

## ANALYSIS OF ERRORS IN INVESTORS' APPLICATIONS IN THE PROCEDURE OF OBTAINING A BUILDING PERMIT

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### Abstract

One of the most important documents occurring in the investment process is the administrative decision: building permit. Obtaining it is often a time-consuming process in practice, associated with the need to attach to the application other required decisions and permits necessary for a positive consideration of the case. The procedure itself is not always a long-term process, as long as the investor makes sure to prepare a reliable application free of errors and irregularities together with the construction project and the required attachments. The purpose of the article is to analyze errors appearing in investors' applications and attached project documentation required in the administrative procedure for obtaining a building permit in the light of the applicable provisions of Polish law.

Keywords: building permit, construction law, administrative decision

### 1. INTRODUCTION

The design phase is the first stage of the building life cycle. At this stage the investor makes decision regarding the property location [3,18], selection of materials and technologies [6,9,16], cost calculation [4,8,14] or energy assessment [10,11]. The decisions made on have a direct impact on next stages: construction, maintenance and possible demolition of a building [12,17]. The project

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documentation presents all solutions adopted and it is the basis for obtaining the building permit. The building permit in Poland is a document issued in the form of an administrative decision authorizing the commencement and carrying out of construction or to carry out construction works other than the construction of an object [2]. Obtaining this decision is a time-consuming process, which mainly results from the need for the applicant to provide the required decisions and permits necessary for the positive consideration of the application. The principle of freedom of construction as defined by the Act of 7 July 1994 - Construction Law in art. 4: "Everyone has the right to develop land, if he demonstrates the right to dispose of the property for construction purposes, provided that the construction intent complies with the provisions" [2] gives certain rights to the investor, while imposing a number of restrictions. They are so-called subject restrictions - possession of a legal title to real estate, e.g. property rights, and subject restrictions that relate to the compliance of the construction project with applicable law. Legal regulations in this respect are primarily set out in the Construction Law [2] together with executive acts in the form of ordinances and acts, e.g. in the field of environmental protection or protection of agricultural land. Local law, in particular local land use plans, also plays an important role in the field of construction. The above provisions protect the key values of human health and life, public safety and respect for the interests of third parties.

The purpose of the article is to identify and analyze gaps and errors appearing in investors' applications and the project documentation attached to them. The data was obtained as a result of the analysis of official documentation and as a result of surveys conducted among employees of starosties issuing building permits in the Lesser Poland Voivodeship.

## **2. THE PROCEDURE FOR APPLYING FOR A BUILDING PERMIT**

According to art. 28 of the Act of July 7, 1994. Construction Law (hereinafter referred to as the Act), construction works may be commenced only on the basis of a building permit decision, subject to art. 29-31 of the Act [13]. This decision is treated as an administrative decision of a legal nature, which results from art. 3 point 12 of the Act [2]. The administrative decision is a declaration of will of the administrative entity, possessing the trait of power, and thus it binds bindingly to the legal situation of the person to whom it is addressed [7].

In addition, science in the field of administration qualifies building permits as a constitutive decision, as it creates a new administrative-legal relationship by granting specific entities rights arising from regulations, and thus is also a direct source of rights [13]. In the administrative law doctrine, a construction permit

is also assigned to related acts, which means that the body examining the case is obliged to issue a decision in the event of legally determined conditions.

In accordance with art. 61 §3 of the Act, the Code of Administrative Procedure [1] the date of initiating the proceedings regarding the building permit is the day on which the request is served on the authority. At the initial stage of verification of the application, it should be verified whether the architectural and building administration body to which the application has been submitted is competent for issuing the decision locally and materially. In a situation where the authority to which the application is submitted is inappropriate in the matter in question, according to art. 65 § 1 of the Code of Administrative Procedure [1] it forwards it immediately to the competent authority in the form of a notification containing justification. If, on the basis of the data contained in the application, it is impossible to determine the competent authority, the authority to which the application was sent returns it to the investor by way of a decision on which he is entitled to appeal [5].

The next step of the authority is the formal verification of the application and a number of attachments related to the case. The list of annexes to the application is defined in art. 33 item 2 of the Act [2]. Only a correctly submitted application, without formal deficiencies, can effectively start running the 65-day statutory deadline for consideration of a case.

If the application contains formal deficiencies, the competent authority shall request the investor to remove them pursuant to art. 64 §2 of the Code of Administrative Procedure [1]. This request should be made not later than 14 days from the date of receipt of the request. The deadline for removing deficiencies is specified by the authority, but this period should not be less than 7 days. If the investor fails to complete the indicated deficiencies, the application will not be examined, and the addressee will be informed about it in the form of an instruction.

In addition to formal deficiencies, the application may also contain material shortcomings. The scope of application control in this respect is defined in art. 35 section 1 of the Act [2]. The authority will impose an obligation on the investor to remedy material deficiencies if it finds [2]:

- non-compliance of the construction design with local plans and other acts of local law or the decision on building conditions and land development (in the absence of a local spatial development plan) and environmental protection requirements,
- non-compliance of the plot or area development project with regulations
- incomplete construction design, lack of required arrangements, opinions, checks, BIOZ information or a certificate of belonging to the designer's chamber,

- execution or checking of a building design by persons who do not have the required building authorization.

With the determination of all parties and notification of the initiation of the proceedings, the case enters the next phase called the investigation. The task of the authority as part of the investigation is to determine the facts and legal status of the case under consideration based on the materials collected. In the course of explanatory proceedings, the authority issues decisions regarding procedural issues, e.g. on suspension of proceedings or refusal to restore the deadline [5].

The act crowning the procedure for granting the building permit is the decision. As the building permit decision is an administrative decision, it should contain primarily information resulting from art. 107 §1 of the Code of Administrative Procedure [1] ie designation of the authority and parties to the proceedings, date of issue, legal basis, resolution of the case, factual and legal justification of the resolution, information about the possibility of appeal and the right to waive the appeal and its subsequent effects, as well as the signature of an employee of the authority issuing the decision from giving the name, surname and position held by that person.

### **3. CLASSIFICATION OF ERRORS IN APPLICATIONS**

The standard division of errors appearing in applications for building permits is the division into formal deficiencies and factual errors [15]. Formal deficiencies (hereinafter referred to as formal errors) are verified at the very beginning of the proceedings. If the application is incomplete in formal and legal terms, the case is not initiated at all until it is removed. Meanwhile, substantive errors relate to the assessment (analysis) of the construction project, which is carried out at a later stage of examining the case.

The breakdown of formal errors in applications for building permits is shown in Figure 1. This classification was developed on the basis of an analysis of submitted applications in one of the starosties in the Lesser Poland voivodship (competent authority in the case) and interviews with employees dealing with the examination of applications.

The authors have divided formal errors into errors regarding the printing of the application itself and errors regarding annexes to the application. According to art. 63 §2 of the Act [2] and §3 of the Code of Administrative Procedure [1] the application should contain at least:

- details of the applicant,
- make a request,
- be signed.

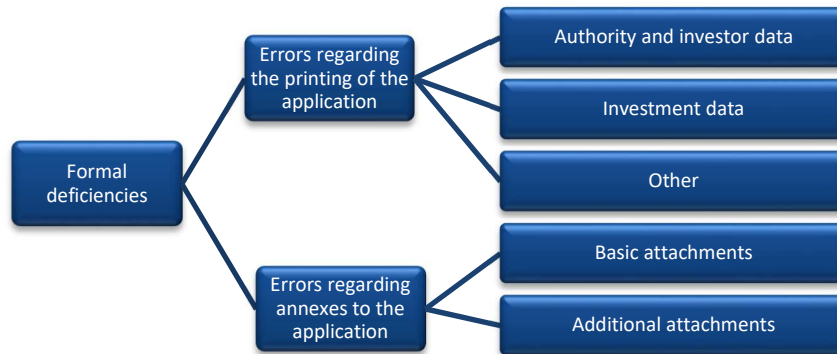


Fig. 1. Application for a building permit - formal deficiencies

In addition, in the Regulation of the Minister of Infrastructure and Construction of August 24, 2016. [5] a ready-made application template is provided, which indicates what information should be included therein. The documents that the investor should attach to the building permit application are specified primarily in art. 33 item 2 of the Construction Law [2]. This act is the most important regulation in the field of construction, hence the division of attachments into basic attachments [1,2]:

- four copies of the construction design together with opinions, arrangements, permits and other documents required by specific provisions and the certificate referred to in art. 12 independent technical function par. 7, valid as at the date of the project,
- declaration on the right to dispose of the property for construction purposes,
- decision on building and land development conditions, if it is required in accordance with the provisions on spatial planning and development,
- the permit referred to in art. 23 powers of the construction site manager 1 and art. 26 powers of the investor supervision inspector, para. 1 and the decision referred to in art. 27 laying and maintaining submarine cables and pipelines in the exclusive economic zone 1 of the Act of March 21, 1991 on maritime areas of the Republic of Poland and maritime administration, if required,
- and others specified in the Act regarding relevant buildings.

Additional attachments, on the other hand, are additional documents imposed by special provisions (e.g. by the Act on stamp duty or the Act on the Protection of Agricultural and Forest Land).

Substantive errors were classified in accordance with art. 35 section 1 of the Construction Law [2], on the basis of which the authority checks the solutions contained in the construction design [15]. Irregularities related to the non-compliance of the project with the decisions on building conditions or the local

spatial development plan mainly concern the requirements for the parameters of the designed buildings, the behavior of which has a particular impact on the shaping of spatial order and the lack of making arrangements directly resulting from these acts. The division of substantive errors is shown in Fig. 2.

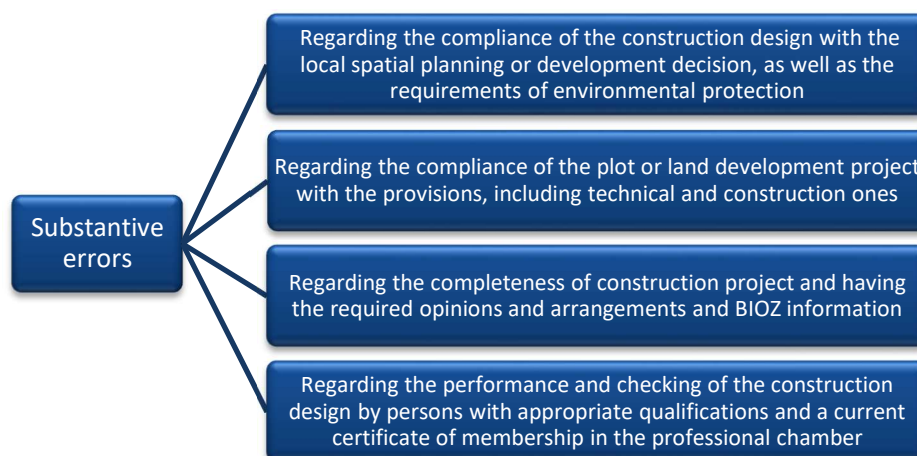


Fig. 2. Application for a building permit - substantive errors

#### 4. ANALYSIS OF FORMAL AND SUBSTANTIVE ERRORS

The authors have attempted to indicate the frequency of formal and substantive errors. The results were developed on the basis of surveys conducted among employees of institutions issuing building permits in the Lesser Poland Voivodeship. The questionnaire asked questions about the frequency of the indicated errors (as in Fig. 2), to indicate the number of applications that contained such errors, the number of cases considered negative due to failure to complete the indicated irregularities. The research was conducted at the end of the third quarter of 2018 and concerned the applications submitted since the beginning of the year. 10 correctly completed forms were obtained in the subjects, on the basis of which the results were compiled. The figures do not result from the statistics kept by the above mentioned experiences of employees dealing with cases.

The first group analyzed concerned formal errors. The applications contained therein constituted 59% of all applications submitted in the period considered. The vast majority, 80% of applications with formal deficiencies were supplemented in the scope indicated by the authority and as a consequence the proceedings were successfully initiated.

The group of formal errors regarding the printing of the building permit application was divided into five subgroups:

1. Errors regarding authority and investor data.
2. Errors regarding investment information.
3. Errors regarding other data contained in the application.
4. Errors regarding basic attachments.
5. Errors regarding additional attachments.

The frequency of occurrence of individual errors was determined on a scale of 0 to 4, where 0 - did not occur, and 4 - occurred very often.

The most frequently mentioned errors of subgroup 1: data on the authority and the investor are presented in Fig. 3. These are deficiencies associated with the supplementary form B-4, i.e. no attorney's data (3.0) or no other investors' data if there are more applicants (2.8).

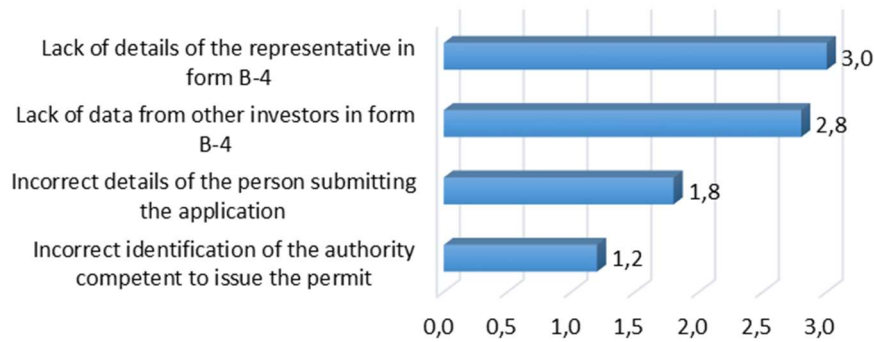


Fig. 3. Formal errors regarding the printing of the building permit application - authority data and investor data.

A high frequency of formal errors was recorded for subgroup 2, i.e. errors related to investment information (Fig. 4). These are errors related to the correctness of the name and data of the planned investment (providing correct plot numbers, registration precincts, etc.), as well as the type of investment.

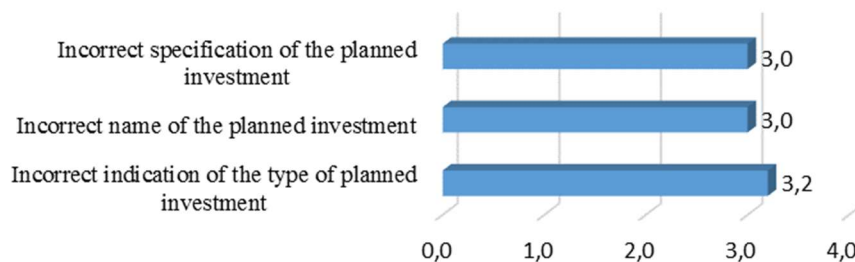


Fig. 4. Formal errors regarding the application for a building permit - information on the investment.

In subgroup 3, i.e. errors regarding other data contained in the application, the lack of date of submission of the application dominates. The frequency of this error is high and was recorded at 3.8. Less frequently, the application attachments (2.8) are incorrectly identified or the applicants' signatures (2.6) are missing. The results are presented at Fig.5

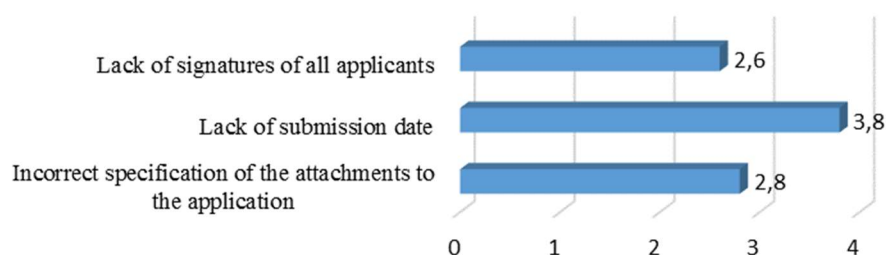


Fig. 5. Formal errors (deficiencies) regarding the building permit application - other data.

When analyzing the results of subgroup 4 errors in the scope of basic annexes to the application, it should be noted that they most often relate to an incorrectly completed statement on the right to use the property for construction purposes (3.6). Lack of decision on building conditions in comparison with the incorrectly completed statement occurs by half less (1.8). More often, however, this decision, despite being attached to the application, does not have the status of last resort or simply no seal imprinted, the presence of which indicates that the decision has become enforceable. The results are presented in Fig. 6.

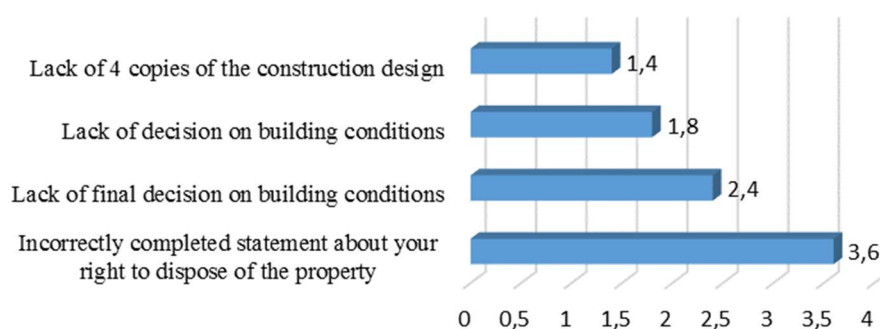


Fig. 6. Formal errors regarding the application for a building permit - basic attachments.

The last subgroup of formal errors are deficiencies related to the delivery of additional attachments (Fig. 7). Studies have shown that among the additional documents most often there is no decision to exclude land from agricultural production or information that such a decision is not required (3.6), slightly less



often there is no stamp duty for issuing the final decision (3.2), or fees for power of attorney granted (2.8).

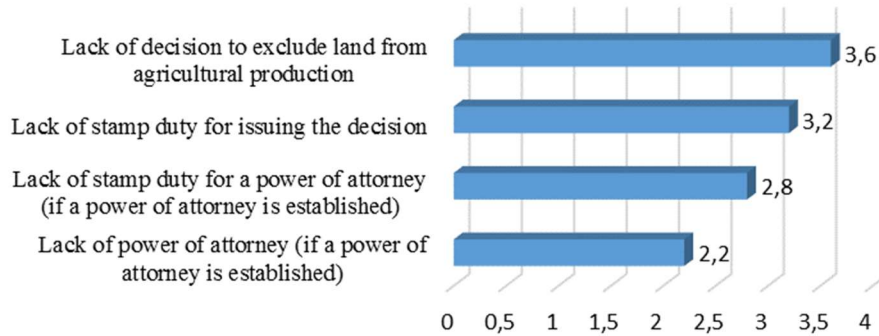


Fig. 7. Formal errors regarding the application for a building permit - additional attachments.

The second group of errors analyzed are substantive errors. The research shows that the submitted applications contain as much as 78% of substantive errors, of which 86% have been completed, and for 14% a negative decision was issued.

Substantive errors were divided into 3 subgroups:

1. Errors regarding the compliance of the project with the development of the plot with regulations, including technical and construction regulations.
2. Errors regarding the completeness of the construction design, possession of the required opinions and arrangements and BIOZ information.
3. Errors concerning the implementation and checking of the construction project.

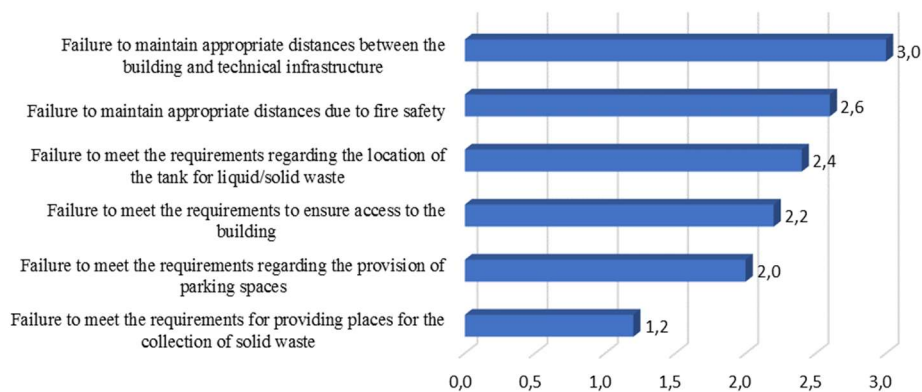


Fig. 8. Substantive errors regarding the compliance of the plot development project with the provisions, including technical and construction ones

The most common types of errors occurring in subgroup 1 and their frequency are shown in Figure 8. They relate to the failure to maintain appropriate distances including: the building from the technical infrastructure (3.0), the distance due to fire safety (2.6), or the distance of the building from the border (2.4). It is also common to fail to meet the requirements regarding the location of the tank for solid and liquid waste (2.4).

In the second subgroup, including errors regarding the completeness of the construction project, possession of the required opinions and arrangements and BIOZ information, the lack of numbering of the construction project pages (4.0), incorrectly completed construction project metrics (3.2), lack of required elements in the drawing part of the plot development project or lack of required information on the title page of the construction project (3.0). It should be noted that the frequency of these errors is above 3, which means that these errors are common and occur very often. The graphic presentation is Fig. 9.

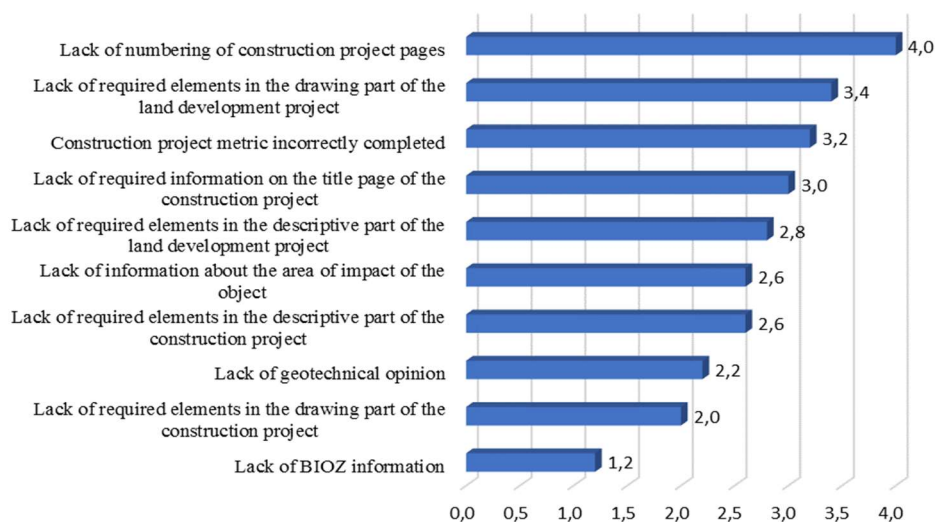


Fig. 9. Substantive errors regarding the completeness of the construction project, possession of the required opinions and arrangements and BIOZ information.

The last - third subgroup of substantive errors are errors related to the execution and checking of the construction project (Fig. 10).

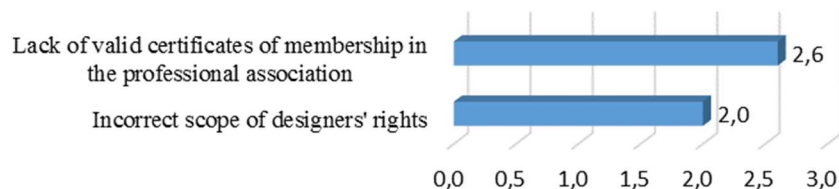


Fig. 10. Substantive errors regarding the execution and checking of the construction project

First of all, the lack of valid certificates of membership in the professional association (2.6) and the incorrect scope of designers' rights (2.0) were identified.

## 5. CONCLUSION

The purpose of the research was to indicate the frequency of formal errors and substantive errors in applications for building permits. The obtained results showed that substantive errors (78% of the applications analyzed) appear more often than formal deficiencies (59%). Substantive errors are errors that are identified as a result of checking the solutions contained in the construction project. Thus, it can be assumed that they are made by designers rather than by the applicants. In contrast to formal errors, mostly insignificant resulting from insufficient knowledge filling in the application or lack of precision of applicants. Research shows that both types of errors are often supplemented (formal deficiencies - 80%, substantive errors - 86%), which ultimately results in obtaining the building permit decision.

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