

# COMPARISON OF THE PERMITTING OF SELECTED RECREATIONAL BUILDINGS FROM THE PERSPECTIVE OF THE NEW AND OLD BUILDING ACT

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## Abstract

The paper will be devoted to the issue of permitting selected buildings for recreation from the perspective of the current Building Act No. 183/2006 Coll. and from the perspective of the new Building Act No. 283/2021 Coll., which is to come into force on 1 July 2023. The author will focus on specific selected types of buildings for recreation, which are located and implemented in recreational areas. A comparison will be made between the different forms of permitting of these structures according to the old and the new Building Act.

**Key words:** Building Act, recreational facilities, sports grounds

## Introduction

Rules for construction were codified in the Czech lands as early as the Middle Ages, not only as rules for construction, but also technical conditions for construction and control of compliance with these conditions by the authorities. Already in the Middle Ages it was the builder's duty to obtain a permit before building most structures. The legal regulation of building permits changed and became more specific over the centuries.

## Methods

In recent years, the issue of recodification of public building law and the approval of the new Building Act has been a very topical issue. This is an issue that affects the rights of many citizens, either as builders or as neighbours affected by construction, even in terms of buildings for recreation. The process of adopting the new building law was very complicated and long. In 2019, the substantive draft of the Construction Law was published, which introduced new basic rules for public construction law, including a proposal for reform of public administration in the field of construction. The draft amendment was prepared at the end of 2019. The legislative process of approving the new regulation was completed on 13 July 2021, when the new approved Construction Act was published in the Collection of Laws under the number 283/2021. The new Construction Act will come into force gradually, and the comprehensive law is expected to come into force on 1 July 2023. However, in recent days, the possibility of postponing the entry into force and the preparation of amendments to the Act have been discussed.

## Results

In general, one of the main changes of the new Construction Act can be described as a reform of the construction public administration consisting in the integration of selected concerned authorities into construction authorities and a change in the structure of construction authorities. There should be a Supreme Construction Authority (§ 32), a specialised and appellate construction authority (§ 33), a regional construction authority (§ 34) and other construction authorities (§ 35) as the first instance authority. Another change should be the acceleration of building permitting, which consists in the so-called one-stage permit, i.e. a building will no longer require a permit with location and a permit for implementation, but only one permit for the construction plan. In certain statutory cases, it will also be possible to obtain this permit under the accelerated procedure (§ 211 et seq.). Another change concerns the so-called digitisation of processes and the digitisation of public building law. All these changes will also affect the permitting and construction of buildings for recreation.

In connection with the above-mentioned approved amendments to the Building Act and the topicality of the issue of building permits, the author focuses on selected types of buildings for recreation and their forms (methods) of permitting, including a comparison of the forms of permitting under the existing Building Act<sup>1</sup> and under the new Building Act.<sup>2</sup>

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<sup>1</sup> Act No. 183/2006 Coll., as amended

<sup>2</sup> Act No. 283/2021 Coll.

### **Building for recreation - general definition**

As in the existing Building Act, the term "building for recreation" is not enshrined in the new Building Act. Other laws also do not have a separate definition. Thus, we can consider as buildings for recreation basically any buildings that allow their use for recreational purposes. This can be, for example, buildings for family recreation, buildings for other residential recreation and other buildings for sport and recreation, which are buildings serving recreation in the form of an additional function, e.g. buildings serving selected sporting activities (motocross track, ski lift, water lift, etc.).

The author has chosen to compare the forms of permitting of buildings for family recreation, accommodation facilities and a motocross track.

### **Building for family recreation**

A building for family recreation is a building whose volumetric parameters and appearance correspond to the requirements for family recreation and which is intended for this purpose; a building for family recreation may have a maximum of two above-ground floors and one underground floor and an attic [Section 2 (b) of Decree No. 501/2006 Coll.]; for example, a holiday home, a cottage, a holiday cottage, a garden cottage.

Construction for family recreation under the current Building Act requires a simplified form of permitting, namely the placement in the form of a zoning consent under the provisions of Section 96 of the Building Act and the notification of construction under the provisions of Section 104 (1) (a) of the Building Act. Both the location consent and the building permit are issued by the general building authority (provisions of Section 13 of the Building Act). According to the provisions of Section 96a of the Building Act, a joint planning consent and a consent for the execution of the notified construction project can be issued. The conditions under which a building for individual recreation can be authorised by these simplified procedures (consents) are determined by law. It is possible to permit the location of a building by means of a planning consent if the building is in a built-up area or in a buildable area, the conditions in the area are not substantially changed and the project does not require new demands on public transport and technical infrastructure. One of the requirements for the granting of planning consent and building notification consent is the consent of neighbours who may be affected by the permitted development. A problem in the case of some family recreation buildings may be the requirement for the consent of affected neighbours, which is not obtained and therefore the building does not meet the condition for authorisation in the form of planning consent and building notification. If this is the case, it is then necessary to obtain a siting permit in the form of a planning consent and building permit to permit such a structure.

Under the new Building Act, the above-described building for family recreation (maximum two storeys above ground and one underground storey and an attic or set-back storey) is classified as a simple building in Appendix 2. According to the new Building Act, the building should be authorised by one decision, namely the planning permission. Permission can also be obtained in a so-called simplified procedure, for which the prior consent of the affected neighbours is also required. Compared to the current procedures, this will simplify the process, whereby it will not be necessary to obtain a location permit and then a permit for implementation.

### **Construction of accommodation facilities**

An accommodation building is a building or a part thereof where accommodation and related services are provided (hotel, motel, guesthouse, tourist hostel, dormitory, boarding house, camping site and group of cottage-bungalows, cultural or monumental building used for temporary accommodation, etc.); an accommodation building is not an apartment house, family house or a building for family recreation (Section 2(c) of Decree No. 501/2006 Coll.).

Since the construction of accommodation facilities does not meet the conditions for a permit in a simplified manner under the current Building Act, it is always necessary to obtain a location permit in the form of a zoning permit and a building permit in the form of a building permit. Both the zoning decision and the building permit can be replaced by a public law contract (provisions of § 78a and § 116 of the Building Act), provided that the statutory conditions are met. The building permit can also be replaced by a certificate of an authorised inspector in accordance with the provisions of Section 117 of the Building Act.

According to the new Building Code, the above-described building for recreation serving as an accommodation facility should be authorised in the same way as a building for family recreation, i.e. by a single decision, namely the planning permission. The permit can also be obtained in a so-called simplified procedure.

### **Sports ground - motocross track**

Various sports facilities, such as motocross tracks, are also used as specific buildings for recreational use. In terms of the current Building Act, the basis for the construction of such a sports ground is usually landscaping, which, however, requires a permit from the building authority. Furthermore, other administrative authorities must also comment on the construction project in question, from the point of view of nature and landscape protection, protection of the agricultural land fund, noise protection, etc. From the point of view of the new Building Act, according to Section 213, it will be a change of land use that requires a permit, with the exception of landscaping up to 1.5 m in height or depth with an area of up to 300 m<sup>2</sup> on land that does not have a common boundary with a public road or public open space.

### **Conclusion**

Buildings for recreation are very broadly defined from the point of view of law. It can be both buildings for recreational housing and buildings for recreational activities that fulfil a certain additional function of recreation. These may be, for example, sports grounds or other buildings that enable sporting activities, etc. Due to the variety of types of buildings for recreation, it is not possible to uniformly determine the methods of permitting these buildings under either the existing or the new Building Act. It will always be necessary to assess which particular building is involved, which particular sporting activity is involved and to approach the permitting of buildings accordingly. Related issues such as nature and landscape protection, forest protection, water protection, etc. cannot be overlooked.

### **Souhrn**

Stavby pro rekreaci jsou z pohledu nejenom práva pojaty velmi široce. Může se jednat jak o stavby pro rekreační bydlení, tak stavby pro rekreační aktivity, které plní určitou doplňkovou funkci rekreace. Může se jednat např. o sportoviště či jiné stavby, které umožňují sportovní aktivity, aj. Vzhledem k různorodosti typů staveb pro rekreaci, nelze jednotně určit způsoby povolování těchto staveb ani dle stávajícího ani dle nového stavebního zákona. Vždy bude nutné posuzovat o jakou konkrétní stavbu se jedná, o jakou konkrétní sportovní aktivitu se jedná a dle toho se bude přistupovat k povolování staveb. Nelze taktéž opominout i otázky související jako je ochrana přírody a krajiny, ochrana lesa, ochrana vod, apod.

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