an opinion that is subject to the assessment of the competent administrative body and although the administrative bodies cannot enter into the scope of expert knowledge possessed by the expert, they cannot at the same time accept his findings without criticism". The same applies to the opinion issued in the matter of determining the amount of the planning fee.

When determining the value of real estate for the above purposes, it is necessary to take into account, in particular, the type of value to which the Act on Spatial Planning and Development refers. According to Article 2(18) of this Act, the value of real estate means the market value of real estate. It therefore follows that the property valuer cannot determine any other value of real estate than the market value, understood as the estimated amount that can be obtained for the real estate on the day of valuation in a sale transaction concluded on market terms between a buyer and a seller who have a firm intention to conclude a contract, act with knowledge of the matter and prudently, and are not in a situation of coercion (Article 151(1) of the Real Estate Management Act). Market value is one of the most complex ones in economic theory (Kucharska-Stasiak, 2018). One must keep in mind that this value is created by constantly changing subjective values. Therefore, the level of market value is constantly changing (Kucharska-Stasiak, 2022).

The above also applies to other claims due to the owner or perpetual usufructuary of real estate on the basis of the Act on Spatial Planning and Development, i.e. to the determination of the amount of the actual damage suffered, as well as the determination of the value of the redemption of the real estate or its part, or the value of the replacement real estate. The

valuation for these purposes is also carried out by property valuers.

Jakóbiec (2011) rightly notes that, in the process of valuing real estate for the purpose of determining the amount of the planning fee, only the increase in the value of the real estate is relevant. When determining the amount of compensation for the reduction in the value of real estate, only the reduction in the value of the real estate is relevant.

Cymerman (2011) also rightly points out that determining the value of real estate for the above planning purposes requires the property valuer to have special knowledge that allows for the proper interpretation of the condition of the valuation object on the relevant date and finding similar properties to carry out the valuation process.

7. Understanding the concepts of: "real estate data" and "intended use in the local plan"

According to Article 155(1) of the Real Estate Management Act, when valuing real estate, the property valuer uses all necessary and available data on real estate, which are contained in particular in the land and mortgage registers, the real estate cadastre, the land development network register, the register of property address numbers, the register of monuments, valuation tables and on valuation maps, local spatial development plans, decisions on development and land development conditions, decisions on building permits and general municipal plans, as well as in the lists kept by tax offices, documents in the possession of agencies to which the State Treasury has entrusted, by law, the exercise of the right of ownership and other property rights on its behalf, or in notarial deeds in the possession of housing cooperatives, concerning the transfer of cooperative rights to premises and in contracts, rulings, decisions and other documents, which are the basis for entry in the land and mortgage registers and in the registers included in the cadastral survey, as well as in the energy performance certificate.

Although the aforementioned provision refers to the general municipal plan as a source of data on real estate, it should be remembered that this plan will only become such a source once it has been adopted (the final date by which municipalities should already have these plans is January 1, 2026).

The above provision confirms that the information and data that characterize individual types of real estate are scattered in various source sets, as no

existing professional set includes complete information about real estate (Zaremba, 2009).

It should be noted here, as the Supreme Administrative Court rightly pointed out in its judgment of February 2, 2022, case file I OSK 723/19 (Lex No. 3335645), that the catalogue of sources of data on real estate is listed in the aforementioned provision as an example.

It should also be remembered that the property valuer is not obliged to examine and analyze the data contained in all the sources indicated in the aforementioned provision. The rule is that he should only use the data that is necessary for him. The sources which the property valuer uses will depend on the needs of the specific case, and in particular the purpose of the valuation, the adopted approach, method and technique of valuation (Judgment of the Voivodeship Administrative Court in Opole of May 13, 2014, case file II SA/Op 134/14)¹⁵.

However, as Jaworski, Prusaczyk, Tułodziecki and Wolanin (2021) rightly point out, the sources from which and to what extent the property valuer can draw the information and data necessary to prepare an opinion on the value of real estate (valuation report) has an impact on the quality of the report itself. Since it is not possible to prepare a valuation report without access to information and data on the market, transaction prices, types and incomes derived from real estate, the use of all information and data on real estate seems logical and justified in every way.

So, what is the aforementioned real estate data? In the opinion of the author of this article, "real estate data" should be understood as all available facts, information and news about real estate.

Moving on to the concept of "intended use in the local plan", it is worth noting that the Real Estate Management Act, in Article 4(5), indicates what it understands as a local plan. According to this provision, a local plan is a local spatial development plan, referred to in the provisions on spatial planning and development. Here it should be noted that the Act on Spatial Planning and Development also refers to the local revitalization plan as a special form of the local plan, as well as to a new planning document (introduced by the same act as the general municipal plan) called an integrated investment plan, covering the area of the main investment and the complementary investment, which also constitutes a special form of the local plan.

What is an "intended use" then? In her other publication, the author of this article focused on the understanding of this term (Piotrowska, 2024), pointing out that the intended use of the land should be defined in the local plan in a clear, legible and unambiguous way. The author noted that the intended use does not apply to the existing state, but to the future state. The intended use of the land is binding from the day the local plan enters into force, and not from the moment the land is developed in accordance with that plan. The intended use of the property, defined in the above way, should constitute a set of parameters that determine the possible way of developing a given property and their impact on the market value of the property (Judgment of the Supreme Administrative Court of July 10, 2019, case file II OSK 2241/17, Lex No. 2727946).

The author also emphasized that the administrative decision, which is the decision on the conditions of development and land development, does not determine the intended use of the land, but determines the methods of development and the conditions of land development, i.e. it determines the so-called investment possibilities. The intended use is also not determined by the new spatial planning act, which is the general municipal plan (such intended use is also not determined by the study of conditions and directions of spatial development of the municipality, which has been removed from the spatial planning system, but is still in force - which is also confirmed by the Minister of Development and Technology in the notification of September 28, 2023 on the method of handling the petition)¹⁶.

So, are the aforementioned decision and the general municipal plan not taken into account in the process of real estate valuation? Well, as indicated earlier, according to Article 154(2) and (3) of the Real Estate Management Act, in the absence of a local plan, the intended use of the property is determined on the basis of the aforementioned decision on the conditions of development and land development. If there is neither a local plan nor such a decision, the actual use of the property or the provisions of the general municipal plan are taken into account. The aforementioned Act, although it refers to the intended use in relation to the decision, does not mean that this decision determines it. In relation to the general

¹⁵ www.orzeczenia-nsa.pl

¹⁶ <https://www.gov.pl/web/rozwoj-technologie/472023-petycja-w-sprawie-uregulowania-kwestii-odszkodowan-z-tytulu-art-36-ust-1-ustawy-o-planowaniu-i-zagospodarowaniu-przestrzennym>

municipal plan, the Real Estate Management Act refers to the provisions. However, it should be borne in mind that the rank and substantive scope of the decision and the general municipal plan are determined by the Act on Spatial Planning and Development, and this is the key issue here.

As Damurski and Laskowski (2014) rightly pointed out, "planning documents determine the possible ways of using real estate, thus determining their investment potential and market value". Cymerman and Kotlewski (2017), in turn, pointed out that the value of real estate is influenced by planning conditions. Hence, the Real Estate Management Act lists decisions and planning documents other than the local plan.

8. Importance of general municipal plan in valuation of real estate for the purpose of determining the amount of compensation and fee, referred to in Article 36(3) and (4) of the Act on Spatial Planning and Development

As mentioned above, the current Article 154(3) of the Real Estate Management Act states that, in the absence of both a local plan and a decision on the conditions of development and land development, the property valuer shall take into account the actual use of the property or the provisions of the general municipal plan in the valuation of the property. It therefore follows that the provisions of the general municipal plan are taken into account only in the aforementioned case. It should also be noted that the word "or" appears in the aforementioned provision between the actual use of the property and the provisions of the general municipal plan. This word means "either this or that", but also "both this and that". The legislator therefore treated the general municipal plan and the actual use of the property equally.

General municipal plans should be prepared by 31 December, 2025. It should be noted here that, in accordance with Article 64(2) of the Act on Amending the Act on Spatial Planning and Development and Some Other Acts, until the entry into force of the general municipal plan in a given municipality, in the provisions of the acts amended by this act (with the exception of the Act of 16 November, 2006 on the stamp duty - i.e., Journal of Laws of 2023, item 2111), referring to the general municipal plan, this plan shall be understood as the study of conditions and directions of spatial development of the municipality,

with the exception of only matters of adopting general municipal plans.

According to Article 37(1) of the Act on Spatial Planning and Development, the amount of compensation for the decrease in the value of the property and the amount of the fee for the increase in the value of the property are determined on the day of the sale. The decrease and increase in the value of the property are the difference between the value of the property determined taking into account the intended use of the land in force after the adoption or amendment of the local plan and its value determined taking into account:

- 1) the intended use of the land in force before the amendment of this plan,
- 2) the actual use of the property before the adoption of this plan.

The above provision does not refer to the general municipal plan whatsoever. Important from the point of view of the above is paragraph 11a of this article, which indicates that, to determine the value of the property in the case referred to in point 2, the change in the value of the property resulting from the adoption or amendment of the general plan is not taken into account. In the author's opinion, this means that general municipal plans should not be taken into account when valuing real estate in administrative proceedings concerning the determination of the amount of the planning fee (fee for the increase in the value of the property) and concerning the determination of the amount of compensation for the decrease in the value of the property. This is because the general municipal plan is not a binding act, but rather merely a study of the conditions and directions of spatial development of the municipality. The general municipal plan does not determine the intended use of the land, and it does not create any legal obligations for the owners of real estate. Therefore, the general municipal plan should not be taken into account when determining the amount of the planning fee or the amount of compensation for the decrease in the value of the property. The value of the property should be determined taking into account the actual use of the property and the intended use of the land in force after the adoption or amendment of the local plan.

Therefore, it is necessary to take into account paragraph 11 of this article, which states that the value of the property is determined on the basis of:

- 1) only the actual use of the property and access to public roads, water supply, sewage,

electricity, gas, heating and telecommunications networks existing on the day of the entry into force of the local plan - in a situation where, as a result of the adoption of a local plan for areas previously not covered by such a plan or not covered by a local plan in force on the day of the adoption of this plan, it became impossible or significantly limited to continue the actual use of the property in a manner consistent with the actual use of the property taking place on the day of the adoption of the local plan,

- 2) the previous intended use resulting from the local plan which is being changed or repealed - in a situation where, as a result of the change of the local plan or the adoption of the local plan for the area covered by the local plan in force on the day of the adoption of this plan, the use of the property or its part in a manner consistent with the previous intended use became impossible or significantly limited.

When valuing for the planning purposes discussed in this article, one should also keep in mind Article 87(3a) and (3b) of the Act on Spatial Planning and Development, according to which:

- 1) if the local plan was adopted after 31 December, 2003, due to the loss of validity of the local plan adopted before 1 January, 1995, the provision of Article 37(1) sentence two of the aforementioned Act, in relation to the increase in the value of the property, shall not apply, unless the value of the property determined taking into account the intended use of the land determined in the detailed local land development plan adopted before 1 January, 1995 is higher than the value of the property determined taking into account the actual use of the property after the loss of this plan's validity. In such a case, the increase in the value of the property is the difference between the value of the property determined taking into account the intended use of the land in force after the adoption of the local plan and its value determined taking into account the intended use of the land determined in the detailed local land development plan adopted before 1 January, 1995,
- 2) if the local plan was adopted after 31 December, 2003 due to the loss of validity of the local plan adopted before 1 January, 1995, the provision of Article 37(1) sentence two of this Act, in relation to the decrease in the value

of the property, shall not apply, unless the value of the property determined taking into account the intended use of the land determined in the detailed local land development plan adopted before 1 January, 1995 is higher than the value of the property determined taking into account the actual use of the property after the this plan loses validity. In such a case, the decrease in the value of the property is the difference between the value of the property determined taking into account the intended use of the land determined in the detailed local land development plan adopted before 1 January, 1995 and its value determined taking into account the intended use of the land determined in the local plan.

The details of the valuation subject, the condition of the property and the price level when determining the value of the property for the purpose of determining the above compensation and planning fee are specified in § 38 of the Regulation of the Minister of Development and Technology of 5 September, 2023 on the valuation of real estate (Journal of Laws of item 1832).

As follows from the above, as correctly indicated by the Voivodeship Administrative Court in Wrocław (Decision of 28 March 2023, file number: SKO 4125/17/23, OwSS 2023/3/20-30), the provisions of the Act on Spatial Planning and Development constitute *lex specialis* in relation to the general regulation of Article 154 of the Real Estate Management Act, which puts the intended use resulting from the local plan first, next indicates the decision on the conditions of development and land development, and then the actual use of the property or the provisions of the general municipal plan. The provisions of the aforementioned Article 37 of the Act on Spatial Planning and Development refer to the intended use of the land in force before the amendment of this plan and to the actual use of the property before the adoption of this plan, of course subject to the provisions of Article 87 of this Act. These provisions therefore define a different hierarchy than that adopted in Article 154 of the Real Estate Management Act, and it is this hierarchy that should be applied in the valuation of real estate for planning purposes, i.e. the purposes indicated above.

It seems that the general plan of the commune will not be taken into account in the valuation of real estate for planning purposes because it is not a local development plan. Giving the general plan of a

commune the form of a local law act (i.e. the same as the local spatial development plan), i.e. a source of generally applicable law in the area of operation of the authority that established it, does not mean that such a plan is the basis for taking its findings into account in the valuation of real estate for the above-mentioned planning purposes, i.e. purposes closely related to the entry into force of the local spatial development plan or its amendment.

9. Importance of Local General Plan and the General Spatial Development Plan of Settlement units in Valuation of Real Estate for Determining the Amount of Compensation and Fee, Referred to in Article 36(3) and (4) of the Act on Spatial Planning and Development

Neither the Act on Spatial Planning and Development nor the Act on Real Estate Management refer to the local general plan and the general spatial development plan of settlement units. The former refers only to the detailed local spatial development plan adopted before 1 January, 1995, as a plan whose provisions should be taken into account in the valuation of real estate for the planning purposes mentioned in this article. On a side note, it should be mentioned that neither the 1984 Act nor its predecessor from 1961 used the name "detailed local spatial development plan", which is pointed out by the author in her other publication (Piotrowska, 2024).

The omission of the local general plan by the legislator results from the fact that the legislator treated this plan as a plan that does not determine the intended use of the land. However, the author of this article finds it difficult to agree with such an approach. It should be noted that the "conditions and methods of land development and use", which were defined by the local general plan, are nothing else but the "intended use of land" defined in the local detailed plan. The only difference is that the former defined the above in general terms, while the latter defined them in detail. Both of them were undoubtedly the local spatial development plan prepared before January 1, 1995, which was referred to, among others, in the original wording of Art. 87 section 3a of the Act on Spatial Planning and Development (as well as in the judgment of the Constitutional Tribunal of May 22, 2019), which were taken into account in the valuation of real estate, including the above-mentioned planning purposes (the situation changed after the legislator introduced changes to the above-mentioned Act in 2022).

A similar situation takes place in the case of the general spatial development plan of settlement units, which was intended to determine, among other things, the principles of spatial development of the area and the method of spatial development of the settlement unit, the principles and methods of which constitute the intended use. The detailed spatial development plan of parts of settlement units and, in justified cases, of the entire settlement units, in turn determined the intended use of land for individual purposes in detail, designated the line dividing these areas, established the principles of land development and equipment, and also determined the building line and permissible building height, and, if necessary, also other conditions and guidelines for shaping the development.

The above is confirmed by Art. 36 section 14 of the previously applicable Spatial Development Act, which states that the principles for determining the value of real estate and the persons authorized to assess this value were determined by the provisions on land management and expropriation of real estate regarding the valuation of sold state real estate, i.e., among others: art. 38 section 1-2 of this Act, according to which, when determining the value of undeveloped and developed land, the function designated in the spatial development plan was taken into account (this did not pertain to only the detailed plan).

10. Conclusions

The general municipal plan is significant to the valuation of real estate in accordance with Article 154 of the Real Estate Management Act, however its provisions are not taken into account when valuing real estate for the purpose of determining the amount of compensation for the decrease in the value of real estate due to the entry into force of the local plan and when determining the amount of the planning fee (fee for the increase in the value of real estate due to the entry into force of the local plan or its amendment). The hierarchy of "planning provisions" taken into account in the valuation of real estate for the aforementioned planning purposes, defined in the Act on Spatial Planning and Development, is different from the general one indicated in the Real Estate Management Act. The above results, among other things, from the fact that the general municipal plans will not constitute a direct basis for the implementation of land development, nor will they affect the provisions of the already existing local

spatial development plans, which, in accordance with Article 6 of the Act on Spatial Planning and Development, shape the way in which the right of ownership to real estate is exercised. From the above point of view, it is also important that the commune's general plans are not local spatial development plans.

The provisions of the local general plan, referred to in the 1984 Act on Spatial Planning, and the general spatial development plan of settlement units, referred to in the 1961 Act of the same name, are not mentioned at all in the Act on Spatial Planning and Development as those that should be taken into account in the valuation of real estate for the aforementioned planning purposes. These plans prepared before 1 January, 1995, and which, according to the currently applicable Act, should be taken into account in the valuation of real estate for the aforementioned planning purposes, are the plans called detailed local spatial development plans, i.e. plans prepared for the areas indicated in the general plans. The current situation is therefore completely different than the one in force before the change in the above-mentioned provisions of the Act constructed in 2022, where the valuation of real estate took into account the provisions of the local development plan (general and detailed) adopted before January 1, 1995. For the author of this article, this change is incomprehensible and even inconsistent with the judgment of the Constitutional Tribunal, in connection with the issuance of which the legislator initiated legislative work adapting the provisions of the Act on spatial planning and development to it.

To sum up, the new act on spatial planning, i.e. the general plan of the commune, will not constitute a basis for the property appraiser to take the intended use into account in real estate valuation, whenever the purpose of the valuation is to determine the amount of the above-mentioned compensation and fees. Local development plans (general and detailed) adopted before January 1, 1995, were, on the other hand, taken into account by property appraisers in the valuation of real estate for the above-mentioned objectives, but from the moment the amendment to the Spatial Planning and Development Act comes into force, they should only take into account the detailed plans (although these are not always taken into account seeing as how they have not been adopted in every area indicated in the general plan.)

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