

CONSENTS OF POSSESSORS OF ADJACENT TERRITORIES WHEN CONSTRUCTING STRUCTURES CLOSE TO THE COMMON BOUNDARY OF A LAND LOT

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Straipsnyje yra analizuojamos asmenų teisės, kurios gali būti pažeidžiamos statant statinius greta žemės sklypo ribos, ir teisės aktai, reglamentuojantys atstumus nuo statinių iki žemės sklypo ribos, todėl straipsnis yra naudingas ne tik teoriniu, bet ir praktiniu požiūriu. Pateikta teorinė apžvalga ir pasiūlymai dėl teisės aktų tikslinimo gali būti panaudoti ir tolesnei tarptautinei analizei.

The legislation, scientific articles and specific practical situations are analyzed in the article. Generalizing the information and data collected, the most frequent issues are revealed and the proposals to amend specific provisions of the legislation are therefore presented. The research performed showed that even 70 percent of all applications regarding construction works close to the boundary of a land lot are not upheld.

Introduction

The topic of the article is unique; therefore, finding any scientific articles and analyses on this topic is difficult. The analysis itself and the research performed do not approach international scientific issues as relevant in global sense; nevertheless, this is a highly relevant study from a practical point of view and legal discourse is quite interesting as well.

Before beginning the discussion on the planned topic, an overview of legal relationships is expedient first of all. In his scientific article on material rights and rights arising from obligations, J. Sakavičius overviewed the rise of these rights and formulation thereof in accordance with the understanding of the scientists of different countries in a sufficiently detailed manner. One subject is enough for the rise of material right, i.e. the acquirer of the right who acquires direct possibility to affect an item. Other scientists believe that material right is not a person's relation to an item but a person's relation to another person in respect of an item. However, one can also find such a theoretical definition: material right is, first of all, associated with a person's duty, i.e. the owner's obligation in respect of any third parties. According to the traditional understanding of material right, subject right of the holder of material right to request other persons to restrain themselves from any violations of material right exists in material relationship¹.

¹ SAKAVIČIUS, J. Kai kurie daiktinės ir prievolinės teisės santykio probleminiai aspektai. *Jurisprudencija*, 2008, 5(107), p. 42–49.

According to the author, in some opinions, the relationship of material right and right arising from obligations is evidenced as the relationship of the objective and the means to achieve that objective wherein the right arising from obligations plays the role of servicing the material right. Generalizing the theories analyzed at that time, it is concluded that property rights are priority rights compared to obligations.

Another important side of the discussion is a person's legitimate expectations. This topic was analyzed in great detail by A. Gedmintaitė in her scientific article. According to her, the doctrine of protection of legitimate expectations has been consolidated in the law of Lithuania as the general principle of law. This doctrine has been developing rapidly during recent years and has become one of the most important normative legal acts and criteria of inspection of validity and legitimacy of administrative decisions. This author also emphasizes that there are very few scientific researches regarding this topic.

The doctrine of protection of legitimate expectations can be effectively invoked to contest both individual administrative decisions and general acts. A. Gedmintaitė who analyzes court judgments often takes the situations concerning territorial planning and land law when the decisions made by the institutions could have generated legitimate expectations of the applicant to engage in investment activities as an example. However, it is noteworthy that this practice is applied by a minority of countries only.

It must also be noted that the person who aims to invoke protection of legitimate expectations reasonably must demonstrate that the legitimate expectations are based on property right first of all².

Taking the topic of the article into account, overviewing articles regarding illegal construction is expedient as well. O. R. Šostak analyzes the possibilities to legalize illegal construction in one of them. Persons tend to perform construction works high-handedly first of all and legalize this act afterwards. Such a process is even called national Lithuanian mentality – the pursuit to bypass laws³.

Article 21 of the Law on Land of the Republic of Lithuania⁴ (hereinafter – RL) stipulates the duties of the owners and users of land lots, i.e. it is stipulated in article 21(2) that the owner and user of a land lot must follow the special terms of use of land determined for the land lot and the requirements established in territorial planning documents or designs of land holdings; article 21(7): they must not violate the rights and interests of the owners or users and residents of adjacent land lots that are protected by the laws while performing any economic or other activities in the land lots used by them; article 21(11): they must construct structures and installations only having obtained the necessary permits in line with the procedure established by the legislation.

It is stipulated in section 8 of the Construction Technical Regulation STR 1.07.01:2010 “Documents permitting construction” approved by the Order No. D1-826 of the Minister of Environment of RL “Concerning approval of the Construction Technical Regulation STR 1.07.01:2010 “Documents permitting construction” (hereinafter – “STR “Documents permitting construction”) of 27 September 2010 when written consents or agreements of the owners or possessors of the land lot or adjacent land lots (hereinafter – “the Consents”) are mandatory in case of construction of a simple new structure or reconstruction of a simple structure when drawing up simplified designs of such works is not mandatory⁵.

² GEDMINTAITĖ, A. Teisėtų lūkesčių apsauga Europos žmogaus teisių teismo praktikoje. *Teisė*, 2014, nr. 91.

³ ŠOSTAK, O. R., Savavališkų statybų teisinis reglamentavimas. Iš *Lietuvos jaunųjų mokslininkų konferencija „Mokslas – Lietuvos ateitis“*. *Statyba*, 2008.

⁴ Lietuvos Respublikos žemės įstatymas. 1994 m. balandžio 26 d. nr. I-446. *Valstybės žinios*, 1994, nr. 34-620.

⁵ Statybos techninis reglamentas STR 1.07.01:2010 „Statybą leidžiantys dokumentai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2010 m. rugsėjo 27 d. įsakymu nr. D1-826 „Dėl statybos techninio reglamento STR 1.07.01:2010 „Statybą leidžiantys dokumentai“ patvirtinimo“.

Exactly the said requirements established in the Law on Principal Use of Land and in the construction technical regulations shall be used to analyze specific practical situations in the article aiming to demonstrate the most frequent mistakes and items to be corrected in the legislation. Since most designers and owners have doubts regarding the procedure of issuing the Consent to construct structures closer to the boundary of the land lot, it is explained in detail here which structures need them and at what distance they can be constructed without the Consent of the manager of an adjacent territory in line with the currently applicable legislation. Distances from the boundary of the land lot only are analyzed in the situations presented, i.e. fire safety requirements or minimum fire safety distances between structures are not taken into account⁶.

It is also noteworthy that the issue regarding the Consent of the possessors of adjacent territories to construct or reconstruct structures but not the issue concerning the consents of the possessors located in the territory under construction is analyzed in the article.

The objective of the research is to raise practical and theoretical issues concerning obtaining of the Consents of the possessors of adjacent territories for construction works as well as to present a clear classification of the theoretical definitions used in this process and to create an algorithm of issuance of the Consents.

The object of the research is the Consents that were and were not issued as well as the legislation regulating the issuance of the Consents. Consents related to state-owned land plots.

The tasks of the research: review the legislation and scientific articles; determine the most frequent issues due to which NLS does not uphold the applications regarding the issuance of the Consents; create and algorithm and present amendments.

The methods of the research: analysis and generalization of the data base, legislation and scientific articles.

1. Overview of legislation and scientific articles

The main concepts used in the legal terminology of construction are specified in article 2 of the Law on Construction of RL⁷. That is where the concepts of a structure, a structure of special significance, a structure of non-special significance, a temporary structure, a simple structure, a building, a building designed for public use, engineering structures, engineering networks and communications are set out in detail.

The Construction Technical Regulation STR 1.01.08:2002 “Types of construction of a structure”⁸ contains the definitions that specify which actions are considered construction, construction of a new structure and reconstruction of a structure, or repairs (major and running).

Structures are divided into buildings and engineering structures in Lithuania by their purpose of use. There are residential and non-residential buildings, whereas engineering structures are divided into communications, engineering networks, hydrotechnical structures and other engineering structures⁹.

The hierarchy of the classification of structures is quite broad and complicated (table 1). In many cases, it is difficult to decide to which subgroup the structure planned to be constructed must be attributed even taking physical characteristics of the structure (installation) into account.

⁶ Statybos techninis reglamentas STR 2.01.04:2004 „Gaisrinė sauga. Pagrindiniai reikalavimai“, patvirtintas Priešgaisrinės apsaugos ir gelbėjimo departamento prie Vidaus reikalų ministerijos direktoriaus 2010 m. gruodžio 7 d. įsakymu nr. 1-338 „Dėl gaisrinės saugos pagrindinių reikalavimų patvirtinimo“.

⁷ Lietuvos Respublikos statybos įstatymas. 1996 m. kovo 19 d. nr. I-1240. *Valstybės žinios*, 1996, nr. 32-788.

⁸ Statybos techninis reglamentas STR 1.01.08:2002 „Statinio statybos rūšys“, patvirtintas Lietuvos Respublikos aplinkos ministro 2002 m. gruodžio 5 d. įsakymu nr. 622. *Valstybės žinios*, 2002, nr. 119-5372.

⁹ GAUDĖŠIUS, R; GURSKIENĖ, V. The Lithuanian RE market. *Real estate, construction and economic development in emerging market economies. Routledge studies in international real estate*, 2016, p. 342–352.

Different classifications of buildings can be found in foreign countries. For example, buildings are divided into classes in line with the Building Code in USA: class 1 – a detached house; 2 – an apartment building; 3 – temporary residence; 4 – offices; 5 – trade; 6 – production; 7 – laboratories; 8 – public; and class 9 – others¹⁰.

Table 1. Subgroups of structures

Buildings		Engineering structures			
Residential buildings	Non-residential buildings	Communications	Engineering networks	Hydrotechnical structures	Other engineering structures
One apartment	Hotels	Roads	Oil	Dams	Sports
Two apartments	Administrative	Streets	Gas	Seawalls	Other purpose
Three and more apartments	Trade	Railways	Water supply	Hydroelectric power plants	
Intended for persons from various social groups	Services	Airports	Heating	Culverts	
	Catering	Water ports	Wastewater	Watering places	
	Transport	Other transport structures	Electricity	Channels	
	Garages		Communications	Coast protection	
	Production and industry		Other engineering networks	Fishery	
	Warehousing			Navigation	
	Culture			Oil extraction	
	Science			Aqueducts	
	Treatment			Levees	
	Recreation			Reclamation	
	Sports				
	Religious				
	Special				
	Auxiliary infrastructure				
	farms				
	agriculture				
	greenhouses				
	gardens				
	gambling, etc.				

Drawn up in line with the Construction Technical Regulation STR 1.01.09:2003.

The Construction Technical Regulation STR 1.01.07:2010 “Simple structures” determines the list of simple structures, the peculiarities of attributing structures to simple structures, the characteristics and technical parameters of the simple constructions of the buildings and engineering structures

¹⁰ STASIUKYNAS, A. Pastatų klasifikavimao ypatumai. Iš *Lietuvos jaunųjų mokslininkų konferencija „Mokslas – Lietuvos ateitis“*. Statyba, 2011.

attributed to simple structures¹¹. It can be determined in line with the said Construction Regulation that all buildings height of which does not exceed 8.5 meter and area of which does not exceed 80 m² are attributed to simple structures. If hazardous substances are stored or used, potentially dangerous installations are located or installations with open flame are used in the buildings, such buildings are not attributed to simple structures. It is also stipulated in the Regulation that a fence is attributed to simple structures if its height is 1–5 meters, whereas supporting walls are attributed to simple structures if their height is 0.2–2 m.

The engineering structures that are not specified precisely cause the most discussions in practice, i.e. legal regulations leave space for freedom to choose, e.g. a note “and others”, “and the like” is left in the subgroup of structures. Some structures, e.g. engineering structures of another purpose are defined in more detail in the Construction Technical Regulation STR 1.01.09:2003 “Classification of structures by the purpose of use”¹². According to the Regulation, engineering structures of another purpose are fences, yard sites, sheds, arbours, supporting walls, environment management elements and other engineering structures that have no clear functional dependence or defined use.

It is important for the owners and users of land lots to know the distance that must be kept in order to perform construction works in their own land lot without asking the consent of the manager of an adjacent territory. The situation is different in case of each construction depending on the physical properties of the structure.

Appendix 3 of the Construction Technical Regulation STR 2.02.02:2004 “Public structures”¹³ should be followed when constructing public structures, whereas the Construction Technical Regulation STR 2.03.02:2005 “Management of the lots of production, industrial and warehousing structures” should be followed when constructing production, industrial and warehousing structures¹⁴. The requirements stipulated in Appendix 8 to the Construction Technical Regulation STR 2.02.09:2005 “Single-apartment residential buildings” should be followed when constructing a residential house¹⁵. Generalizing the aforementioned regulations, it is to be concluded that minimum distance from the building (height – up to 8.5 m) to the boundary of an adjacent land lot must be 3 meters. This distance is increased in case of higher buildings by 0.5 m per each additional meter of the height of the building (e.g. height of the building – 9.5, thus the distance to the boundary must be 3.5 m, etc.).

One of the said regulations also states that the distance from engineering structures, excluding enclosure of the lot, to the boundary of the lot must be at least 1 meter.

The same requirements apply when constructing buildings or engineering structures in the land lots within the territories of garden communities¹⁶.

Sufficiently detailed distances that must be adhered to in order to construct respective structures in one’s own lots without the Consent of the owner of an adjacent lot are specified in Appendix 11 to

¹¹ Statybos techninis reglamentas STR 1.01.07:2010 „Nesudėtingi statiniai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2010 m. rugsėjo 27 d. įsakymu nr. D1-812. *Valstybės žinios*, 2010, nr. 115-5903.

¹² Statybos techninis reglamentas STR 1.01.09:2003 „Statinių klasifikatorius pagal jų naudojimo paskirtį“, patvirtintas Lietuvos Respublikos aplinkos ministro 2003 m. birželio 11 d. įsakymu nr. 289. *Valstybės žinios*, 2003, nr. 58-2611.

¹³ Statybos techninis reglamentas STR 2.02.02:2004 „Visuomeninės paskirties statiniai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2004 m. vasario 27 d. įsakymu nr. D1-91. *Valstybės žinios*, 2004, nr. 54-1851.

¹⁴ Statybos techninis reglamentas STR 2.03.02:2005 „Gamybos, pramonės ir sandėliavimo statinių sklypų tvarkymas“, patvirtintas Lietuvos Respublikos aplinkos ministro 2005 m. birželio 17 d. įsakymu nr. D1-309. *Valstybės žinios*, 2005, nr. 80-2908.

¹⁵ Statybos techninis reglamentas STR 2.02.09:2005 „Vienbučiai gyvenamieji pastatai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2005 m. liepos 1 d. įsakymu nr. D1-338. *Valstybės žinios*, 2005, nr. 93-3464.

¹⁶ Lietuvos Respublikos sodininkų bendrijų įstatymas. 2003 m. gruodžio 18 d. nr. IX-1934. *Valstybės žinios*, 2004, nr. 4-40.

STR “Documents permitting construction”. In order to understand legal literature as well as possible, it is expedient to picture certain technical parameters in diagrams.

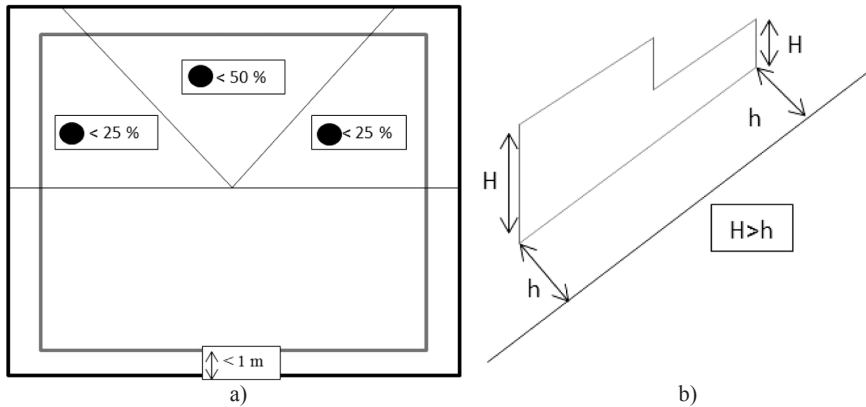


Fig. 1. Situations when the consent of the owner of an adjacent lot is needed when constructing a fence (a) and a supporting wall (b).

Prepared by the author.

The consent of the owner of an adjacent must be obtained when constructing a fence when the fence is closer than 1 meter to the boundary of the land lots and when the percentage of the area of the apertures thereof is lower than specified in respective directions of the lot (fig. 1a). It is concluded according to the technical parameters regulated by this legal act that the consent is not needed in the southern side of the land lot.

The consent of the adjacent territory must be obtained in all cases when a supporting wall is constructed on the boundary of the land lots. The consent is also needed when the supporting wall is higher than the distance to the boundary (fig. 1b).

The consent of the manager of an adjacent territory must also be obtained when constructing roofless engineering structures, engineering networks or communications (excluding fences and when that is done within the red lines of streets or in a lane of a state road) when such structures are constructed closer than 1 meter to the boundary of the land lots.

The consent must be obtained in all cases when constructing buildings or roofed engineering structures when the structure is closer than 1 meter to the boundary of the lot, i.e. distance is marked by the index “h” in figure 2. When the structure being constructed is at the distance of 1-3 m to the boundary of the lots “h1”, the consent is needed only when the height of the structure is higher than the distance to the boundary (fig. 2a).

When constructing wind power plants, the consent is needed only when the height of the structure (including the length of the wings) is higher than the distance to the boundary of the land lot (fig. 2b).

In Lithuania, the society is used to dividing all property to “private” and “state” property. Economic relationships in case of public property are described as dependence of material valuables to a specific nation. In the broad sense, the right of public property is the whole of legal standards consolidating and protecting dependence of material valuables to a specific nature and determining the procedure of management, use and disposal of public property. In RL, state property must be managed, used and disposed of in line with the following principles: public benefit, effectiveness, rationality and public law. It is stated in article 46(3) of the Constitution of Lithuania that: “The state regulates economic

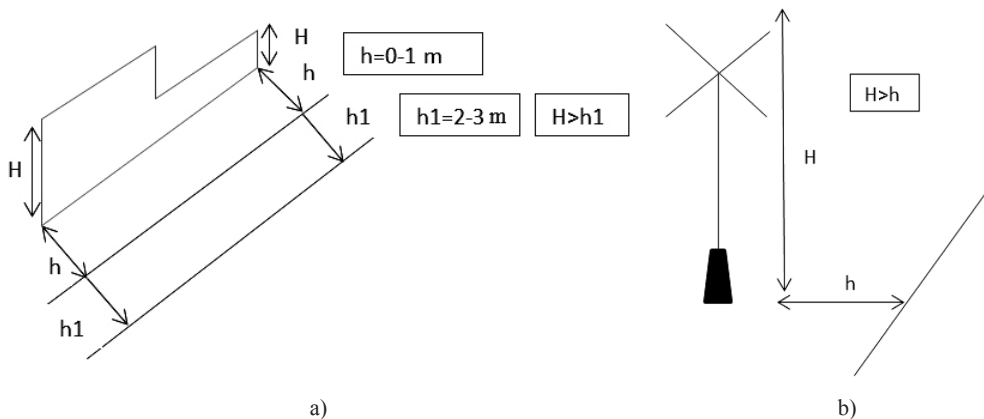


Fig. 2. Situations when the consent of the owner of an adjacent lot is needed when constructing buildings or roofed engineering structures(a) and a wind power plant (b).

Prepared by the author.

activities so that they serve for the good of the nation”. An analogous provision is consolidated in the Constitutions of Ireland, Denmark, Estonia, Greece, Italy and other countries as well¹⁷.

There is quite a lot of state-owned land within the territories of the cities of Lithuania and the trustee of the state-owned land of RL, excluding the land that is handed over to other entities by the right of trust in line with the procedure established by the laws, is the National Land Service under the Ministry of Agriculture (hereinafter – “NLS”). Taking that into account, the person who wishes to construct any structures closer to the boundary of a land lot that borders a state-owned land lot or state-owned land in which land lots have not been formed must obtain the consent of the trustee of this territory. NLS issues such Consents following the Rules on The Issuance of the Consents to Construct Structures in the Land Lots that Border State-Owned Land Lots or State-Owned Land in which Land Lots have not been Formed approved by the Order No. 1P-(1.3.)-259 of the Director of NLS “Concerning Approval of the Rules on The Issuance of the Consents to Construct Structures in the Land Lots that Border State-Owned Land Lots or State-Owned Land in which Land Lots have not been Formed” (hereinafter – “the Rules”) of 27 July 2012.

It is stated in the general provisions of the Rules¹⁸ that the Consents to construct a fence or a supporting wall, construct roofless engineering structures, engineering networks or communications, construct any structures or roofed engineering structures, construct a wind power plant shall be issued in the cases stipulated in Appendix 11 to STR “Documents permitting construction”. The Consents regarding reconstruction of structures shall be issued in line with the same procedure as when issuing the Consents to construct, excluding the cases stipulated in clause 33.2 of STR “Documents permitting construction”. The cases when the trustee of the state-owned land does not issue the Consents are stipulated in clause 5 of the Rules.

Following the Rules, a territorial subdivision of NLS, having received an application of a natural person or a legal entity regarding issuance of the Consent, shall follow an administrative procedure

¹⁷ VASARIENĖ, D; MINGĖLAITĖ, D. Legal regulation of state and municipalities property relations in Lithuania [interaktyvus. Žiūrėta 2016-02-05]. Prieiga per internetą: <https://www.law.muni.cz/sborniky/Days-of-public-law/files/pdf/sprava-finance/Vasariene_Mingelaite.pdf>.

¹⁸ Sutikimų statyti statinius žemės sklypuose, besiribojančiuose su valstybinės žemės sklypais ar valstybine žeme, kurioje nesuformuoti žemės sklypai, išdavimo taisyklės. *Valstybės žinios*, 2012, nr. 93-4831.

during which the users of state territories or land lots shall be inquired in writing whether they object to construction works in the adjacent territory. These users shall have the right to make any comments or objections regarding the planned works within 10 business days.

A territorial subdivision of NLS may refuse to uphold the applications regarding the issuance of the Consent submitted by persons due to various reasons. The data of the Department of Klaipėda City for the year 2013–2015 specifying the reasons due to which the citizens’ applications to issue the consent to construct structures closer to the boundary with state-owned land and repetitions of those reasons during respective years are presented in the second table.

Table 2. Reasons due to which the applications regarding the issuance of the Consent were not upheld.

Reason due to which the consent was not issued	2013	2014	2015
Plan was not presented	1	0	0
Structure intersects the boundary of the lot	1	2	0
Adjacent user presented comments	1	4	4
Application was presented by someone else, not the owner of the land lot	4	6	13
Consent of the co-owner was not presented	4	3	3
Distances are not specified in the plan	1	5	11
Plan was drawn up not on an orthophotographic base	1	0	22
Boundary with a private lot	1	0	0
Distance from the boundary is more than 3 meters	1	1	3
The walls of the house only are covered with heat insulation	1	1	0
Servitude is mortgaged	0	1	0
Boundaries of the lot are not shown in the plan	0	0	5
Adjacent lot was not handed over for use	0	0	2

Prepared by the author in accordance with the data of NLS.

Approx. 70 percent of the applications are not upheld due to various reasons. Such a high percentage of the applications submitted in an incorrect manner is a very big load on the institution and human resources are wasted in this way. Generalizing the data collected (fig. 3), it can be seen that usually the applications are not upheld due to the designers’ mistakes, i.e. the diagrams enclosed to the application are drawn up not on an orthophotographic base and the distances from the planned structure to the boundary of the land lot are not specified in them. It is also quite common that the application is submitted by a person who actually cannot do that (not the owner or user of the land lot) or the consent of the co-owner of the land lot regarding the said works is not presented.

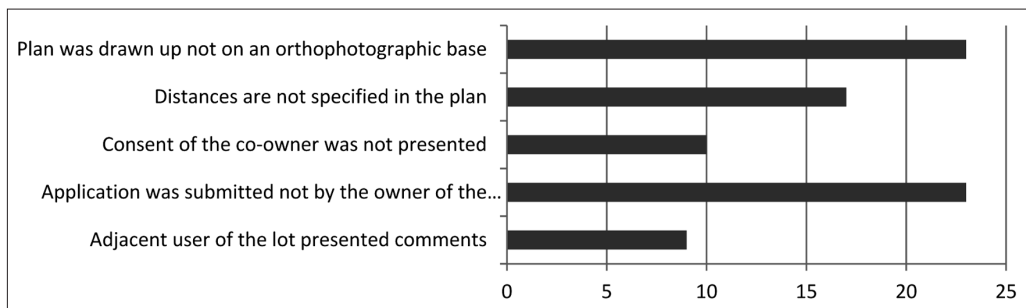


Fig. 3. The most common mistakes in the applications submitted.

2. Creation of an algorithm, proposed legal amendments

As it was mentioned already, the procedure of upholding citizens' requests regarding the issuance of the Consents is stipulated in the Rules. However, taking into account repeated mistakes and confusing legal regulation, it is expedient to present a simplified algorithm (diagram 1).

Today, most of geographic information data presented in digital format in websites¹⁹. State institutions are also trying to transfer most of the administrative services provided by them to e-space.

In any case, a plan (diagram) is needed for the issuance of the Consent. It is stipulated in clause 4.2 of the Rules that the diagram presented must be drawn up using the most up-to-date orthographic map of RL, the location of the structure planned to be constructed, the parameters of the structure (length, height, width, area) and the distance from the structure planned to be constructed to the boundary of the land lot must be marked. All requirements are quite reasonable, excluding drawing up of the plan using an orthographic map. This requirement does not provide any information whatsoever to the specialist issuing the Consent. A plan drawn up on such a basis within the territory of the city even makes it more difficult to picture other really important parameters (distance from the structure to the boundary) in the plan.

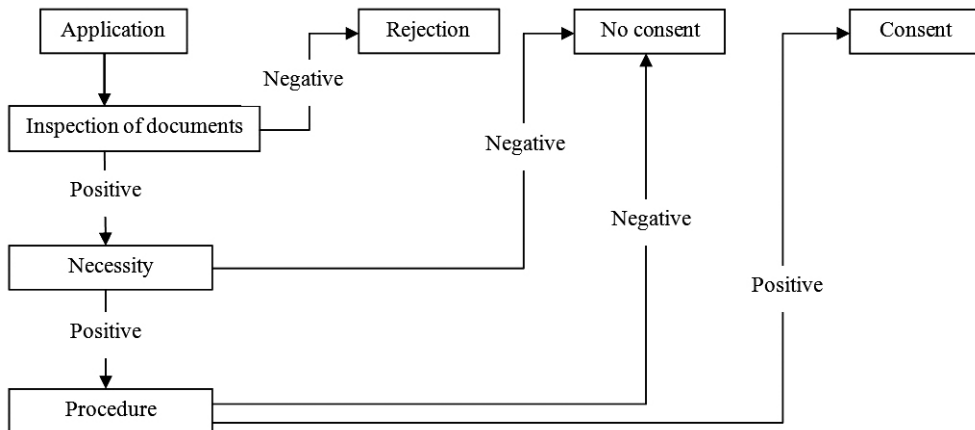


Diagram 1. Diagram of the algorithm.

Prepared by the author.

Taking into account article 21(2) of the Law on Land of RL, it would be expedient to show the zones of the special terms of use of land applicable to the land lot in the plan. For example, such special terms of use of land and forest²⁰ in the protection zone whereof (communications, electricity, gas supply, etc.), respective constructions works cannot be performed, may be applicable to the land lot.

Also taking into account subclauses 34.1 and 34.1 of STR “Documents permitting construction”, it is expedient to show the boundaries of the lane of a road of national significance and of the red lines of streets in the plan because the Consents are not mandatory for construction works performed in these areas.

¹⁹ GAUDĖŠIUS, R. Real estate cadastral data collection problems, imaging and works intensity in Lithuania. *Geodesy and cartography*, 2014, 1(40), p. 14–26.

²⁰ Lietuvos Respublikos Vyriausybės 1992 m. gegužės 12 d. nutarimas nr. 343 „Dėl specialiųjų žemės ir miško naudojimo sąlygų patvirtinimo“. *Valstybės žinios*, 1992, nr. 22-652.

Having generalized the legislation mentioned above, it would be possible to develop a digital system using which NLS could examine the applications regarding the issuance of the Consent electronically.

First of all, a person would submit the application, i.e. he / she would complete the data regarding him / her, the land lot and the structure planned to be constructed. He / she would enclose (scan) additional documents to the application: the power of attorney, the document from the register of the right of ownership, the plan.

The specialist issuing the Consents would inspect in the electronic system whether the person may apply for the Consent and whether the plan meets the requirements set for it (including the additions proposed by the author). A rejection shall be drawn up if the application is not suitable, whereas if the documents are suitable, an inspection regarding the necessity of the Consent shall be performed.

Assessing the necessity of the Consent, the specialist may draw up a reply that the consent is not needed or decide that the consent may not be issued in line with clause 5 of the Rules. Should the structure to be constructed need the consent and the consent may be issued, the specialist shall initiate another stage of the procedure and shall inquire in writing the possessors of the adjacent territory as regards potential violations of rights when performing construction works.

It is expedient to amend subclause 5.3 of the Rules as well since it becomes misleading and causes discussion due to its lengthy description. It simply should be specified in it that the Consent shall not be issued if the adjacent territory is planned (a land lot is designed) by a territorial planning document.

The Rules must be supplemented by an additional clause specifying that the Consent is not needed if the structure to be constructed is covered by the area of building-up defined in the territorial planning document(detailed plan).

The manager (user) of an adjacent territory may make written claims regarding the rights that, in his / her opinion, shall be violated if construction works are performed close to the boundary of the land lots. Following clause 10 of the Rules, a territorial subdivision of NLS shall assess whether this person's comments are reasonable and shall decide to issue or not to issue the Consent thus completing the administrative procedure.

Clause 10 of the Rules also incites doubts whether the specialist (a stranger) can make a resolution deciding that the construction works to be performed shall not violate the rights of the manager of an adjacent territory. The scientist's thoughts concerning material rights and rights arising from obligations as well as protection of legitimate expectations that are presented in the beginning of the article form the opinion that the said rights are significant and determining a violation (absence of a violation) thereof is not so easy. Therefore, when completing the algorithm, it would be expedient to legally stipulate that, if a person has presented any comments, NLS shall not issue the consent and the persons can decide upon the reasonability of the said comments by communicating with each other or at court.

Conclusions and proposals

1. The consents of the possessors of adjacent territories to construct structures in the land lot are very important because persons' material rights and rights arising from obligations can be violated if strict requirements are not followed. NLS are in charge for the state-owned land and issues quite a lot of Consents following the Rules during the issuance whereof it expresses its opinion regarding the construction works being performed close to the state-owned land as well as represents the interests of the state.
2. According to the Rules, NLS shall return an application that was drawn up in an incorrect manner to the owner; therefore, a huge additional work is done because the results of the research show

that such applications to be returned amount to even 70%. The research performed also shows that the most frequent mistake of the designer is failure to draw up the diagram of the situation on an orthophotographic base. However, this requirement set by the Rules is absolutely useless in practice since it does not provide any relevant information. Also, taking the theoretical outlines of the law into account, no interests are violated by the presence or absence of such a requirement. Therefore, it is expedient to eliminate this requirement from the rules as soon as possible thus reducing the expenditure of the human resources of the specialists of the institution.

3. The requirements applicable to the diagram enclosed to the application need to be amended by stipulating in the legislation that the special terms of use of land and the red lines of streets must be shown in the diagram.
4. Classification of structures is complicated and leaves uncertainties. Therefore, taking the experience of other countries into account, a new, more specific classification of structures should be discussed. Also, taking into account the fact that the requirements for construction are scattered among many regulations, it is expedient to generalize them into a few regulations only. Application of the criteria to respective situations would be facilitated in this way.
5. It is believed that, having transferred the issuance of the Consents of NLS to e-space and amended the requirements of the legislation, the human resources that are used pointlessly would be reduced and the necessity of the issuance of the Consents would be clearer because the requirements when the consents are needed could be set in the system.

REFERENCES

Legislation

1. Lietuvos Respublikos sodininkų bendrijų įstatymas. 2003 m. gruodžio 18 d. nr. IX-1934. *Valstybės žinios*, 2004, nr. 4-40.
2. Lietuvos Respublikos statybos įstatymas. 1996 m. kovo 19 d. nr. I-1240. *Valstybės žinios*, 1996, nr. 32-788.
3. Lietuvos Respublikos Vyriausybės 1992 m. gegužės 12 d. nutarimas nr. 343 „Dėl specialiųjų žemės ir miško naudojimo sąlygų patvirtinimo“. *Valstybės žinios*, 1992, nr. 22-652.
4. Lietuvos Respublikos žemės įstatymas. 1994 m. balandžio 26 d. nr. I-446. *Valstybės žinios*, 1994, nr. 34-620.
5. Statybos techninis reglamentas STR 1.01.07:2010 „Nesudėtingi statiniai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2010 m. rugsėjo 27 d. įsakymu nr. D1-812. *Valstybės žinios*, 2010, nr. 115-5903.
6. Statybos techninis reglamentas STR 1.07.01:2010 „Statybą leidžiantys dokumentai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2010 m. rugsėjo 27 d. įsakymu nr. D1-826 „Dėl statybos techninio reglamento STR 1.07.01:2010 „Statybą leidžiantys dokumentai“ patvirtinimo“.
7. Statybos techninis reglamentas STR 2.03.02:2005 „Gamybos, pramonės ir sandėliavimo statinių sklypų tvarkymas“, patvirtintas Lietuvos Respublikos aplinkos ministro 2005 m. birželio 17 d. įsakymu nr. D1-309. *Valstybės žinios*, 2005, nr. 80-2908.
8. Statybos techninis reglamentas STR 2.02.09:2005 „Vienbučiai gyvenamieji pastatai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2005 m. liepos 1 d. įsakymu nr. D1-338. *Valstybės žinios*, 2005, nr. 93-3464.
9. Statybos techninis reglamentas STR 2.01.04:2004 „Gaisrinė sauga. Pagrindiniai reikalavimai“, patvirtintas Priešgaisrinės apsaugos ir gelbėjimo departamento prie Vidaus reikalų ministerijos direktoriaus 2010 m. gruodžio 7 d. įsakymu nr. I-338 „Dėl gaisrinės saugos pagrindinių reikalavimų patvirtinimo“.
10. Statybos techninis reglamentas STR 2.02.02:2004 „Visuomeninės paskirties statiniai“, patvirtintas Lietuvos Respublikos aplinkos ministro 2004 m. vasario 27 d. įsakymu nr. D1-91. *Valstybės žinios*, 2004, nr. 54-1851.
11. Statybos techninis reglamentas STR 1.01.09:2003 „Statinių klasifikatorius pagal jų naudojimo paskirtį“, patvirtintas Lietuvos Respublikos aplinkos ministro 2003 m. birželio 11 d. įsakymu nr. 289. *Valstybės žinios*, 2003, nr. 58-2611.
12. Statybos techninis reglamentas STR 1.01.08:2002 „Statinio statybos rūšys“, patvirtintas Lietuvos Respublikos aplinkos ministro 2002 m. gruodžio 5 d. įsakymu nr. 622. *Valstybės žinios*, 2002, nr. 119-5372.
13. Sutikimų statyti statinius žemės sklypuose, besiribojančiuose su valstybinės žemės sklypais ar valstybine žeme, kurioje nesuformuoti žemės sklypai, išdavimo taisyklės. *Valstybės žinios*, 2012, nr. 93-4831.

Scientific literature

14. GAUDĖŠIUS, R; GURSKIENĖ, V. The Lithuanian RE market. *Real estate, construction and economic development in emerging market economies. Routledge studies in international real estate*, 2016, p. 342–352.
15. GAUDĖŠIUS, R. Real estate cadastral data collection problems, imaging and works intensity in Lithuania. *Geodesy and cartography*, 2014, 1(40), p. 14–26.
16. GEDMINTAITĖ, A. Teisėtų lūkesčių apsauga Europos Žmogaus Teisių Teismo praktikoje. *Teisė*, 2014, t. 91.
17. SAKAVIČIUS, J. Kai kurie daiktinės ir prievolinės teisės santykio probleminiai aspektai. *Jurisprudencija*, 2008, 5(107), p. 42–49.
18. STASIUKYNAS, A. Pastatų klasifikavimo ypatumai. Iš *Lietuvos jaunųjų mokslininkų konferencija „Mokslas – Lietuvos ateitis“*. Statyba, 2011.
19. ŠOSTAK, O. R. Savavališkų statybų teisinis reglamentavimas. Iš *Lietuvos jaunųjų mokslininkų konferencija „Mokslas – Lietuvos ateitis“*. Statyba, 2008.
20. VASARIENĖ, D.; MINGĖLAITĖ, D. Legal regulation of state and municipalities property relations in Lithuania [interaktyvus. Žiūrėta: 2016-02-05]. Prieiga per internetą: <https://www.law.muni.cz/sborniky/Days-of-public-law/files/pdf/sprava-finance/Vasariene_Mingelaite.pdf>.

GRETIMŲ TERITORIJŲ VALDYTOJŲ SUTIKIMAI STATANT STATINIUS GRETA BENDROS ŽEMĖS SKLYPO RIBOS

Rimvydas Gaudėšius

S u m m a r y

Žemės sklypo savininkai, vykdančys statybos darbus, privalo nepažeisti gretimų teritorijų valdytojų interesų, nes šiuo atveju galimi asmens daiktinių ar prievolinių teisių pažeidimai. Siekiant asmens teisėtų lūkesčių apsaugos, yra nustatyti teisiniai reikalavimai, juose nurodyti konkretūs techniniai parametrai ir administracinės procedūros, kurių privaloma laikytis. Šių reikalavimų laikymąsi kontroliuoja įvairios valstybės institucijos. Kartais susiduriama su įvairiomis probleminėmis situacijomis, kurias sukelia žemės savininkų savanaudiški poreikiai, projektuotojų klaidos arba teisės aktų netikslumas. Taip pat žemės sklypų savininkams ir projektuotojams reikia žinoti, kokiais atvejais toks sutikimas yra reikalingas.

Straipsnyje nagrinėjami teisės aktai, moksliniai straipsniai ir konkrečios praktinės situacijos. Apibendrinant surinktą informaciją ir duomenis parodomas dažniausios problemos ir dėl to pateikiami siūlymai keisti konkrečias teisės aktų nuostatas. Pagal atliktą tyrimą nustatyta, kad net 70 procentų pirminių prašymų dėl statybos darbų greta žemės sklypo ribos būna netenkinama.

Įteikta 2016 m. balandžio 7 d.

Priimta publikuoti 2016 m. gruodžio 29 d.