

DIVISION OF DEVELOPED REAL ESTATE – POLISH EXPERIENCE

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ABSTRACT

This paper is an attempt to show what environmental and spatial consequences will be brought by the construction of the southern ring-road of Olsztyn, which is a linear investment. It also justifies the choice of the location from among four variants that were taken into consideration at the planning stage. The area in which the ring-road is located is characterised by particularly precious natural values due to the occurrence of rivers, lakes, diversified relief, rich flora and fauna or bird refuges. Many of these elements are covered by legal forms of natural protection. As a result of numerous discussions between planners, ecologists and the local community, the best variant of the course of the ring-road was chosen, which is the subject-matter of the analysis presented below. The paper also presents an economic analysis of the construction of the bypass road (saving time, fuel economy, etc.).

Keywords: real estate division, the division of plots, the division of the building, Poland

INTRODUCTION

First, it should be noted that the division of real estate can be considered in the following terms:

- **administrative** [land register-related, land survey-related] - division of real estate consists merely in defining within the area of the estate other geodetic configurations of plots of land that form part of the estate, without changing its current owner – in this case geodetic division has no effect in terms of property law, i.e. it does not result in the creation of land real properties as separate objects of ownership.
- **legal** - division of real estate means taking at least one plot of land forming part of the estate out from the current land and mortgage register (by deleting the plot from the 1st Section of the land and mortgage register) and establishing a new land and mortgage register for it;

Such classification has been proposed in numerous studies on real estate management, including real estate division issues [1, 2, 3, 4, 5, 7, 9].

The division of a developed property into two parts may be caused by the different manners of administration of each part. The case shown in Figure 1 may serve as an example, in which there is only one entity in Part A which runs its business there, with welfare and technical facilities. Part B is a part of the building where the users are tenants of commercial space with a large common area for traffic. It should be noted that the two parts have one shared entrance. The building is a structure with two above-ground floors and an underground car park. Within the entire height of the building there is a possibility of fire separation in the form of permanent or temporary partitions.

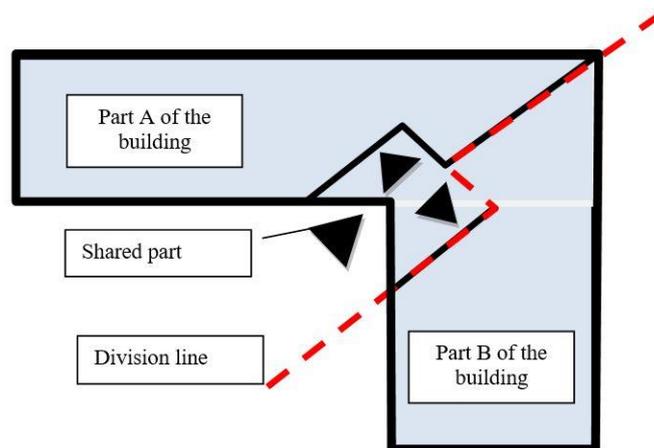


Figure 1. Example of drawing a division line (dashed line) through the building structure
[source: own elaboration]

A problem of a legal and technical nature appears in the example shown. In which place exactly should one draw the line dividing the structure of the building? In the scale of the drawing presented one may get the impression that the division line is aligned with the vertical projection of the wall, while in fact the wall is much thicker than the dividing line. In addition, one should consider a situation where the thickness of the walls the division line runs through differs depending on the floor. Should the border line, as a vertical plane drawn up along the wall, be a plane running through the centre of the wall, or coinciding with one of the surfaces of the wall?

DIVISION OF A DEVELOPED PROPERTY WITH DIVISION OF THE BUILDING LOCATED ON IT

A special case is the division of a developed property with the division of the building. Where administrative division also causes division of the building, the borderlines of plots of land to section off should run along vertical planes that are created by fire separation walls located along the entire height of the building from foundation to roof covering. In buildings with no fire separation walls, the boundaries of plots of land to be sectioned off should run along vertical planes that are formed by walls located along the entire height of the building from foundation to roof covering, clearly dividing the building into two separately used parts (Article 93, paragraph 3b of REMA).

Polish law does not provide for the rules of administrative division of a building in isolation from determining the rights to the plot of land. Kopyra even states that "the principle formed in Polish property law is the integrity of the building, provided that (...) the division of the building is being made together with the division of the land the building is founded on." [6].

The division of real estate along the vertical walls of the building is governed by Article 93 paragraph 3b of REMA, introduced by Article 1 paragraph 32 subparagraph b) of the *Act amending the Real Estate Management Act and other acts* of 24 August 2007 (Journal of Laws 2007, No.173, Item 1218). However, there were already certain principles for the division of developed property before, such as § 4 of the Regulation of the Council of Ministers of 7 December 2004 on the manner and procedure of carrying out the division of real estate, wherein detailed conditions for division were set out, which was, as Kopyra put it, an example of legal solutions developed in case law that were subsequently adopted in legislation.

Article 93 paragraph 3b allows the division of a developed property which also results in the division of the building located on it if the boundaries of the plots of land to be sectioned off run along vertical planes that are created by:

- a) fire separation walls situated over the entire height of the building from the foundation to the roof covering,
- b) walls situated over the entire height of the building from the foundation to the roof covering, clearly dividing the building into two independently used parts if the building has no fire separation walls.

Therefore, it seems reasonable that in the context of the need to define what is the effect of the division of a building: whether independent **buildings** or independent **parts of the building**, one should refer with this regard to the Act of 7 July 1994 Construction Law (Journal of Laws 2013, item 1409 consolidated text), to Article 3 point 2 containing the definition of a building. 'Building' is defined as a structure that is permanently fixed to the ground, separated from the surrounding space by partitions, and having a foundation and a roof.

The secondary legislation to the above Act, the Regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions to be met by buildings and their location (Journal of laws 2002.75.690 as amended), in § 210 states that separate parts of a building sectioned off vertically with fire separation walls - from foundation to roof covering - can be treated as separate buildings. Thus, according to this regulation, the condition for the division of a building into two buildings is the course of the border line along the fire separation wall. This corresponds to Article 93 point 3b of REMA, where two distinct parts are mentioned in the context of the division of the building along the walls that are not fire separation walls.

In the context of discussion about the division of a building, which accompanies the division of real estate, it should be noted that the division usually concerns facilities that were designed and built to perform specific functions. Division often produces functional/structural/practical situations which can be solved by establishing appropriate easement, whether land- or building-related.

However, Article 93 paragraph 3b. of REMA does not mention easements. This seems to be a major inconsistency, because paragraph 3 of the same Article 93 of REMA refers to the need to establish easements (as a way to provide a separate plot with access to a public road). In the practice of divisions, such as the example quoted in the introduction, there may be a situation where the residents or users of some separate parts of a building or a new building will be forced to use sectioned off parts or the other building. It seems necessary to include such a provision in the Act on Real Estate Management [6]. It should be noted that the Supreme Court, in its judgment of 5 January 1970 (Case No. I, CR 5/71, Lex database No. 6643), also became aware of such a need, noting that independent parts of a building may be created as a result of division. "Such parts include not only those that are built as self-contained functional wholes, but also those in which the legitimate interests of the owners are guaranteed by establishing appropriate easements."

CONDITIONS FOR THE DIVISION OF A DEVELOPED PROPERTY WITH THE DIVISION OF A BUILDING

Formal requirements for the division of a developed property that also causes the division of a building are contained in Article 93 paragraph 3b of the Act of 21 August 1997. The provision of §4 of the Regulation of the Council of Ministers of 7 December 2004 on the

manner and procedure of carrying out real estate divisions is connected with the above article. Compared to statutory requirements, the requirements set out in the regulation are broader.

A. Condition for the existence of a wall in the plane of division of the building

An indispensable element of the division is to identify the boundary line. Article 93 paragraph 3b of REMA and § 4 of the Regulation **on the manner and procedure of carrying out real estate division** allows division of a developed property with the concurrent division of the building into **independently used parts**. The boundaries of the plots of land to be sectioned off should run along vertical planes that are created by:

- a) fire separation walls situated for the entire height of the building from the foundation up to the roof covering,
- b) walls situated for the entire height of the building from the foundation up to the roof covering.

There is no definition of “wall” in the Polish legal system. According to Lechołaj, a wall is a vertical barrier that protects the interior of the building from external influence, or separates it into individual rooms [8]. The technical requirements to be met by walls depend on what their functions in the building are. The properties of walls depend primarily on the materials they were made of. The materials used to make them should be durable, aesthetic and harmless to the health of users. The choice of material depends on the purpose and functions of walls in the building.

Pursuant to Article 93 paragraph 3b of REMA, the boundary of the plot should be determined by the vertical plane defined by the wall. It should be noted that the cited provisions of the Act and Regulation do not decide at which point of the cross-section of the wall to draw the border line. Each wall, no matter how thin, has some thickness, while the plane of division does not have. Practically, this means that we may draw through the wall cross-section an infinite number of planes that may constitute the border.

So, we can basically distinguish two cases concerning the course of the border:

1. the border runs along the outer edge of the wall or a physically identified layer of the wall (Figure 2),
2. the border runs inside the wall

It seems that in determining the boundary line one can use the provision of the Regulation of the Council of Ministers of 10 December 2010 on the Classification of Fixed Assets (Journal of Laws 242, item 1622), where the description of group-1 includes the following: *"For compact development buildings, the boundaries between particular structures are formed by planes of contact between gable walls, and if there is a common wall between the two structures, the border between the buildings **runs through its centre**.."* It should be noted that the Regulation cited above was enacted under the delegation set out in the Act of 29 June 1995 on public statistics (**Journal of Laws 2012.591, consolidated text**, as amended), and is of an ancillary nature for considerations relating to the division of buildings. It should also be noted that this regards the border between buildings, while in the event of division referred to in Art. 93, paragraph 3b of REMA, two parts of the same building are created, not two separate buildings.

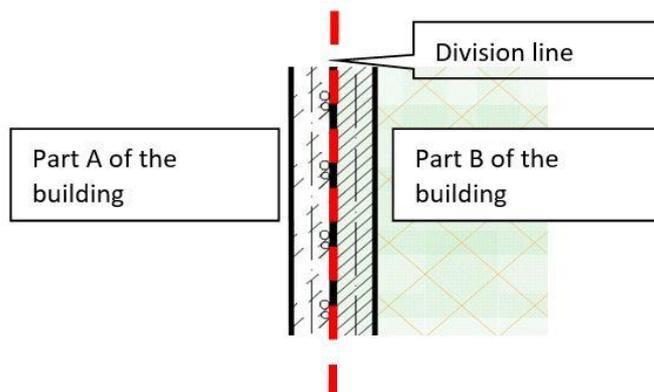


Figure 2. The border runs along the outer edge of the wall or a physically identified wall layer surface [source: own elaboration].

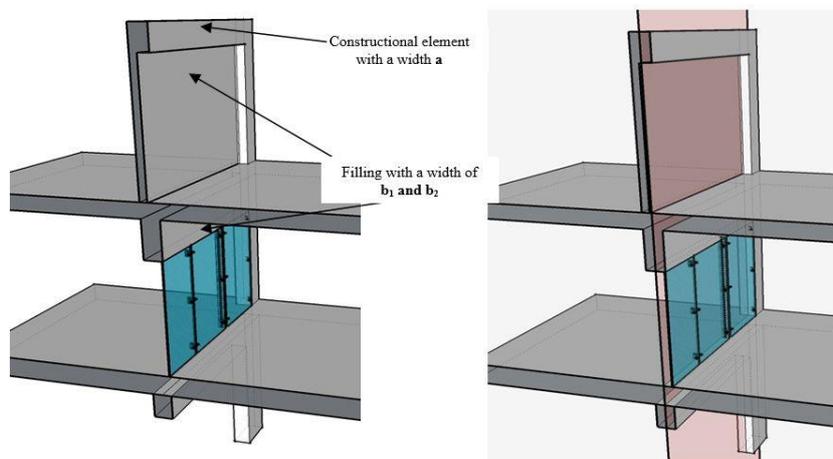
The situation where the dividing line runs inside the wall (fire separation wall or other) is much more difficult to solve. Various cases may occur here:

- a) the wall is uniform in terms of material and geometry for the entire height and width of the building in the plane of division,
- b) walls in the plane of division on individual floors have different thicknesses, for example a framework structure made of load-bearing poles, on each floor filled with walls of different material and geometric characteristics (thickness), or filled with window or door woodwork.

It seems necessary that where the agreed line of division of the property and building is to run through the cross-section of the wall, this wall must be covered by legal protection in order to protect the neighbours against irresponsible interference in the structure of the common wall.

The course of the border should be indicated on the plans of each floor as required by § 4 point 2 of the Regulation on the manner and procedure of carrying out real estate divisions.

The legislation does not specify the types and characteristics of the walls along which the border will run, except for the provision that they must be fire separation walls or other walls. In such a situation it may happen that the projection of a structural wall "includes" an element of filling made of other material - load-bearing structural elements with a width of projection **a** and the filling with a width **b**, where $a > b$ (Figure 3, 4).



- a) arrangement of walls before the division – vertical cross section
- b) vertical cross-section with marked vertical plane running through the centre of a structural wall.

Figure 3. Fragment of the vertical arrangement of the building [source: own elaboration].

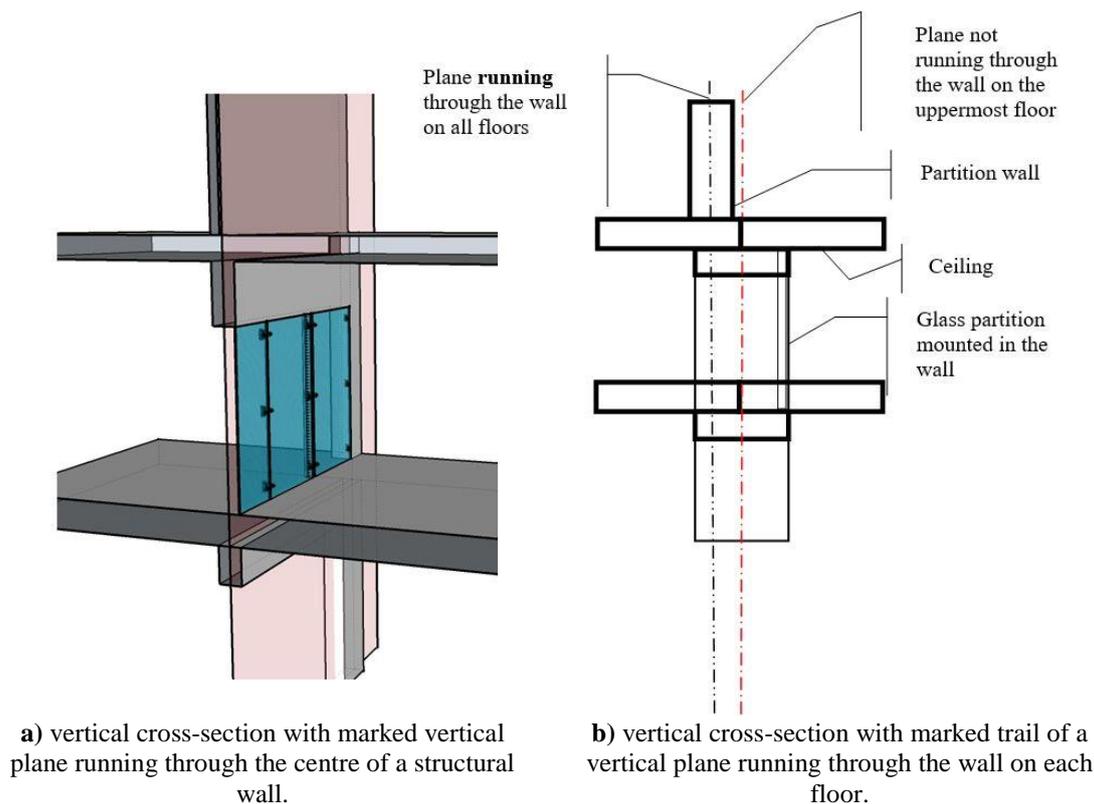


Figure 4. Fragment of an arrangement with a vertical plane running through the centre of a structural wall (the plane does not intersect the wall on the upper floor – dot-dash line) [source: own elaboration].

B. Condition of separate use of the newly created parts

The subdivided parts are independently used.

C. Condition of independent entrance

A condition that was formulated in the Regulation on the manner and procedure of making real estate division, and is related to the division of property with the division of a building, is the requirement of its own independent entrances for the separated parts of the building. Due to the fact that divisions concern existing facilities, so often there is no physical possibility to meet this condition directly, but only through a joint entrance and vestibule. This suggests a certain analogy to the need to provide access to a public road for a building and plot of land. According to § 14 paragraph 1 of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements to be met by buildings and their locations, it is required to provide a plot for development with access enabling communication with a public road, suitable for the purpose and manner of use and fire protection requirements set out in separate regulations. According to Article 93 paragraph 3 of the Real Estate Management Act, plots of land to be sectioned off must have access to a public road; and access to a public road also means sectioning off an internal road together with the establishment of appropriate easements on this road for separate plots of land, or establishing other right-of-way easements for these plots if it is not possible to section off an internal road from the property being divided. Article 2 paragraph 14 of the Act of 27 March 2003 on Spatial Planning and Development has similar wording: access to a public road shall be construed as direct access to this road or access to it by an internal road, or by establishing an appropriate right-of-way easement.

Therefore, it seems reasonable to apply the formula previously presented to the question of an independent entrance, i.e. where such an entrance cannot be provided directly, an appropriate easement must be established.

D. Condition of separate utility systems

The last condition that was formulated in the Regulation of 7 December 2004 on the manner and procedure of making real estate division, and is related to the division of property with the division of a building, is the requirement of equipping the newly separated parts of the building with separate utility systems. Legal definitions of certain utility systems can be found in the Regulation of the Minister of Infrastructure of 12 April 2002. on the technical requirements to be met by buildings and their location: water supply system, sewerage system, heating system, gas system:

As can be seen, not all the systems have their legal definitions, but all are governed by provisions of the Regulation, separate provisions concerning, among other things, fire protection, environmental protection and occupational health and safety, as well as the requirements of Polish Standards relating to these systems and equipment. Therefore, it seems reasonable to assume that the primary criterion for the existence of separate systems in separated parts of the building was whether they comply with the provisions or not. A very important functional condition is the possibility of precise settlement of consumption and maintenance costs. In view of the fact that the divisions relate to existing facilities, and often there is no physical possibility to ensure these conditions, one should consider the legal possibilities of how to ensure the use of the other party's systems within a specified scope.

CONCLUSIONS

The division of developed property, also resulting in the division of the building, is possible pursuant to Art. 93 paragraph 3b of the Real Estate Management Act if the boundaries of the plots of land to be sectioned off run along vertical planes that are created by:

- a) fire separation walls situated over the entire height of the building from the foundation to the roof covering,
- b) walls situated along the entire height of the building from the foundation to the roof covering, clearly dividing the building into two independently used parts if the building has no fire separation walls.

Based on the conducted analysis, it should be noted that due to the division of a real property with the division of the building, two buildings or two (or more) parts of the building may be created. It seems reasonable to assume that a prerequisite to separate two independent buildings is that the dividing line runs through the separating fire wall. Otherwise the results of the division are parts of the building.

In determining the building division line, a prerequisite is that the division line is within the space defined by the outer edges of the wall. Structural components are of importance here. It should be added that where the agreed line of division of the property and building is to run through the cross-section of the wall, this wall must be covered by legal protection by establishing an adequate easement in order to protect the neighbours against irresponsible interference in the structure of the common wall.

Another condition for dividing the building is the requirement of separate entrances to the resulting parts. We propose that if it is not possible to determine independent entrances for the parts sectioned off, then an appropriate easement should be established.

The analysis of legal status and possible cases from practice shows the need to specify the rules for the division of developed real estate, or to develop a common practice.

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