

CIRCULAR TO MEMBERS

EXTENSION OF BOUNDARIES OF EXISTING TOWNSHIP

“INCISION OF FARM PORTION”

Our Ref: 200/032
PJ Dacomb

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The extension of the boundaries of an existing township, to incorporate an adjacent farm portion as a new erf, is not a matter which occurs frequently and, understandably, the various role-players may hold different views in regard to the procedural aspects thereof.

Whereas these matters were previously regulated in terms of, inter alia, Ordinance 15 of 1986, the new order municipal by-laws on spatial planning and land use management matters now fulfil this role. Given that the by-laws are often different in regard to their detail, certain difficulties have arisen in regard to giving effect to a decision of a municipality to allow for the extension of the boundaries of an existing township.

It appears that the essence of the difficulty lies in the interpretation of the provisions of Section 49(1) of the Deeds Registry Act, 1937 (Act 47 of 1937). The chosen wording in this regard is somewhat ambiguous and for ease of reference is quoted below:

“If any area of land in the province of the Transvaal constitutes, by reason of its situation, a portion of an existing township, the Administrator may, by proclamation in the official Gazette of that Province, extend the boundaries of that township to include such area, and thereupon such area of land shall be deemed to be and shall be registered as an erf in that township”.

Underlining by author

This section appears to suggest (somewhat ambiguously) that an area of land (not an existing erf or street) may “... constitute ... a portion of an existing township ...”. This is clearly in error, as the existing township has a specific boundary and typically includes certain erven and streets. No other “area of land” can “constitute” a part thereof. The only part of the section that alludes to the affected area of land being situated external to the perimeter of the existing township, is where provision is made for the Administrator (now municipality) to extend the township boundaries by including the affected area of land – as one erf.

Apart from the awkward wording of Section 49(1), the Office of the Registrar of Deeds has, in the past, argued that the proclamation must first occur and the technicalities in regard to the township register and deeds shall be attended to subsequently. This is contra the sequential steps in township establishment and may result in various downstream difficulties. Upon arranging for proclamation, the municipality must surely be satisfied that all is in order in regard to the technicalities in the Deeds Registry. If conditions of title and servitudes, etc. present difficulties (post proclamation), this may require having to repeat certain processes and lead to associated delays and frustrations. In regard to Tshwane, this has been resolved (by agreement). Surely this should be standard practice and apply uniformly to all affected municipalities.

When an application for the extension of the boundaries of a township is approved by the relevant municipality, it typically involves “incorporating” a single adjacent farm portion which, in practical terms, may “fit” within the available space on the original general plan of the township in question. On its part the Surveyor General will typically be approached to confirm the above and to allocate a new erf number to the affected farm portion and will bring about an endorsement on the General Plan to reflect the change of the boundary (enlargement).

On its part the Registrar of Deeds requires to revisit the conditions of establishment and the township register to reflect the required changes. Typically, the new erf requires to be made subject to the relevant conditions of establishment which were originally proclaimed when the mother township was registered.

On its part, the municipality is obliged to hand down a set of additional conditions of establishment which may be relevant to the newly incorporated erf, together with the typical amendment scheme documents which shall apply to the erf upon incorporation.

This process is also often described as “incision”, given that the adjacent farm portion is “cut into” the boundaries of the new township. Attached is a copy of Examiner’s Notice 03/2021, issued by the office of the Registrar of Deeds, confirming its *modus operandi* in regard to the aforesaid subject.

Whereas the prior interpretation was that the approved incision should first be proclaimed, before the township register could be attended to, the latest agreement between the parties suggests that, in the case of Tshwane, a submission is to be made to the Registrar confirming the approval, the amended conditions of establishment, etc. whereupon the Registrar will issue a letter to the municipality confirming that “proclamation” may occur. Following proclamation, the registration of the incision occurs and the title deeds are endorsed accordingly.

Per: SAACPP