

THE DAWN OF THE BY-LAW: BE AFRAID ... BE VERY AFRAID!

By now it is old hat. Municipal By-Laws on Land Use Management are two a penny. Various municipalities have prepared and adopted their By-laws and planning practitioners and their clients have attended information sessions to learn more, and dare we say, become more confused about what lies ahead.

In the aftermath of the *SPLUMA Splash*, there was much expectation that the By-laws of different municipalities would follow a pre-determined “model” and establish an acceptable level of consistency derived from the provisions of the Spatial Planning and Land Use Management Act, 2013. Such expectations have been dashed, given the example of the differences of the City of Tshwane By-law when compared to the draft City of Johannesburg By-law. So much for consistency!

One important “grey” area which presents as a potential hurdle when these By-laws are looked at in more detail, is the advent of the development charge/services contribution which may be levied by the municipality when approving new land development rights in terms of the By-law.

There are two important considerations which hinge on this namely:

- When does the development charge/contribution become payable ?
- What will the development charge/contribution cover ?

As to the first question, the City of Tshwane requires payment of the development charge / contribution **prior** to the publication of a notice in the Provincial Gazette to bring the approval of the new land use rights into operation. In the Johannesburg example, it appears that the former Ordinance model was used. In other words, payment of the development charge / contribution is due after the publication of the notice in the Gazette.

In the Tshwane example, land development applicants will be faced with the prospect of having to settle the account before the land use rights vest in the property concerned. Thereafter the land development applicant will be obliged to comply with the conditions of approval within a pre-set period of time, failing which the approval may lapse. In such an instance, the payment of the development charge/contribution may be forfeit.

On the face of it, the Johannesburg example appears to be less daunting, given that approved land use rights will have vested by the publication of the notice in the Provincial Gazette, before the development charge becomes due. Clearly, in the event of the development charge not being paid in the Johannesburg example, development will not be permitted to commence. This is one of the important differences between the two metropolitan municipalities, which share a common boundary.

How will the development industry respond and what disputes may lie ahead to be resolved? Only time will tell.

As to the second question of what the development charges may cover, the jury is still out. In the Johannesburg example, and based on recent experiences of developers in the area, the issue of a contribution towards inclusionary housing looms large.

In the Ordinance model, there was a fairly clear indication of what services contributions/endowments may be used for. This was generally restricted to engineering services and parks. On the face of it, the new By-laws appear to open the door for the relevant Municipality to levy additional charges (beyond the traditional engineering's services and parks contributions). There is talk of contributions for social facilities, the provisions of land for educational purposes, etc.

Developers may be faced with the prospect of not knowing what to expect when a land development application is being considered. The possibilities for which the Municipality may levy contributions remain unknown at this stage. How to budget, remains the question.

In dissecting the by-laws and digging into the detail, it is apparent that, because of pressure at the time to bring the By-laws into operation, not enough time was spent on analysing the potential consequences of the formulation of the various sections. More particularly, time was spent on cross referencing the By-law provisions. As a result, a host anomalies and contradictions are evident. These will probably require amplification/rectification in time to come.

Suffice it to state that planning practitioners will be faced with these difficulties during the “growth pain period” of the new By-laws. It may be expected that the legal fraternity may derive much benefit from the

inevitable disputes which will arise with regard the interpretation of the provisions of the By-laws and the manner in which they are applied.

per SAACPP, May 2016