

Adjacency Levies in Poland – Main Problems

Mirosław GDESZ, Poland

Key words: Betterment, Adjacency levies, Infrastructure charges,

SUMMARY

The object of the paper is an analysis of the incidence of the adjacency levies in Poland from both theoretical and practical perspective. The legal framework of adjacency levies is set in the Act of 21 August 1997 on land management (Land Management Act). Adjacency levies are imposed upon land owners as charges from increase in the market value of the land caused by: building the following local public infrastructure: roads, sewers, water supply systems, electricity, gas, telecommunication and when local municipalities and subdivision of land. The paper includes an analysis of applying the adjacency levies in Poland in years 2002 – 2004 as well as describes running of the adjacency levies in 2004 on the example of Szczecin city. Last part of the paper presents propositions of needed changes in Polish law relating to the adjacency levies. I especially focus on the idea of eliminating those of legal rules, which impose to define the amount of the adjacency levy as a percentage of increase in market value of the land.

Adjacency Levies in Poland – Main Problems

Mirosław GDESZ, Poland

1. INTRODUCTION

The paper investigates the incidence of adjacency levies in Poland from both theoretical and practical perspective. Adjacency levies are compulsory charges imposing on selected properties for a particular improvement and services that benefits the owners of such properties. The amount of the levy is calculated in proportion to the benefits which may result from improvement (the rate of levies is regulated by municipal statutes). A real estate valuer determines increase in the market value of the land due to the improvements.

This paper discusses:

- the history of adjacent levies,
- the legal background,
- problems with applying provisions relating to adjacency levies in Poland with the analysis of local statutes and introducing the adjacency levies in Polish municipalities in years 2002-2004
- proposal changes

2. HISTORICAL EVOLUTIONS OF ADJACENCY LEVIES IN POLAND

2.1. Polish Building Decree (1928)

The concept of imposing on property owners the cost of constructing public infrastructure as roads, sewers and water facilities was adopted from German regulations. First step in introduction this type of levy in Polish law was the regulations implemented after I World War based on Prussia Street Line Act from 1874. Article 164 of Polish Building Decree (PBD) provided that municipalities might impose compulsory levies on owners of properties adjacency to new constructed streets, street pavings, sanitary sewers and water supply system. These levies were collected by municipalities on the basis of local statute which set up the tariffs.

2.2. Land Management in Cities and Districts Act (1961)

This act (LMCDA) was a result of introducing communist ideas to land law regulations and the main aim of this act was limitation of private ownership of land. For example public lands in cities were only given for perpetual usufruct (*Polish term - użytkowanie wieczyste.*)

In contrary to this legal guidelines, regulations concerning betterment levies were similar to those implemented before Second World War. Article 27 of LMCDA provided that owners of properties in cities and selected districts located outside cities and towns were obliged to cover the cost of building new streets and public places and partly the cost of constructing

water distribution system, sewers, gas and electricity facilities. This levies were collected in annual instalments by the State because of liquidation of municipalities in Poland in 1950. The procedure of determining the levies and possibilities of paying them in installments were regulated in executive decree. The basis of assessing the levies was fixed tariff introduced in a separate legal act on the level of an ordinance of the Council of Ministers. This levies were collected in annual instalments.

2. 3 Land Management and Land Expropriation Act 1985

Land Management and Land Expropriation Land 1985 brought important changes in regulations on adjacency levies. In this act for the first time was used term “*adjacent levies*”. The levies were imposed at the rate equal to 50 percent of the increase in value of property as a result of constructing public infrastructure facilities such as streets, sewers, water pipes, electricity and gas facilities.

In 1990 Land Management and Land Expropriation Land was amended to a significant extend. From this time municipalities (reactivated in May 1990) were authorized to collect levies instead of the local state governors. The details of assessing and collecting levies were regulated in regulation of the Council of Ministry of 16 July 1991. According to § 7 of this regulation(s) the adjacency levies (have) became the income(s) of municipalities. To impose levies the adoption of local statute was necessary.

At the request of the owner the levy could be paid in annual installments but only to the amount of 10. There was also introduced a second type of adjacency levies (which are connected with the land reallocation procedure. However, in practice after 1990 the adjacency levies were applied only by small number of municipalities. Local councils didn't want to adopt statues introducing the adjacency levies.

3. CURRENT LEGISLATION

3.1 Introduction

Land Management Act (LMA) came into force on the 1st January 1998. From this time the act was several times amended. Its adoption was enormously important, both from the point of view of correct management of the public real estate, i.e. that belonging to the State Treasury and self-governments, and an efficiently functioning real estate market. This act regulates in details management of properties owned by the State and municipalities (excluded forestry and agriculture land), subdivision of land, pre-emption right, expropriation, property valuation and participation of owners in the construction costs of technical infrastructure facilities. LMA authorized all cities and villages (Polish- *gmina*) to imposing three types of adjacency levies.

3.2 Definition and types of levies

The term **adjacency levies** (Polish term - *opłaty adiacenckie*) is defined in this act as a levy set in connection to an increase in the value of real estate as a result of the construction of technical infrastructure facilities financed from public resources, as a result of land reallocation (Polish term - *scalenie i podział*) or as a result of land subdivision (Polish term – *geodezyjny podział nieruchomości*).

The main problem concerning this (**legal**) term is to define **its** scope in Polish legal language. This is caused by the fact that levies in Poland are imposed not only on plots contiguous (adjacent) to provided expenditure but on all plots which market value has increased because of the expenditure.

3.3. Adjacency levy as a result of constructing local public infrastructure

In the paper I define this type of levy as connected with local public infrastructure. although this is not statutory term. In my opinion the term “*local public infrastructure*” corresponds better with the character of adjacency levy than the term “*technical infrastructure facilities*” (Polish – *urządzenia infrastruktury technicznej*) used in LMA . This type of adjacent levies is regulated in Chapter 7 of LMA (ART 143 to ART 148A of LMA).

Municipalities shall collect levies upon property specially benefited by constructing of new infrastructure with participation of public funds. The proportion of public funds to private funds spent for construction of improvements is irrelevant.

Article 143 of LMA defines constructing of technical infrastructure facilities as:

- new roads (modernization is excluded from 2004 Year),
- water distribution system
- sewer system plant and facilities (include storm drainage improvements)
- gas, heat, electricity and telecommunication infrastructure

Art 144 LMA provides that owners and perpetual users (*Polish- użytkownik wieczysty*) who are not obliged to pay annual fee shall participate in the construction of local public infrastructure. The condition to designate the land for building or commercial purposes is not necessary. Although the adjacency levies are not imposed on parcels designated for the purpose of agriculture and forestry in local plan or in cadastre if plan has not been adopted.

First step in the procedure of imposing adjacency levies is to adopt local statute by municipal council (*Polish – uchwała rady gminy*) which regulate the rate of the levies. In the most municipalities there has been adopted only one local statute and one rate [ex. Łódź, Wrocław] Only a few cities have adopted individual local statutes for every district [ex. Elbląg]. The municipal council set the percentage rate of adjacency levies which can be no more than 50 percent of the increase in the value of the property attributable to the improvements. In some cases the municipal council set the 0 percent rate, but the sentence of Administrative Supreme Court from 2002 (Year) set aside those local statutes as illegally.

If the local statute that regulate the rate of adjacency levies (less than 50 percent of municipalities in Poland) the mayor (the commune executive officer in villages) after finishing improvements initiates administrative procedure to impose the levy. Statutory terms concerning finishing the improvements are described as creation conditions:

- allowing individual technical infrastructure facilities to be connected to the property
- allowing to use new road.

The amount of the levy is assessed as per cent of the increase in value of property received due to infrastructure improvements. The value of the property before construction of infrastructure and after the construction is determined by a valuer. The amount of the adjacency levy is reduced by any costs previously incurred by the owner for improvements of infrastructure and contributed in kind into the construction of individual technical infrastructure facilities.

Payment of the charge is due in 14 days subsequent to the issuing of the demand for payment. During this time levy can be paid without any interest. At the request of the owner the levy can be paid in annual installments for 10 years. The interest rate is equal to the bills of exchange rediscount rate applied by the National Bank of Poland. If the levy is payable by installments LMA obliges to mortgage property

3.4 Adjacency levy as a result of subdivision

Article 98a of LMA contains detailed provisions of imposing this type of adjacency levies. Section 1 of Article 98A LMA says that if the value of real estate increase as a result of its subdivision performed at the request of the owner or perpetual usufruct user (in contrary to *ex officio subdivision*), the city mayor or chief village officer may set by force of decision a adjacency levies. The necessary condition of allowance to impose the levies is adopted by municipal council the percentage rate of levy. The amount of the levy cannot exceed 50 % of the increase in value attributable to the subdivision. The levy may be collected within the period of three years from the date of subdivision decision.

According to Section 2 of Article 98A LMA it is not permitted to levy if subdivision decision was accepted irrespective of the resolutions of local plan (ex. subdivisions to eliminate co-ownership rights to real estate). Plots allotted for purpose of public road are excluded from adjacency levies.

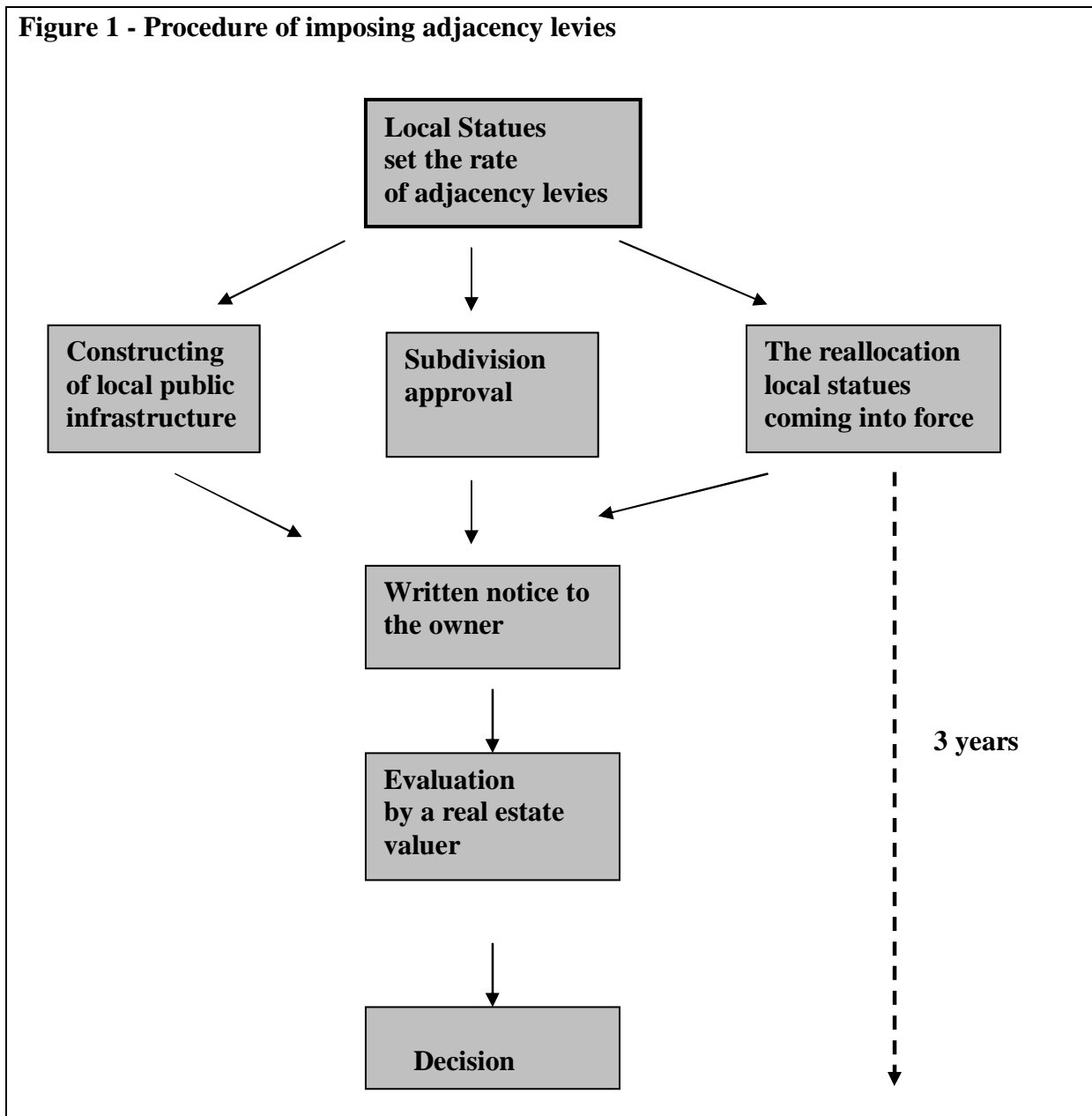
The procedure of assessment and collecting is the same as described in section 3.3.

3.5. Adjacency levy as result of land reallocation

This type of adjacency levy is used very rarely because land reallocation is not popular in Poland a form of urbanization, The procedure of reallocation is too formalized. According to ART 107 LMA every participant of reallocation is obliged to pay adjacency levy. The rate of the levy is set in reallocation local statues and cannot exceed 50 per cent of the increase in the value of property due to reallocation. The conditions (date, installments etc.) of collecting

levies may be subject of negotiations. If the negotiation failed this conditions shall be regulated by local statue (ex. local statue provides payment without installments).

Figure 1 - Procedure of imposing adjacency levies



4. IMPLEMENTING OF ADJACENCY LEVIES BY MUNICIPALITIES

The institution of adjacency levies has not been the subject of detailed analyses so far. Only one national survey of applying of these levies has been conducted by The Supreme Chamber of Control (Najwyższa Izba Kontroli) so far and its results were published in 2003. The Supreme Chamber of Control surveyed only 32 municipalities and it was random sample of

municipalities. The surveyed found that 27 municipalities (84,4 percent) adopted overall 66 local statutes introducing adjacency levies and :

- 35 statutes (53 percent) concerning the percentage rate of levies connected with increase in the value as a result of constructing local public infrastructure,
- 22 statutes (33 percent) concerning a rate of levies connected with increase in the value as a result of land subdivision,
- 9 statutes (14 percent) concerning a rate of levies connected with increase in the value as a result of land subdivision .

I analyzed enabling of adjacency levies statutes in years 2001-2003 and the result shows that:

- in 2001 was adopted 122 local statute,
- in 2002 was adopted 63 local statutes,
- in 2003 was adopted 140 local statute

By the basis of this analysis I determined the percent of municipalities in these particular provinces which have introduced the adjacency levies. What is interesting, the results show that there is a substantial differences between Western and Eastern Poland in imposing adjacency levies. In Western Poland more than 50 % of all municipalities adopted statutes enabling collecting of adjacency levies in contrary to Eastern Poland where such statutes were adopted by less than 20 % municipalities (see figure 2) .

The main problem with applying regulations concerning adjacency levies is determining the increase in value of properties. In practise, it is difficult to assess the increase in market value of the properties as a result of public improvements and isolate this factor from other influences on property value. In many court cases The Supreme Administrative Court set aside adjacency levies decision because of the wrongful determining of the increase in value of property. Another obstacle in popularization of these levies is a high cost of preparing written opinion by a real estate valuer (about 200 PLN) and this cost of opinion is often equal to 1/5 amount of the levy.

And, on the other hand the adjacency levies are not popular because of political reasons. During the campaign before municipal elections most of candidates promise not to impose adjacency levies on properties.

Table 1 - Adoption of adjacency levies statues in period 2001 -2003

Voivodeship (województwo)	Total amount of municipalities	Adopted Statues	%
1. Dolnośląskie	169	35	21 %
2. Kujawsko-pomorskie	144	25	17%
3. Lubelskie	213	12	6 %
4. Lubuskie	83	11	13 %
5. Łódzkie	177	8	3,4 %
6. Małopolskie	181	2	1,1 %
7. Mazowieckie	314	31	9,9 %
8. Opolskie	71	7	9,8 %
9. Podkarpackie	160	1	0.6 %
10. Podlaskie	118	5	4,2 %
11. Pomorskie	123	13	10,6 %
12. Śląskie	167	7	4,2 %
13. Świętokrzyskie	102	2	1,7 %
14. Warmińsko-mazurskie	116	37	31,9 %
15. Wielkopolskie	226	14	6,2 %
16. Zachodniopomorskie	114	29	25,4 %

5. SZCZECIN- CASE STUDY

In this part of paper I look in details at the collecting of adjacency levies in Szczecin. This city with 415 000 population is the 7th biggest city in Poland. As the only one city with population more than 400 000 tried to impose adjacency levies in wider range in 2004.

Local statue adopted in February 2004 introduce two types of adjacency levies

- a) as a result of land subdivision
- b) as a result of constructing local public infrastructure.

The rates of levies were introduced at 10 percent of the increase in value attributable to the improvement as a result of subdivision (type “a”) and at 50 percent of the increase in value to the improvements as a result of constructing local public infrastructure (type “b”) .

The Table 2 demonstrates the collecting of adjacency levies connecting with cost of constructing local public infrastructure in Szczecin. In this period of time the levies were collected in 12 improvement districts. In those districts city expenditures for local improvements were equal to 20 391 907 PLN. The table shows that in only 3 districts, out of 12, levies were collected. In those 12 districts more than 300 properties are located (no data from 3 districts) but only 76 decision imposing adjacency levies were issued. Those practices breach the principle of equity because in the same legal situation (land betterment) owners are treated differently and therefore imposing of levies is a form of discrimination. Secondly, the total amount of imposed levies was less than 0.006 % of city expenditures for public infrastructure in those districts. Additionally there must be noted that in most cases owners received permission to pay levy in installments and only 15 % of imposed levies were paid to the city budget.

Above numbers show inefficiency regulations concerning adjacency levies. Due to low revenues capturing by levies and social disapproval in October 2004 local council annulled the local statutes introducing adjacency levies.

The recent Szczecin experiences in imposing adjacency levies show that new regulations should be adopted in short term.

Table 2 - Imposing of adjacent levies in Szczecin in 2004 (source Szczecin City Office Department of Land Management – not published)

Localization	Type of infrastructure	Date of Finishing Works	No. of properties	No. of decisions imposing levies	Amount of levies (in PLN)	Levies paid to the city	City expenditures for infrastructure facilities In PLN
ul. Chorwacka, Węgierska, Szybowcowa	Sewer	17.09.2001 r.	9	12	61 600,00	18 100,00	1 898 180,06
ul. Goleniowska, Wejherowska, Pucka, Wrzesińska	Sewer	17.09.2001 r.	16	27			951 000,00
ul. Czwojdzńskiego, Grońskiego, Abrahama	Sewer, drainage, street	23.10.2001 r.	28	37	68 600,00		1 569 716,81
ul. Pochyła, Dąbrowszczaków	Sewer, drainage	07.12.2001 r.	32	0			1 681 313,00
ul. Rolna	Sewer, drainage	11.12.2001	7	0			1 771 200,96
ul. Tęczowa, Ogrodnicza, Galla Anonima, Szosa Polska, Tarnopolska, Nehringa	Sewer. drainage, street	20.12.2001	36	0			3 020 948,00
ul. Pogodna	Street	18.11.2002	17	0			473 637,76
ul. Zaściankowa, Krzekowska, Sobieskiego, Kaperska, Kirasjerów - os. Bezrzecze	Sewer. water, drainage	26.08.2002	94	0			4 014 857,46
ul. Ziemniaczana, Gryczana	Street	23.05.2002	No data	0			499 528,52
ul. Gronowa	sewer	29.07.2002	No data	0			1 193 878,25
ul. Szosa Polska, Okólna, Kolonistów, Kombatantów, Dojazdowa, Powrotna	Sewer, drainage, street	17.01.2003 03.12.2001	35	13	0		677 062,30
ul. Strzałowska, Pokoju	sewer	05.01.2004	No data	0			
2001-2004 Total			287	76	130 200,00	18 100,00	20 391 907,89

5. PROPOSAL CHANGES

Over last decade both theory and past experience suggested that the regulations on adjacency levies were insufficient and should have been reformed.

The main problem is determining the amount of levies on the basis of the increase in property value. Such services as roads, sewers and water system are related to the front footage of property instead of the increase in market value. It's methodical mistake and main obstacle in popularization of adjacency levies.

In my opinion, it is necessary to eliminate those of legal provisions setting adjacency levies as a percentage of value development. This base of assessing should be replaced by the width of the plot adjacency to the improvements (foot frontage) or tariffs set by local governments. Additionally local authorities should have more discretion in regulation the rate of levies, but also in setting the types of infrastructure involved by levies and boundary of districts. The adjacency levies should be expanded to include social and educational infrastructure and should be connected with financing affordable housing by commercial developers. Such reformed regulations should be adopted in short term as *ad hoc* remedy but at any rate, in long term, the adjacency levies should be replaced by land betterment tax which would be more appropriate instrument of land policy.

REFERENCES

- Alterman R., (1988) Exactions American style: The context for evaluation. In R. Alterman (Ed.), *Private Supply of Public Services: Evaluation of Real-Estate Exactions, Linkage and Alternative Land Policies* (pp. 3-21): New York University Press
- Alterman R., (1989) Evaluating linkage, and beyond. Cambridge: Lincoln Institute of Land Policy
- Altshuler A. A., Gomez-Ibanez J. A., *Regulation For Revenue: The Political Economy of Land Use Exactions* (w The Brookings Institution and Cambridge, Mass; Lincoln Institute of Land Policy, Washington 1993 r.)
- Bauman G., Ethier W.H., *Development Exactions and Impact Fees: A Survey of American Practices*, 50 Law & Contemp. Probs. 51, 51 (1987)
- Drozd E., Truszkiewicz Z., *Gospodarka gruntami i wywłaszczanie nieruchomości Komentarz* Zakamycze 1995
- Leoński Z., Szewczyk M., *Zasady prawa budowlanego i zagospodarowania przestrzennego* Bydgoszcz – Warszawa 2002
- Rudnicki S., *Sąsiedztwo nieruchomości*, Zakamycze 1999
- Szewczyk M., *Granice ingerencji administracyjnej w prawo własności nieruchomości na gruncie prawa zagospodarowania przestrzennego w: Rola materialnego prawa administracyjnego a ochrona praw jednostki*, Poznań 1998
- Wolanin M., *Komentarz do ustawy o gospodarce nieruchomościami*, Beck 1998

BIOGRAPHICAL NOTES

Dr Mirosław Gdesz was worked in Office of Housing and City Development and Ministry of Infrastructure in years 2002-2004, from 2004 he's working a referendary at District Administrative Court in Warsaw. He finished Phd paper "Adjacency levies in Poland" in 2004 r. He is the author of *Cel publiczny w gospodarce nieruchomościami published by ZCO 2002 (Public purposes in land law)* and many articles concerning public land law (all in Polish).

CONTACTS

Dr Mirosław Gdesz
District Administrative Court in Warsaw
ul. Jasna 4/6, 00-013 Warsaw
Home Address Łucka 2/4/6 m. 56 00 -845
Warsaw
POLAND
Tel. + 48 22 553 72 50 (work)
+ 48 654 56 92
Email: migdesz@hotmail.com.
Miroslaw.Gdesz@warszawa.wsa.gov.pl