

LAMENTING THE ABSENCE OF SECTION 60: SPLUMA

Following the recent plea by the South African Property Owners Association (SAPOA) for the Minister of Rural Development and Land Reform, Mr Gugile Nkwinti, to facilitate a speedy conclusion to the bringing into effect of the provisions of Section 60 of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA), Peter Dacomb confirms that the Association of Consulting Professional Planners has also approached the Honourable Minister in solidarity with SAPOA.

According to the SAPOA submissions, an estimated R12 Billion in property development value is being frustrated by the impasse surrounding the coming into effect of Section 60 of SPLUMA.

In the Provinces of Gauteng, Mpumalanga, North West, Limpopo, Kwazulu Natal, Eastern Cape and Northern Cape, various land development areas were approved by the then Provincial Development Tribunals under the provisions of the Development Facilitation Act, 1995. Because of the Constitutional Judgements which rendered certain chapters of the DFA unconstitutional, many of the decisions of the various provincial tribunals were not brought into effect and remained in abeyance.

The much lauded and awaited SPLUMA legislation came into effect in August 2013 but, curiously, incorporated a provision under Section 61 which reads as follows:

"This Act is called the Spatial Planning and Land Use Management Act, 2013 and comes into operation on a date fixed by the President by proclamation in the Gazette.

The President may set different dates for different provisions of this Act to come into operation".

To date, no such further proclamations have occurred.

The bone of contention on the part of SAPOA (and supported by the SAACPP) pertains to Section 60 which, inter alia, provides for the following:

"All applications, appeals or other matters pending before a tribunal established in terms of Section 15 of the Development Facilitation Act, 1995 (Act 67 of 1995), at the commencement of this Act, that have not been decided or otherwise disposed of, must be continued and disposed of in terms of this Act.

A reference to a tribunal in terms of Section 15 of the Development Facilitation Act, 1995 must, for the purposes of deciding or otherwise disposing of any application, appeal or other matters pending before a tribunal at the commencement of this Act, must be construed as a reference to a local or metropolitan municipality".

In other words, the R12 Billion property development initiatives currently treading water as a result of prior decisions of the various provincial tribunals may be "unlocked" by a simple proclamation in the Government Gazette as contemplated in Section 61 of SPLUMA. It is understood that the resource capacity of municipalities to deal with the added obligations emanating from Section 60 of SPLUMA were foremost in the minds of the officials responsible for this matter (Rural Development and Land Reform).

It would serve no practical purpose to foist the aforesaid responsibilities on various municipalities throughout the country without creating sufficient capacity and knowledge to deal with such matters. Whilst municipalities at a metropolitan level may be expected to have sufficient capacity, knowledge and experience to deal with these matters without experiencing undo difficulties, the same cannot be said of smaller municipalities elsewhere.

To this end, the Department of Rural Development and Land Reform embarked upon a campaign to inform municipalities and to assist in creating the mechanisms to receive and process applications contemplated in Section 60 of SPLUMA. A type of "manual" was developed by the National Department and made available to municipalities to deal with practical and technical matters such as:

- the required resolutions to be passed by the various municipal councils in order to bring the systems into place to deal with the provisions of Section 60 of SPLUMA;

- practical arrangements to identify and delegate authority to certain officials or committees within the municipalities to deal with matters previously embarked upon in terms of the Development Facilitation Act; and
- to anticipate the practical challenges which may be faced by municipal officials in having to deal with multi-layered decisions of prior tribunals, also on issues which are typically not decided by municipalities. These may extend to include changes to general plans, extensions of boundaries of townships, the setting aside of the authority of certain legislation such as Act 70 of 1970, cost orders and the like.

Apart from the recent election and the "go slow" generally associated with the period immediately prior to the election day, there appear to be no specific obstacles in the way of the Honourable Minister Nkwinti to facilitate a speedy publication of the notice in the Government Gazette as explained herein.

In the submissions to the Department of Rural Development of Land Reform, SAPOA and the Association lamented the implications of holding the various development initiatives in abeyance. The high unemployment rate which plagues the country, the less than satisfactory economic growth and the general cost of financing land development projects combine to suggest that, in the absence of unlocking the problem associated with Section 60 of SPLUMA, there may be disastrous consequences for this important sector of the economy.

The SAACPP is under no illusion that, once the provisions of Section 60 of SPLUMA come into practical effect, it will be no "easy ride" to bring the various pending matters to fruition. The property development process remains complicated and challenging and a lack of experience and knowledge within certain municipal jurisdictions will undoubtedly result in various frustrations. The consulting professional planning fraternity will inevitably be called upon to assist in facilitating these matters on behalf of property developers throughout the country. All concerned with therefore be well advised to steel themselves for what lies ahead. As the saying goes: "It is time to throw a Planner in the works".

Post Script: Breaking news Breaking news Breaking news!!!

The Minister of Rural Development and Land Reform responded on 23 May 2014 and confirmed, inter alia, that, on 1 July 2014, Sections 1 to 32 and 53 to 61 of SPLUMA will be enacted by way of a Government Gazette Notice. The balance of the Act is proposed to come into effect in September 2014.

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