

CIRCULAR TO MEMBERS

THE BY-LAW COMETH

Our Ref: 200/032
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6 February 2017

The new year 2017 is well underway. Hope springs eternal that it will indeed be better in all respects when compared to the upheavals and economic strains associated with 2016, widely rumoured to rival the *annus horribilis* that the Queen of England made reference to.

As far as planning matters go, 2017 will herald the first full 12 month cycle within which the various municipal by-laws on spatial planning and land use management matters become fully operational. Very few land development applications of any substance, submitted in terms of the new municipal by-laws have been fully completed, given the fairly recent enactment of the by-laws. It is not yet possible to draw any real conclusions with regard to the manner in which the processing of applications in terms of the by-laws will differ from what went before in terms of the old order legislation. Only time will tell.

In certain fees have risen Association is yet to for this. There appears which the fee calculated, nor for when compared to

In addition to the municipality, certain submission of a to accompany a land Not all such reports the old order

costs in this regard for the land development applicant are mounting up and often result in a decision not to proceed given the high upfront expenses. This is generally relevant to a less significant development applications. Larger development companies are generally willing to absorb the costs which will ultimately reflect in the cost to the end user.

One concerning reality which has emerged is the exponential rise in cost to a land development applicant when compared to the previous dispensation.

municipalities the application exponentially and the find a reasonable justification to be no specific basis on structures have been increase in each instance previous fee structures.

direct costs payable to the of the by-laws require the number of technical reports development application. were previously relevant to applications. The additional

The Association will be petitioning the municipalities to consider differentiated application fees with a view to accommodating members of the public (other than larger development companies) who intend to apply for minor subdivisions, consent use authorisations, minor increases in density of occupation, etc. There appears to be little if any justification for the excessively high payments demanded by the municipalities when regard is had to persons from previously disadvantaged areas hoping to divide land or to procure consent for a formal spaza shop or a tavern or a small guesthouse or similar.

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Members also note that they are increasingly experiencing what may best be described as confrontational attitude from certain municipal officials when land development applications are discussed or submitted.

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There is a growing perception that certain municipal officials are intent on finding reasons to either delay or scupper land development applications, rather than to constructively assist in bringing matters to a reasonable conclusion. The underlying rationale for this state of affairs is unknown and the Association endeavours to engage with the relevant municipal representatives with a view to fostering constructive co-operation.

INDEMNITY INSURANCE AND CLAIMS

In a world where electronic communication reigns and access to information becomes ever more uncomplicated, the end-user (typically the client of a consulting planner) is also far more informed with regard to land development matters and application procedures.

In circumstances where a property development transaction fails as a result of a land development application not being concluded within the originally expected timeframe, the aggrieved party (typically the client of the planner) may be advised to consider taking the consultant to task with a view to recovering associated damages.

Members report that there is a growing tendency for clients to consider litigation and claims against planning consultants with regard to alleged damages suffered as a result of deadlines not being met.

On the part of the consultant, he or she is often at the mercy of a system (municipal or otherwise) which is as good or as bad as the management thereof. Suffice it to say that apart from complying with the prescripts of the ruling legislation and appeasing the relevant officials with regard to demands for further technical reports and plans, the planning consultant is generally not in a position to practically influence the speed at which the land development application process is brought to a conclusion by the relevant authority.

Members are that, when concluding agreement with the with regard to the with the land application are that the consultant to the extent possible. holding appropriate insurance becomes all

Notwithstanding, certain clients of planners will allege that, somehow, the consultant remains primarily responsible to ensure that the land development application process is brought to a conclusion within a

forewarned to ensure an appointment client, the expectations timeframe associated development properly qualified and protects himself/herself Also, the importance of professional indemnity the more important.