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Determination of Real Estate Boundaries for the Purposes of Subdivision Process

1. Introduction

Real estate boundaries is one of the most important problems in Poland, nowadays. It has been especially visible after accessing Poland to European Community. It is caused because of the fact, that prices of real estate are higher and higher and moreover that farmers can apply for supplements for agricultural production. These problems are strongly connected with real estate boundaries [3].

The prices of real estate and values of mentioned supplements depend directly on area of real estate. Area of real estate, in turn, is calculated on the basis of real estate boundaries. The more accurate boundaries of real estate the more precisely determined the value of real estate price and the quantity of supplement. One need not say that by accurate boundaries, range of ownership right to real estate is well determined. It is also a crucial factor while real estate turnover process.

The problem of real estate boundaries is clear visible while subdivision process, where one real estate is to be divided on two or more smaller pieces. This process needs former determined outer boundaries of real estate and moreover produces new boundaries. Thus, the problem of boundaries determination for real estate subdivision, in possible wide aspects, is the subject of the paper.

2. Kinds of Real Estate Boundaries

There are two kinds of real estate boundaries, describing real estate being a single parcel. The former is real estate boundary according to factual status of parcel boundary in the field, the latter is real estate boundary according to legal

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status of boundary [2]. Both kinds of parcel boundaries exist in obligatory grounds and buildings register (cadastre) and show the range of ownership right. Yet, there is a big difference between them.

Real estate boundary in accordance with factual status was determined on the ground by surveyor many years ago, while establishing grounds register. Although the course of such boundary was measured by surveyor in the field, yet the course itself was shown by owners. This course was not consistent to legal documents, sometimes. It is a reason, that such boundaries are not suitable for current purposes and that they should be replaced by legal boundaries, as quick as possible.

Legal boundaries, in turn, are very useful and suitable for all purposes connected with real estate. The general rules for their description are given in [3]. Thus, we will show here only basic problems connected with their determination.

Legal boundaries of real estate always become, if one proceeds the following surveying-legal procedure in the field:

- real estate delimitation,
- real estate subdivision,
- real estate assemblage,
- real estate expropriation,
- real estate legal status regulation and others

As a result of these processes, real estate legal boundary becomes.

To obtain legal boundary, one must perform one of mentioned above processes. It is the first necessary condition. The other necessary conditions are as follows:

- licensed surveyor must notice the work to surveying documentation centre,
- surveyor must prepare a surveying file,
- surveying file must be accepted by the head of surveying documentation centre.

In turn, satisfactory condition for legal boundary is, that head of suitable self-government authority must issue decision which proves the course of boundary and points boundary location. Instead of decision, a court verdict is given, sometimes. Both decision or verdict are issued on the basis of accepted surveying file. So, no matter what has been given, because after ultimate decision or legible verdict, legal boundary become.

The specific features of such boundary are as follows:

- such boundary is solid, because their corners are permanent,
- all boundary corners have coordinates, expressed in obligatory reference system,

- such boundary are sufficiently accurate, and in case of moving or even destroying one or more boundary corners, one has always possibility to relocate these point at demanded accuracy (let's say at level of 2 cm), by setting out process with total station, using computed data and control points.

It is clearly visible, that legal boundaries have much advantages in the relation to boundaries according to factual status. They determine the range of ownership right at the highest accuracy. One can fully rely on them. Thus, it is a reason that such boundaries should be initiated into cadastre as quick as possible. If such boundaries would exist in cadastre, there would probable not occur any case of boundaries delimitation. Thus, all problems connected with boundary points location could be solved through simple, relocation process.

3. Real Estate Subdivision Procedure

Real estate subdivisions are proceeded under the rules of Law Act [4] and order [5]. Subdivision of real estate can be made on submit of party or office. The list of most important documents which one must attach to application for dividing, contains:

- document confirming title to real estate (abstract from land register, mostly);
- abstract from cadastre records (from grounds register and from cadastral map);
- copy of decision of Land Use and Buildings Conditions (if it was issued) if there is not any Land Plan Use for the area, where parcel to be divided;
- preliminary project of real estate subdivision in order to accept consistency with Land Use Plan and conditions of subdivision;
- protocol of acceptance of outer boundaries of real estate, being the subject of subdivision;
- ultimate project of real estate subdivision.

One should necessary remark, that problem of subdivision is rather complicated. So, we will not explain all possible cases of it. Thus, taking into account the aim of the paper, we will focus on surveyor's activity while subdivision.

After having noticed the subdivision work at surveying documentation centre, surveyor gets from the centre suitable documents, necessary to perform subdivision. Then, surveyor should follow analysis of these documents and prepare data to set out outer boundary of real estate in the field. It is very important and crucial activity. It results from the fact, that this boundary must be next accepted by parties, take place in subdivision procedure. It means, that these boundaries must be sure and without any doubt.

The analysis itself can be troublesome in many cases. It results from the fact, that in [5], one can find a statement, that “at first, boundaries should be accepted on the basis of documentation of legal status of real estate”. It is problem of discussion, at least, since legal status describes rights assigned to real estate. On the basis of rights only, one can not determine the location of boundary at all. Thus, one can only determine, who is an owner, but not where boundary is. Probably there were mixed two ideas. The first deals with “legal status of real estate” and the second deals with “legal boundary”. It is obvious, that the second idea should be applied here.

If accurate and reliable documents, proving the course of outer boundary do not exist, then cadastral documents can be used, according to [1] and [5].

If real estate outer boundaries are accepted by parties, then surveyor creates exact project of subdivision. This project contains, first of all:

- outer boundaries of the real estate,
- projected boundaries,
- object existing in the field (like buildings, trees, utilities etc.).

Such project is accepted through decision of the head of commune or by court through verdict (if case of subdivision takes place at court). If decision is ultimate or verdict legally valid then surveyor, on the basis of project, may set out projected boundary in the field, by computed data and survey instrument, usually total station.

All documents created by surveyor while subdivision procedures are components of survey subdivision file, accepted by surveying documentation centre kept there and used any time, when next subdivision or other survey procedure will take place.

It is necessary to add again, that after subdivision process is made, all new boundaries resulted within this process are legal boundaries.

4. Process of Acceptance Boundaries during Subdivision Process

Process of acceptance of real estate outer boundaries is usually simple. It generally depends on some steps, made by surveyor, along with [5]. These steps are as follows:

1. gathering all accessible and possible documents connected with real estate boundary;
2. calling parties to be in the field in the neighbourhood of boundary; this calling is sent by post (and must be delivered 7 days at least, before the time of showing boundaries to the parties is expected) and then returned back to sender with confirmation a receipt by parties;

3. showing by party the title of ownership to real estate (abstract from land register, mostly);
4. creating a protocol of showing determined boundary to parties;
5. signing the protocol by surveyor and by the parties.

Such boundaries can serve for next procedures of the subdivision of real estate, according to information done in chapter 3. Nevertheless some unexpected circumstances can occur, making acceptance of real estate boundaries not so clear and easy. Then a surveyor must follow some steps through individual way. Yet, the most difficult case which can take place while acceptance of real estate boundaries is litigation between parties. Although such case occurs rather seldom, one should know how to adjust it and then accept boundaries. So, surveyor should persuade parties to stop quarreling and enlighten them, that if litigation would be adjusted then determination of boundaries must be proceeded by delimitation mode, according to [6] and that it is rather complicated, time-consuming and expensive procedure.

If negotiations undertaken by surveyor will be failed, and parties refused to sign protocol, then surveyor finishes all works on the field and announce, that parties must apply for delimitation process of outer boundaries of real estate.

5. Conclusions

On the basis of discussion done in chapters 2, 3 and 4, one can show some conclusions, connected with problem of real estate subdivision.

- Real estate subdivision is one of some surveying processes changing terrain information both in spatial and descriptive aspects.
- Boundaries determined by surveyor while subdivision process, on the base of accepted project of subdivision, are legal boundaries.
- Subdivision process is one of the most complicated surveying-legal procedures. Its complication comes from the fact, that there are many legal conditions which this procedure must follow. Moreover law acts are not consistent as far as rules of subdivisions are concerned.
- The most important and crucial problem is acceptance of outer real estate boundaries. Surveyor must pay great attention to proceed this work properly.

References

- [1] Hanus P.: *Ocena przydatności dokumentacji byłego katastru austriackiego dla potrzeb prac geodezyjnych*. AGH, Kraków 2006 (Ph. D. thesis, unpublished).

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- [2] Hycner R.: *Podstawy katastru*. Uczelniane Wydawnictwa Naukowo-Dydaktyczne AGH, Kraków 2004.
 - [3] Hycner R.: *Zagadnienia geodezyjno-prawne gospodarki nieruchomościami*. Wydawnictwo GALL, Katowice 2007.
 - [4] *Ustawa z dnia 21 sierpnia 1997 roku o gospodarce nieruchomościami*. Dz. U. z 2000 r. Nr 46, poz. 543.
 - [5] *Rozporządzenie Rady Ministrów z dnia 7 grudnia 2004 roku w sprawie sposobu i trybu dokonywania podziałów nieruchomości*. Dz. U. Nr 268, poz. 2663.
 - [6] *Ustawa z dnia 17 maja 1989 roku – Prawo geodezyjne i kartograficzne*. Dz. U. z 2005 r. Nr 240, poz. 2027.