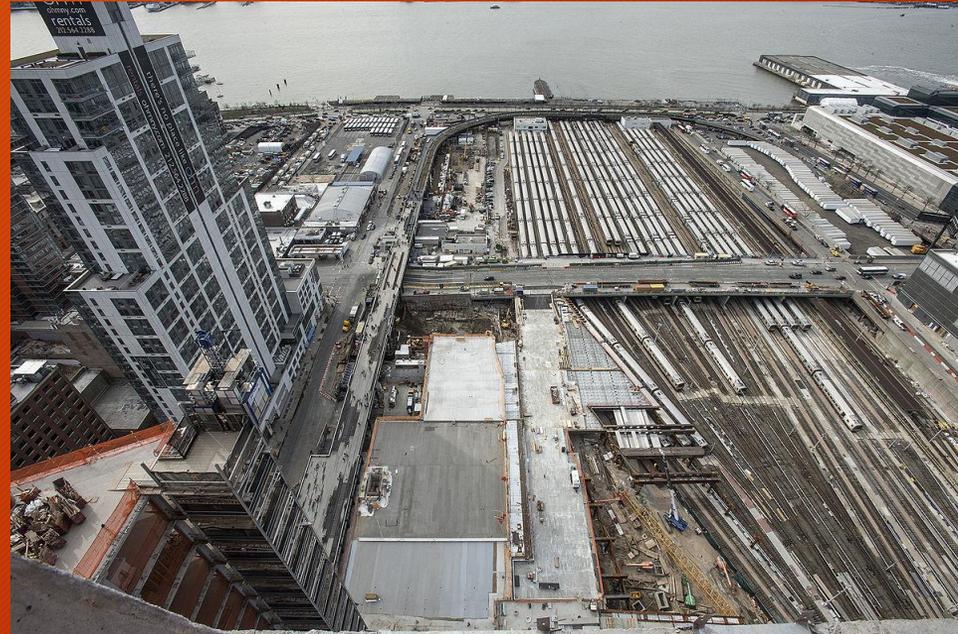


The City of Johannesburg Land Use Scheme: Subdivisions

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Some of the large municipalities can contain within them most of the answers to their own practical problems and so lots of different possibilities for doing things in a practical and different way become available

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Jane Jacobs - Canada

Doing things in a practical and different way -

History of Municipalities After 1994

Right at the start of this presentation it is necessary to understand the history of Municipalities in the South-African context. Prior to the Constitution of South Africa in 1996, Local Authorities as they were then known, were mere creatures of statute created by provincial governments.

Because of their lack of constitutional status Municipalities possessed only such rights and powers as were specifically or impliedly granted to them by the legislature. It rendered all their actions, including the passing of by-laws, subject to judicial review. Municipalities, it can be said, thus existed at the mercy of the provinces.

Local government in South Africa entered a new era with the adoption of the 1996 Constitution. The Constitution introduced, for the first time in our history, a wall-to-wall local government system by providing that Municipalities 'be established for the whole of the territory of the Republic'.

Municipalities were suddenly elevated to a sphere of government, with its own autonomy. A Municipality now had the right to govern, on its own initiative, the local affairs of its community. While national and provincial governments may supervise the functioning of local government, this must be done without encroaching on the institutional integrity of local government.

Town Planning Schemes and Development

A Town Planning Scheme is a system of land use management, in terms of legislation, which allocates legal rights to land within a municipal area and regulates the erection and use of buildings subject to specific conditions and control measures. It deals with sub-divisions, consolidations and the establishment of new suburbs (known as Townships) as well as sectional title schemes and a host of other property related rights and obligations.

- Prior to 1 February 2019 the City of Johannesburg had 16 different Town Planning Schemes operating and applying to all properties in its jurisdiction. Where your property was situated dictated which scheme was applicable. What was possible in one suburb was impossible in the next.
- The new City of Johannesburg Land Use Scheme that came into operation on 1 February 2019 changed all that and the whole of Johannesburg now has a unified set of rules applying to all properties irrespective of suburb.
- The Land Use Scheme is not a stand alone set of rules and it must be read with the Johannesburg Spatial Development Framework 2040, and used in conjunction with the City of Johannesburg Municipal Planning By-law of 2016 and the Spatial Planning and Land Use Management Act, 2013 (SPLUMA). The latter being a National Law applicable to all municipalities.

The scope of this presentation is to provide practical examples and it is not intended to be a legal study of the applicable legislation, but you will be ill advised if you have a practical problem and don't know the solution with reference to the correct law or by-law. We will therefor refer to sections of the above mentioned legislation and others as the need arise.

Subdivisions: I don't use my yard, can I sell it?

The easy answer is you most likely can. Lets look at the conditions before you will be able to, the process and time frames, and the costs to get that piece of your backyard ready for sale.

1) Access - before you can even consider a subdivision of your property you need to consider access. Simply put if you cant access the new piece of land from the street you cant subdivide.

1.1) The Land Use Scheme states in Section 26 (2) (b) that the Council should consider “whether there is adequate and unhindered access to and from the erven or sites: where a panhandle erf or site is created through subdivision the width of the panhandle shall be to the satisfaction of the Council which shall not be less than four (4) metres”.

1.2) Remember that you can demolish a part of the existing structure on the property to accomplish the required access. Its not uncommon for an old loose standing garage and/or outbuildings to be demolished to provide the required access. You also don't have to demolish the part of the building or outbuilding before approval of the subdivision. In practice your application for subdivision will indicate your intention to demolish a portion of the structures on your property and Council will then make the demolition a condition in the approval letter.

1.3) Lastly remember that access, when a panhandle is applicable, can be arranged either by including the “pan” section as part of the new erf or by the creation of a right of way servitude in favour of the new erf. The second option is mostly used when you still want to drive down the new driveway even after you sold the erf because you have a garage or a cottage at the back of your dwelling.

2) Title Conditions - if your Title Deed prohibits the subdivision of your property you may need to bring an application for the removal of the condition from your Deed. Depending on the wording of the condition you may also need the permission of a previous owner, neighbour or the original Suburb Developer. In the majority of cases these conditions can be removed and although it will cost you extra fees (see costs later), these applications are normally lodged with the subdivision application.

3) Size - Section 26 (4) (c) of the Scheme stipulates the Council policy regarding the size of a newly created portion. The policy is 500sqm, but this is not a hard and fast rule for every property or area. Your Town Planner (see process below) will be able to guide you in this regard with specific reference to your suburb.

4) Services - Before you apply for the subdivision of your land it is highly recommended that you get a civil Engineer to comply a service report. This report will confirm the potential of the new erf to link into the council's sewer system and will also look at storm water management. I will deal with sewer connections again later but many a subdivision turned into a nightmare because of sewer and sewer connections. This is a costly aspect of the process and in certain instances subdivision will be impossible or financially not viable because of the costs involved to deal with sewer and /or storm water. An upfront Engineers report can save you a lot in the long run.

5) Desirability - Section 26 (2) (a) of the Scheme directs Council to consider the desirability of the subdivision in relation to the buildings on the erf as well as a discretion to look at any other relevant factors. Here the opinion of neighbours and/ or the rules of a residence association comes to mind. Your neighbours are going to find out about your plan to subdivide sooner or later, why not talk to them before you start? This way you can save yourself much frustration if objections are known beforehand and dealt with.

Process and time frames for subdivision

Your best bet to get a correct, professionally prepared application submitted to council is to appoint a Town Planner. They are registered professionals whose job it is to deal with all property related matters at the City Council. They work closely with your Attorney, Land Surveyor and Engineer and each professional add value to the process at different stages. Remember my advise to consider an Engineer's report even before you start though.

The City Of Johannesburg deals with applications for subdivision at their Development Planning Division. When the application is submitted proof must be provided that, a letter was sent to every neighbour and a carton sign must be erected at the property, confirming the specific details of the application. This is so that any interested party can read the sign and object to the proposed subdivision if he/she wants to.

Council will listen to all objectors, but if your application is correct in format and conform to the Scheme's conditions, the chances are highly likely that objections will not be successful. In practice it is best to try and accommodate legitimate concerns and get any objector to withdraw his/her objection.

It is normal for this process to take 8-12 months, with an additional 6 months if there are remaining objectors. These time frames are based on my experience and not a hard and fast rule even though Section 57 (3) of the By law provides for a period not exceeding 12 months.

As part of the subdivision application, the Development Planning division would have circulated your application to all the various departments of the City. Examples of these are City Power, Johannesburg Water, City Parks and some others. These departments can approve your application or can approve it conditionally. Johannesburg water will always have at least 1 condition and that is that you must install a sewer connection for the new erf before you can subdivide and sell it.

City Power also regularly add conditions to approvals, for example that the new erf will only be able to receive a limited supply of KVA. In such a case subdivision will still be possible but any new dwelling will have to make use of energy alternatives in addition to the use of electricity.

The Final Step:

The City will now issue a formal letter of approval in terms of Section 33(5) of the Municipal Planning By-Laws, 2016 read together with Clause 26(1) of the City of Johannesburg Land Use Scheme of 2018. Many people mistakenly believe that all is in order and they can view the matter as finalised. The truth is that after approval the real expenses and hard work start.

The first step to take after you received your approval is to appoint a Land Surveyor who will draw a diagram for the new erf. It usually takes around 3 months for the Surveyor to lodge the new diagram at the Surveyor General's office in Pretoria and get it approved. Only once this diagram is obtained can the final requirement of the Scheme for a successful subdivision commence.

Section 34 (5) of the Municipal Planning By Law states that the Registrar of Deeds may not register a new portion of land before the City's Legal Administration division has not issued a letter, to the effect that all conditions of the subdivision have been complied with. This process takes 4-8 months (we will see why below) and this is where many subdivisions stumble. All the money and time spent up to this point, then goes to waste. The worst part is that a subdivision is only valid for 12 months and this period can only be extended once for a further 12 months. That may seem like ample time but in reality it is not.

We will now look at what the above process entails:

- 1) When you receive the original approved diagrams back from your Surveyor you, your consultant or attorney can open a file at legal admin (remember that more than 12 months since you have started the process have passed by now). Legal Admin don't take in any new file if the diagram is not part of the documents.

2) After a couple of days Legal Admin distributes your file to a staff member that will deal with your matter. This person will make contact with all the various departments of the City (the same ones that had to approve your application in the initial application process) and ask them whether they had any conditions to your subdivision and if they had if the conditions have been met.

3) As discussed before, Johannesburg Water will always insist that you install a sewer point for the new property before they will give Legal Admin a letter to confirm that they are satisfied. This may seem simple but the difficulties, costs and realities of installing the new sewer can be so complex that I will deal with the process now before we go on:

3.1) Johannesburg Water is the division of the Council that approve and sign off on all new sewer installations. For this presentation we will focus on a simple subdivision of an erf into 2 portions, but this may be a very costly major enterprise when undertaken for a large development of various new erven or lots. As you will see it's costly and difficult enough when doing it for just one new erf.

3.2) Your sewer connection and the simplicity or difficulty thereof, is dictated by your new erf's position relative to the current municipal sewer line servicing your property. If the line is on the other side of the street for example, you will need various permissions (called wayleaves) from many companies including fibre companies, Telkom, Johannesburg Roads, to name a few, before you can dig up the road and lay the new sewer line to the existing council mains. You will also need to be sure that the new property slopes correctly as gravity rules when it comes to sewer installations.

If the municipal mains are situated on your side of the street the process is slightly easier but can also be complicated by factors such as the depth of the municipal sewer, the presence of fibre lines etc. I have seen approved subdivisions where it later proves impossible to install a sewer line due to the contours of the new portion, or the cost implication to join the sewer mains. Think of all that time and money wasted if you falter at this late stage.

At the moment Johannesburg Water insists on an Engineer's drawing and a private installation even in the most basic scenario's. My opinion is you are going to need a Civil Engineer anyway, rather spend money on his opinion before you start, than getting to this late stage only to find out the subdivision is not feasible or the costs are beyond your budget.

4) Legal Admin may also receive conditions from other departments, most likely City Power or Johannesburg Roads. These typically deal with the availability of power for your new erf (City Power may ask that you sign a legal document confirming you will accept a limited supply of KVA) or storm water management in the case of Johannesburg Roads. With storm water it may be required that you agree with your neighbour that the new erf's storm water will be channelled through or over his/her property. This is more likely in larger developments but they may be applicable to you even if you subdivide your property only into 2 portions.

5) Bulk Contributions - When you subdivide into 2 (existing house and 1 new erf) the current contributions payable to council is around R60 000. This number rise as you create more new portions. This amount is not for services to your erf. It does not include your later electrical or water connection and you don't get a sewer connection for it. This is an amount levied under Section 33 (7) of the Planning By Law, that stipulates that the City may (they always do) include a condition that the owner shall pay the to the City an amount of money for a) enhancing and improving services to the area and the new erf per definition and for b) providing and maintaining open spaces or parks. These are payable before legal admin will finalise your file.

6) Attorney documents - the final step after Legal Admin received all the letters to proceed (called clearance letters) from the various divisions is for the attorney to submit the legal documents for the new portion, as well as any servitudes, council may have required. NOTE: Council will always require a new 2 meter servitude for municipal purposes on all new portions and where possible, also over the existing property that remains. In addition they may also require right of way servitudes, power limitation servitudes, boundary identification servitudes etc., but your attorney will guide and assist you here.

Your letter of confirmation will now be issued by Legal Admin and your new erf can be registered in the name of a new buyer or divided and left in your name. Remember you were already the owner of the whole, so you do not pay transfer costs or duties to issue a new title deed in your name. This new title deed is called a CRT (Certificate of Registered Title) and the issuing thereof attracts a fee. It is a fixed admin fee and not related to the value of the property. See more under the discussion of costs. You may sell the new portion at any stage during the subdivision process but always include a reference with a sketch plan of what you are selling, as well as a condition wherein the new buyer acknowledges his/her awareness that the property is in the process of being subdivided and transfer may be delayed for a substantial period as a result.

Show me the money: The costs associated with dividing your land

It is clear from all of the above that various role players are involved and that the process will be costly. Lets look at these costs. Remember that each subdivision is unique and that these must only serve as a guideline:

- Upfront fee for an Engineers report R5000.
- Town Planner:
 - 1) If a title condition need to be removed R25 000.
 - 2) For subdivision application R30 000.
- Surveyor to prepare and submit SG diagram R18 000.
- Consultant to manage Section 34 (5) application R12 000.
- Engineer and Civil contractor to manage and oversee sewer construction and sign off (here the numbers can differ substantially depending on the conditions as set out above):
 - R12 000 for the engineer and from R17 000 upwards for the civil contractor. The highest we have seen for a 2 erf scenario was around R60 000 for the civil contractor.
- Application for wayleaves R5000.

- Bulk contributions payable to council R60 000.
- Attorneys fees for new CRT and servitudes R12 000. If you have a bond and you are not yet selling the new portion provide around R6000 for bond holders consent fees.
- Remember that you may need to demolish old building. and remove rubble to clearly define the new driveway. Budget approximately R35 000 for this.
- In the final instance remember that you will get the best price for your new erf if its already walled and “packaged” as a complete product. You also want to clearly define your existing properties boundaries and maximise your privacy and security. Budget R400 per running meter for a precast wall and R1200 per running meter for a fully painted and plastered brick wall.
- The only question that remains is, is it worth it? Well lets see in the next slide:

Was it worth it?

- I took the above costs and calculated the worst case scenario. This is where you need restrictive conditions removed from your deed, where your sewer costs R60 000 to install, where you build yourself 80 running meters of new brick wall and where you demolish your old outbuilding. Total spend? R376 000. Please remember that the costs are staggered and that you pay as you go for example 1st the Town Planner (also in stages), later the Surveyor and so on.
- Wow that sounds like a lot! Remember the chances that you will fall in the worst case scenario is slim, remember that you now have a brand new wall around your house and that your new erf can sell for anything from R800 per sqm. upwards, and you will see for the vast majority of us it is a way to unlock a lot of unused capital that's currently lying unused.
- It is a fact that your existing property, well walled and secured, may even be more valuable after subdivision, as a lot of people are looking for low maintenance “lock up and go” dwellings. So its simply not true that you will lose value if you subdivide your land. Large high maintenance properties are simply no longer the norm.