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Piotr Ostrowski<sup>1</sup>, Anna Pelak<sup>2</sup>

# **An assessment of effectiveness of the so-called “small amendment” to the act Construction Law of February 20, 2015 in the terms of simplification of administrative procedures related to the construction of a single-family residential building**

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## **Abstract:**

The article attempts to analyze the effectiveness of the so-called “Minor amendment” to the Construction Law of February 20, 2015 in the field of simplification of administrative procedures related to the construction of a single-family residential building. On the basis of the results of surveys conducted among individual investors in the Tłuszcz commune (Mazowieckie Voivodeship, Wołomin County), the advantages and disadvantages of the simplified administrative procedure proposed by the legislator, i.e., construction measurement notification, were determined. The reasons for which this solution is still not competitive in relation to obtaining an administrative decision, which is a building permit, were also indicated.

**Keywords:** Construction Law, single-family residential building, building permit, notification of a construction project, area of influence of the building object

## **1. Introduction**

In spite of a large construction market recovery, Poland’s residential market still calls for improvement. One of the basic indicators Eurostat employs to show how residential needs are satisfied is one which determines the number of rooms per one resident. In 2020, it was 1.2 for

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<sup>1</sup> Dr inż., Instytut Inżynierii Środowiska, Szkoła Główna Gospodarstwa Wiejskiego w Warszawie, e-mail: piotr\_ostrowski@sggw.edu.pl

<sup>2</sup> Inż., Instytut Inżynierii Lądowej, Szkoła Główna Gospodarstwa Wiejskiego w Warszawie, e-mail: s194249@sggw.edu.pl

Poland, which is among the weaker results EU-wide<sup>3</sup>. At the same time, it should be expected that the geopolitical situation caused by the war in Ukraine and the Russian Federation's attempts at destabilising the EU will be adversely affecting the Polish construction market in the upcoming years. A high refugee number will probably boost demand for residential premises. At the same time, the world global chains disruptions, especially in energy raw materials and agricultural produce, drive up the prices of construction materials and the interest rates. This, in turn, restricts credit availability for residential purposes. Under such circumstances, it seems effective legislative efforts are necessary to make it easier for individual investors to build single-family houses, and to encourage them to embrace such form of housing. The importance of these construction process participants is demonstrated by data from Sejm paper no. 2710 of 2014 which reads that, in 2013, as many as 39% of building permits issued in Poland (over 75k projects) concerned single-family houses<sup>4</sup>.

Both individual investors as well as trade associations and investment process related professional organisations have long postulated the need for legislative changes aiming to promote single-family residential housing. Overly extensive and time-consuming administrative procedures regarding building permits were identified among significant barriers blocking the expansion of single-family housing. The so-called "small amendment" to the Construction Law of 20 February 2015 was supposed to address this problem<sup>5</sup>. The legislature's intention and its main purpose was to simplify and accelerate the construction process for a majority of construction projects<sup>6</sup> by way of abolishing the building permit requirement. In the event the area of influence of such a building object is confined to a plot or plots on which the projects were designed, the investor is entitled to choose an administrative procedure between a building permit and notifying a construction project.

Respective solutions the act introduces are even today widely discussed by the participants of the construction process, in media or trade

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<sup>3</sup> [https://ec.europa.eu/eurostat/databrowser/view/ilc\\_lvho04n/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/ilc_lvho04n/default/table?lang=en) [dostęp: 06.07.2022]

<sup>4</sup> Uzasadnienie do projektu ustawy o zmianie ustawy – Prawo budowlane oraz niektórych innych ustaw, druk 2710, Sejm VII kadencji (dalej: uzasadnienie ustawy nowelizującej).

<sup>5</sup> Ustawa z dnia 20 lutego 2015 r. o zmianie ustawy – Prawo budowlane oraz niektórych innych ustaw (Dz.U. z 2015 r. poz. 443); dalej: ustawa z 2015 r.

<sup>6</sup> Uzasadnienie ustawy nowelizującej.

press. Although there are views which undermine their effectiveness<sup>7</sup>, no respective research is mentioned in the literature. The work of S. Kołacińska and T. Zaborowski on two districts of the Capital City of Warsaw<sup>8</sup> comes as an exception. However, there have been so far no analyses presented on areas individual investors find the most appealing, and these will be urban-rural communes neighbouring large urban agglomerations.

The article ventures to find whether and how the changes to the Construction Law are effective in simplifying administrative procedures on the construction of a single-family residential building which were incorporated into the amendment of 20 February 2015. The amendment came on the grounds of results of a survey conducted in an urban-rural commune adjacent to the Warsaw agglomeration, and the authors' professional experience (direct contact with the construction process participants, i.e., investors, designers or construction site managers).

## **2. Administrative procedures regarding the construction of single-family residential buildings prior to Construction Law amendment of 20 February 2015**

Under the Construction Law of 7 July 1944<sup>9</sup>, the procedure on the construction of a single-family residential building is one which gives rise to an administrative decision which allows to commence and continue the construction, i.e., the building permit. Under Article 33 (2) of the Construction Law of 2013, the building permit application should primarily have the following attached:

- a) four copies of the construction project together with the opinions, agreements, and other documents required under specific regulations,
- b) statement on the right to dispose of the property for construction purposes,
- c) zoning permit (if so required by the Act on Spatial Planning and Development).

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<sup>7</sup> R. Krupa-Dąbrowska, *Pozwolenie na budowę czy zgłoszenie? Inwestorzy wolą z pozwoleniem*, „Rzeczpospolita” z 20.02.2017; <https://www.rp.pl/nieruchomosci/art10634341-pozwolenie-na-budowe-czy-zgloszenie-inwestorzy-wola-z-pozwoleniem> [dostęp: 11.08.2022].

<sup>8</sup> S. Kołacińska, T. Zaborowski, *Czy wprowadzenie możliwości budowy domu jednorodzinnego w oparciu o zgłoszenie rzeczywiście usprawniło proces inwestycyjny? Analiza na przykładzie m.st. Warszawy (Polska)*, „Budownictwo i Architektura” 2021, nr 20(3), s. 99-118. DOI: 10.35784/bud-arch.270.

<sup>9</sup> Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane (Dz.U. z 2013 r. poz. 1409), dalej: u.p.b. z 2013 r.

The construction project referred to in Article 33(2)(1) of the Construction Law of 2013 included a land or plot development project (drawn up on a map for project purposes, showing all the characteristic elements of the plot, i.e., the footprint of buildings, the infrastructure development, etc.), an architectural and construction project (specifying, inter alia, the function, structure, form of the building) and information on the influence of the building. In addition, the application also had to come with a statement from the relevant road authority on the possibility to connect the project with a public road, statements from the relevant entities on the assurance of energy, water, heat and gas supply, sewage collection and on the conditions for connecting the work to water, sewage, heat, gas, electricity, telecommunications and land road networks, as well as the results of geological-engineering and geotechnical surveys concerning the foundation conditions of the construction work.

The architectural and construction administration authority checked the completeness of the application and the compliance of the construction project with the local spatial development plan or the zoning decision. If necessary, the authority also consulted other acts of the local law (e.g., the local regeneration plan). Compliance of the land development project with the applicable technical and construction regulations was also assessed. If irregularities were found, an obligation was imposed by the authority's decision on the investor to remedy the identified breach of the Construction Law of 2013 within a specified period of time (Article 35(3)). Once the violations were properly removed, the authority approved four copies of the construction project. The statutory time limit for an administrative decision (building permit) was 65 days (Article 35(6) of the Construction Law of 2013). This time limit did not include statutory deadlines for certain transactions, periods of procedure suspension and delay attributed to the party or for reasons beyond the control of the authority (Article 35(8) of the Construction Law of 2013). In the event irregularities were not removed, the authority issued a decision to refuse to approve the project and to grant the building permit.

A very important element of the building permit process was an option to modify the construction project pending its implementation, the modifications being termed by the legislature as considerable or non-considerable departure from the approved construction project (Article 36a of the Construction Law of 2013).

### 3. Administrative procedures on the construction of single-family residential buildings following the so-called "small amendment" to Construction Law of 20 February 2015

By the Act on Amending the Construction Law and Certain Other Acts of 20 February 2015<sup>10</sup>, key changes were made in the area of design, construction, maintenance and demolition of construction works and the principles for public administration's handling these issues. Their main goal was to simplify and shorten administrative procedures related to the construction of a single-family residential building<sup>11</sup>.

The amended act allowed for construction of such a project on the basis of **contemplated construction project notification**, without having to obtain a **building permit**. However, the legislature has limited the option only to the "area of influence" being "confined to the plot or plots on which they were designed"<sup>12</sup>. Under Article 3 (20) of the Construction Law of 2013, such an area is one around the construction work, demarcated under

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separate provisions which introduce restrictions on the work's development (including the development of housing). An option to resort to the simplified procedure is therefore closely related to proper demarcation of the area of the building's influence (a single-family residential building).

The following should be, inter alia, notified along with the construction project: scope of construction works, their start date and how they will proceed. The notification should come with project documentation and the legal title to the property hosting the project. On the documents' basis, the architectural and construction administration authority will assess whether the area of building influence has been properly demarcated. The authority has 21 days to take a stance, and in the absence of objection (so-called tacit consent), the investor may start the construction works. However, an obligation to remedy the gaps in documentation, once imposed, interrupts the running of the time-limit. The disposition of a case without notice from the authority that is applied in this case enables acceleration and simplification of administrative procedure. It is noteworthy that the disposition of a case without notice from the authority was not introduced into the Code of

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<sup>10</sup> Dz.U. poz. 443; dalej: nowelizacja z 2015 r.

<sup>11</sup> Uzasadnienie ustawy nowelizującej.

<sup>12</sup> Art. 1 pkt 7 lit. a tiret pierwszy nowelizacji z 2015 r.

Administrative Procedure until 1 June 2017<sup>13</sup>, which can be regarded as late and resulting in a dualism arising from the simultaneous applicability of the Code and separate provisions<sup>14</sup>.

In assessing the submitted application, the architectural and construction administration authority checks whether applying the simplified procedure is legitimate. The case study is analysed and the correctness of qualifying the norms for 10,5 reassess the situation, which usually involves increasing the area of influence of the work.

The foregoing shows that for construction project notification, the duration of administrative procedure necessary to start the works has been shortened from 65 to 21 days (by more than 6 weeks). However, the scope of documents necessary for the notification has not diminished greatly<sup>15</sup>.

#### 4. Survey

With respect to the amendments to Construction Law discussed above, the main intention of the legislature was to encourage applicants to take advantage of simplified administrative procedures related to the construction of a single-family residential building, which was expected to stimulate the development of this segment of the housing market.

In order to assess the effectiveness of these amendments, a survey was conducted between June and July 2021. The urban-rural commune of Tłuszcz, with an area of 103 km<sup>2</sup> located in the Wołomin powiat, approximately 35 km north-east of Warsaw, was selected as the location for the survey. The commune can be considered as a reference area, highly appealing for individual investors who deal with the construction of single-family residential buildings. This is determined by two factors - attractive prices of building plots and the road and rail connections to Warsaw that make it possible to work in the capital.

Fifty people were surveyed who had started the construction of a single-family building, were in the process of construction or who had completed construction in the preceding 6 months. The questionnaire of 15 questions was provided to the clients of the Tłuszcz Municipal Office and to people in

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<sup>13</sup> Ustawa z dnia 7 kwietnia 2017 r. o zmianie ustawy – Kodeks postępowania administracyjnego oraz niektórych innych ustaw (Dz.U. poz. 935).

<sup>14</sup> *Milczące załatwienie sprawy przez organ administracji publicznej*, Z. Kmiecik, M. Gajda-Durlik (red.), Warszawa 2019; J. Wegner, *Instytucja milczącego załatwienia sprawy przez administrację publiczną*, Warszawa 2021.

<sup>15</sup> M. Berdysz, *Mała nowelizacja Prawa budowlanego: duże zmiany w przepisach*, „Materiały Budowlane” 2015, t. 3, s. 74-77. DOI: 10.15199/33.2015.03.23.

direct contact with investors (surveyors and designers). The survey was anonymous and supervised (the surveyees could seek explanations from the interviewer, however, only a few people took advantage of this opportunity).

As many as 78% of the respondents decided to start the construction process on the basis of an administrative decision - a building permit. Only 22% of respondents who were investors in the Tłuszcz commune opted for the simplified procedure, i.e., notification of the construction project.

The following are the three main reasons the respondents cited in opting for the procedure:

- the requirements of banks which conditioned mortgage on a building permit (29% of respondents);
- protection against the project being declared an arbitrary construction project (18% of respondents);
- an option to modify the building project during construction (15% of respondents).

It is noteworthy that 14% of respondents were persuaded to obtain a building permit by their designer.

In the case of the simplified procedure, i.e., notification of the construction project, half of the respondents cited a shorter administrative procedure as the reason. Respondents also pointed to fewer documents that need to be collected at the initial stage of the project and to the fact that they do not need to notify their neighbours.

Among the main disadvantages of the building permit procedure, 46% of respondents identified long duration of the administrative decision process. Nineteen percent of respondents stated that the procedure's disadvantage was more documents required prior to the start of construction works, and 13% mentioned the need to notify neighbours, who are sometimes a party to the administrative procedure.

The need to have to carefully analyse the construction project was considered a disadvantage of the simplified procedure by 28% respondents (changes are no longer possible during construction). Twenty-four percent of respondents reported that it is more difficult to obtain a mortgage without an administrative decision, and 17% said that the simplified procedure carries a greater risk of building controller's inspection. Only 6% of respondents said that the procedure is associated with a greater likelihood of irregularities during construction.

## **5. Assessment of the amendment's effectiveness**

The explanatory statement to the so-called small draft amendment of the Construction Law reads that parties other than the applicants are present in as few as around 40% of cases regarding single-family residential buildings<sup>16</sup>. Thus, in approximately 60% of cases (30,000 investment projects per year), the notification of the construction project may replace the building permit procedure. The authors of the draft amendment claim this was to produce time and financial savings for the investor, and also to reduce the procedural burden on authorities in charge of the administrative procedure.

The survey showed that, for the commune of Tłuszcz, the 2015 amendment to the Construction Law has not proved fully effective in terms of an option to construct a single-family residential building on the basis of a construction project notification. The percentage share of projects executed on the basis of construction project notification is almost three times lower than the legislature assumed. Although 80% of respondents were aware of the simplified procedure, only 22% followed it. It is noteworthy that after rounding to 1 percentage point, this value is identical with the one for the area of the Warsaw districts of Bielany and Białołęka<sup>17</sup>.

Among the three main reasons for little appeal of the notification are the policy of banks which usually refuse a mortgage in the absence of a building permit, a concern the project may be considered as an arbitrary construction and no changes possible to the construction project. This last reason is also mentioned by almost all the designers contacted by the authors of the article in their professional practice. They jointly emphasise that the construction of a single-family house without project changes at the construction stage is very difficult and usually involves a failure to meet the investor's expectations. It may be considered highly probable that the reason for which designers persuaded the investors to obtain a building permit (14% of respondents) was an option of project changes.

The main reasons behind the Tłuszcz investors' opting for simplified procedure were shortened duration of administrative procedure and reduced amount of necessary documentation. In addition, an advantage the simplified procedure's advocates pointed out was not having to notify their neighbours of the pending administrative procedure. This was probably due to concerns that, as a party to the administrative procedure, they might protest the

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<sup>16</sup> Uzasadnienie ustawy nowelizującej.

<sup>17</sup> S. Kołacińska, T. Zaborowski, *Czy wprowadzenie możliwości...*



project. The surveys show, these reasons did not prove important enough to offset the disadvantages of the simplified procedure.

They also show that the simplified procedure was most of the time the choice of younger people. Out of the 11 people who chose the simplified procedure, as many as 9 were between the ages of 26 and 40. It proves that, especially for older investors, an administrative decision (a building permit) is a kind of "security guarantee" for the project's legality. They are also aware of the disadvantages of the simplified procedure they mentioned in the survey.

## **6. Summary**

The "small amendment" to the Construction Law of 20 February 2015 introduced numerous changes aimed at simplifying and accelerating the investment process and, consequently, at prompting an increase in the number of constructed single-family houses. Among the amendments, the most significant one was an option to construct a single-family residential building without a building permit. However, amendments to the Law, mainly aimed at individual investors, have not proved fully effective.

Surveys show that relatively few investors took advantage of the simplified procedure of construction project notification. The shortcomings of this procedure (such as no project changes pending construction, difficulties in obtaining a mortgage or concern for the project being regarded as arbitrary construction) were not outweighed by its advantages. The latter include reduced duration of the administrative procedure, the slightly smaller amount of necessary documentation and no need to notify neighbouring property owners of the intention to construct.

The authors are aware of the very narrow scope of their study. Therefore, the ensuing conclusions are but signal information and should be treated as triggering a discussion on the orientations of further amendments to the Construction Law. It is worth emphasising, however, that the survey results have proved to be consistent with research carried out in the dynamically developing districts of Warsaw and with general opinions in the broadly understood construction community.

A single-family residential building being constructed on the basis of a notification of a construction project is the right direction for changes in the Construction Law. However, with this law six years in force now, it seems necessary to introduce amendments to eliminate the flaws that make this

procedure ineffective. These changes should allow the investor to modify the project during the construction process. In addition, a situation should be created in which banks will treat the notification procedure as equivalent to one in which the investor has obtained a construction permit. Since a construction project made by a person with relevant qualifications is an obligatory attachment to the notification of the construction project, obtaining a mortgage loan should not depend on the type of administrative procedure chosen by the investor. The above changes should encourage individual investors to opt for the simplified procedure and stimulate a more dynamic development of this branch of the construction industry.

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