LEGAL & ECONOMIC DOSSIER

Legality of Community Village Funds, Urban Planning Agreements, and Complete Demolition of the 'Local Tourist Tax' Myth

Briefing dossier for residents of Orłowice & Krobica, Council Members of Gmina Mirsk, and planning authorities
Legal Basis: Polish Journal of Laws (Dz.U. 2023 item 1688 - Spatial Planning Reform), Dz.U. 2024 item 320 (Public Roads Act), Supreme Court Ruling III CSKP 62/21, Mirsk Council Resolution LX/655/23

EXECUTIVE SUMMARY & LEGAL STATUS

This dossier provides an exhaustive legal analysis proving that demanding an Orłowice Village Fund and notarial developer infrastructure commitments has 100% indisputable backing in Polish statutory law. Furthermore, it deconstructs and definitively refutes the municipal claim that the 'local tourist tax (opłata miejscowa)' will offset village costs or replace developer obligations.

I. Statutory Pillars of Developer Participation in Poland

Compelling developers to fund public infrastructure and community welfare is neither an unusual demand nor local entitlement. It is an established statutory mechanism under current Polish legislation:

1. Art. 37ed of the Spatial Planning and Land Development Act (u.p.z.p.) – Urban Planning Agreement
Enacted by the national Spatial Planning Reform (Dz.U. 2023 item 1688), Art. 37ed explicitly authorizes municipalities to execute notarial urban planning agreements ('umowa urbanistyczna'). The developer covenants to finance or directly construct complementary public infrastructure (water mains, sewage treatment, roads, green spaces, community buildings) or transfer funds to the municipality for these purposes. This is a recognized statutory public-private instrument.

2. Art. 16 of the Public Roads Act (u.d.p.) – Road Obligation of Non-Road Investors
Under Art. 16(1) and (2) u.d.p., the construction or reconstruction of public roads caused by a non-road commercial investment IS THE RESPONSIBILITY OF THE INVESTOR. The developer cannot evade responsibility by citing that DW 361 is a regional road. Generating traffic of hundreds of daily vehicles triggers an absolute duty to construct turning lanes, intersection widening, pedestrian crossings, and acoustic barriers.

3. Polish Supreme Court Landmark Precedent (SN Ruling III CSKP 62/21 of 24 Feb 2021)
The Supreme Court confirmed that the road obligation under Art. 16 u.d.p. is a civil law commitment requiring the developer to execute necessary road upgrades. The Supreme Court strictly ruled out shifting commercial development traffic and infrastructure costs onto taxpayers and local residents.

4. Art. 893 Civil Code & Art. 223 Public Finance Act – Conditional Donation / Dedicated Village Accounts
Commercial corporations can legally transfer funds into earmarked municipal accounts with a legally binding covenant (Art. 893 Civil Code - 'darowizna z poleceniem') dedicated exclusively to Sołectwo Orłowice (e.g., senior health stipends, private well contamination monitoring, water filter subsidies, community center renovation). Regional Audit Chambers (RIO) fully recognize such dedicated revenues.

II. Debunking the Myth: Why 'Local Tourist Tax' CANNOT Replace the Developer Fund

STRATEGIC COUNTER-ANALYSIS

THE OPPOSING CLAIM: 'There is no need for a developer fund or binding agreements because the municipality will collect local tourist tax (opłata miejscowa) from hotel guests (3.00 PLN/night). This will more than cover the village's costs.'

WHY THIS IS COMPLETELY FALSE: This is bureaucratic sleight-of-hand that misrepresents tax law, violates public finance principles, and defies elementary mathematics.

1. WHO ACTUALLY PAYS? (The developer pays zero)

The local tourist tax ('opłata miejscowa', Art. 17 Local Taxes and Fees Act) is a public levy paid by the VISITOR (the hotel guest), NOT by the developer. The developer does not sacrifice a single penny of profit. In fact, by law, the hotel operator acts as a tax collector ('inkasent') and typically receives a COMMISSION from the municipality for collecting it! Claiming that a guest paying 3 PLN/night satisfies the developer's infrastructure debt is an insult to the law.

2. THE 'BLACK HOLE' OF THE GENERAL BUDGET (Art. 42(2) Public Finance Act)

Under the strict statutory principle of budget unity (the 'non-affection rule', Art. 42(2) of the Public Finance Act), all tax and fee revenues flow into Gmina Mirsk's central general budget. Polish law FORBIDS automatically ring-fencing tourist tax revenue to the specific village where it was collected! The Mayor of Mirsk can spend 100% of it on administrative salaries in Mirsk, municipal debt service, or paving roads in Rębiszów. Orłowice has ZERO legal guarantee that even 1 złoty will ever return to the village!

3. THE FINANCIAL ABYSS & ELEMENTARY MATH (Pennies vs. Millions)

Mirsk's statutory tourist tax rate is 3.00 PLN per person per day (Resolution LX/655/23). For the proposed resort (assuming 300 guests/day at a high 65% annual occupancy), total gross municipal revenue would be ~213,500 PLN/year (~190,000 PLN net after collection fees).

Now compare this to the real capital costs caused by the mega-resort:

- Reconstructing the DW 361 junction (turning lanes, sidewalks, lighting): 6,000,000 – 10,000,000 PLN
- New dedicated water main & expansion of Orłowice deep well station: 3,000,000 – 5,000,000 PLN
- Sewage treatment collector & pumping station upgrades: 4,000,000 – 8,000,000 PLN

Total capital infrastructure deficit: 15,000,000 – 25,000,000 PLN! It would take OVER 50 YEARS of 100% tourist tax revenue just to pay off the single road junction, leaving zero for anything else!

4. DIVERGENT STATUTORY PURPOSES (Minor maintenance vs. Capital infrastructure)

Under Art. 17 of the Local Taxes and Fees Act, tourist tax is legally intended for minor, routine operating costs in tourist localities (trail cleaning, trash bins, promotional flyers, tourist signage). It was NEVER designed or permitted by Parliament to fund multi-million złoty capital infrastructure (regional highways, deep aquifer wells). That is precisely why Parliament enacted Art. 16 u.d.p. and Art. 37ed u.p.z.p.: to make the private developer fund capital projects, not taxpayers.

5. THE DISASTROUS TIMING TRAP (Destruction today, pennies in 5 years)

Tourist tax revenues only begin flowing AFTER the hotel is fully built, licensed, staffed, and hosting guests—at least 4 to 5 years from now. But the catastrophic destruction of Orłowice begins on DAY ONE OF CONSTRUCTION: hundreds of heavy dump trucks, shattered village asphalt, dust clouds, structural cracking of residential houses, and severe risk to underground drinking water aquifers during deep quarry excavation. Without an upfront urban agreement, the village suffers years of physical damage with zero municipal revenue to fix it!

6. ZERO COMPENSATION FOR SENIORS AND LOCAL RESIDENTS

Even if tourist tax reached Mirsk's treasury, public finance law prohibits using general tax revenue for direct compensatory assistance to impacted neighbors. Tourist tax CANNOT legally fund: private well contamination water filters, acoustic fencing on private properties, sewage pump subsidies for affected households, or senior citizen healthcare relief. Only a dedicated, contractually ring-fenced Village Fund in an Urban Planning Agreement can deliver these protections.

III. Summary & Action Plan for the Community

Attempting to dismiss community concerns with the 'tourist tax' argument is legally meritless and economically deceptive. Residents of Orłowice and Krobica are fully entitled to demand from the Mirsk Town Council and the Mayor:

1. Immediate suspension of the MPZP adoption until a binding Notarial Urban Planning Agreement (Art. 37ed u.p.z.p.) is signed.
2. An enforceable Road Agreement (Art. 16 u.d.p.) between the developer, DSDiK, and Gmina Mirsk for the full reconstruction of the DW 361 junction BEFORE any construction commences.
3. Establishment of an Orłowice Community Fund (1–2% annual resort revenue or fixed notarial sum) deposited in an independent Escrow Account with statutory disbursement to the Sołectwo and Social Welfare Centre (OPS).
4. Strict financial security bonds (bank guarantees) for quarry reclamation, groundwater preservation, and aquifer integrity.

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> This briefing represents a civic informational analysis prepared within the statutory public consultations for the draft MPZP (pursuant to Art. 54 of the Constitution of the Republic of Poland and Art. 17 & 18 of the Spatial Planning and Land Development Act). The purpose of this publication is to provide substantive facts, economic analysis, and constructive compromise proposals for open public discussion between residents, local government, and the investor. This material does not constitute individualized legal advice or licensed legal practice under the Bar or Legal Advisers Acts. All statutory provisions (Planning Act, Public Roads Act, Civil Code, Public Finance Act) and court precedents (including Polish Supreme Court ruling III CSKP 62/21) represent official, publicly available sources of Polish law. Each resident exercises their constitutional rights and makes submissions independently in their own name. We welcome constructive feedback, factual scrutiny, and legal review from all community members.