

# TOWNSHIP DEVELOPMENTS





# Presented by:

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# Read together with:

- ▶ **THE CITY OF JOHANNESBURG LAND USE SCHEME 2018,**
- ▶ **CITY OF JOHANNESBURG MUNICIPAL PLANNING BY-LAW OF 2016**
- ▶ **SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (SPLUMA )**
- ▶ **DEEDS REGISTRIES ACT 47 OF 1937**



# History of Municipalities after 1994

- In module 3: Part 1, a summary of the history of Municipalities after 1994 and the Town Planning Scheme and Development was discussed. For ease of reference it is hereby incorporated:
- “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 Developments

- ▶ 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 as well as 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 the practical side of Township Development and it is not intended to be a legal study of the applicable legislation, you will however 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.



# What is a Township?

- ▶ All South African properties fall within one of the following property registers. Farmland, agricultural holdings, full title properties and sectional title properties.
- ▶ A township can only be established on farmland. Before property can be suitable for development as a new township it has to be described as a farm with a number and registration division attached to the description in the title deed thereof. If you want to develop an agricultural holding your conveyancer must first revert the holding back to the farm register through a process called excision.
- ▶ The farm need to be close to a municipal area and the relevant municipality's special development framework must include the farm earmarked for development. This is because a township must be serviced and fall within a municipalities boundaries once it is proclaimed. In simple terms you can not develop a farm that lies outside a municipal area and where no services are available. A farm that fits this criteria may be developed in other ways but not as a formal township.
- ▶ South Africa has a negative political connectivity with the word "township". Please don't confuse the two. In legal terms Sandton and Constantia Kloof are also townships.



# Township Development within South Africa

- ▶ As a result of urbanizing and continued economic growth, township development within South Africa has grown significantly over the last years and for developers who are well prepared it became profitable business.
- ▶ Township development involves risks and therefore adequate planning by the developer is much needed.
- ▶ When a developer identifies the land, which he/she/it wants to open a township register on, it is advisable that the developer appoints a professional team to assist him/her/it with determining factors such as public opinion, environmental and traffic concerns, general availability of services, soil conditions and any possible objections by government or other role players against the proposed development.
- ▶ Parties to the land development application are the owner of the land concerned, or where the owner made the land available to a developer, then his/her/its duly authorised agent and/ or representative. The application must be done in writing by such person's duly authorised agent or a service provider such as a Town Planner or Attorney
- ▶ A professional team will normally consist of the following role players, depending on the developer's strategy and the site's requirements, to assist in the township establishment process:

# Professional team

- **Town-planner:** who can act as the coordinator for planning the project and who is responsible for processing the township application and ancillary land-use rights;
- **Civil Engineer** – designs and over see the construction of all infrastructure and determines the location and availability of existing services to the new township such as water, sewer, storm water and roads;
- **Hydraulic Engineer** – deals with large-scale projects related to managing the flow and storage of water;
- **Transportation Engineer** - who is mainly concerned with planned changes to roads or traffic signals to better serve motorist and advice what needs to be done to accommodate the additional flow of traffic;
- **Electrical Engineer** - designs and over see the electrical infrastructure of a new township and determines the availability of electricity and the possible limitations thereto in conjunction with the municipality and/or Eskom;
- **Environmental Consultant** – The consultant that deals with obtaining a Record of Decision. This is done under the National Environmental Management Act 107 of 1998 (NEMA) and is obtained by compiling an environmental impact assessment report and submitting it for approval;
- **Architect** – plans and creates the layout plans for the buildings;
- **Land Surveyor:** determining the terrestrial positions of points and the distances and angles between them. These points are used to establish diagrams and boundaries or other purposes required by government. All townships need an approved general plan before it can be proclaimed. This plan is prepared by the surveyor;
- **Geologist** – to undertake a dolomitic or any other type of geotechnical investigation for a new township;

## LAST BUT NOT LEAST: ATTORNEY & CONVEYANCER

- ▶ In short they are responsible to assist in scrutiny of the title deed conditions and with the registration of all property and other real rights pertaining to the land - **this will be discussed in full in part 2 of this presentation.**

### THE LEGAL STUFF: THE LEGISLATION DEALING WITH THE TOWNSHIP APPLICATION PROCESS AND TIME FRAMES:

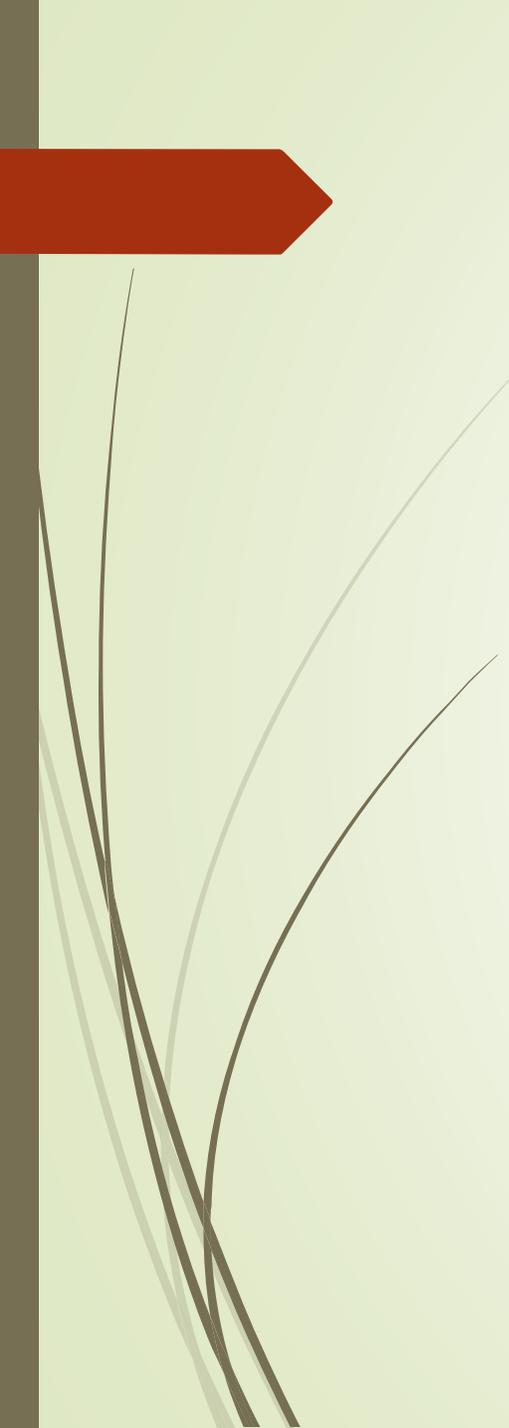
#### ▶ **SPLUMA: ACT 16/2013**

- ▶ A municipality must in order to determine land use and development applications within its municipal area establish a Municipal Planning Tribunal. (herein after refers to as “MPT”).
- ▶ The MPT must consider and determine all applications lawfully referred or submitted to it;
- ▶ The MPT may –
- ▶ Approve in whole or part , or refuse any application for a township establishment; the subdivision of land; the consolidation of different pieces of land, the amendment of a land use or town planning scheme, the removal, amendment or suspension of a restrictive condition.
- ▶ In the approval of the application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges (commonly called “bulk contributions”);



# In considering and deciding an application a MPT must:

- ▶ Make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework
- ▶ **Take into account** :The public interest, constitutional transformation imperatives and the related duties of the State; the facts and circumstances relevant to the application; the respective rights and obligations of all those affected; the state and impact on existing engineering services, social infrastructure and open space requirements and any factors that may be prescribed, including timeframes for making decisions.
- ▶ Ensure compliance with environmental legislation;
- ▶ Must set a timeframe for applications to be approved in;
- ▶ The MPT **may** conduct an investigation into any matter relevant to an application to be considered and designate a municipal official or an authorised person in terms of section 32(2) of SPLUMA as an inspector to conduct an inspection required by the MPT.
- ▶ The approval of a development application which provides for the use of land for residential purposes is subject to the provision of land for parks or open space by the applicant.

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- **Provisions for engineering services:** this is a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development. An applicant is responsible for the provision and installation of internal engineering services and the municipality is responsible for the provisions of external engineering service.
  - **An application may be approved in whole or in part, or rejected.**
  - **A CONDITIONAL APPROVAL OF APPLICATION LAPSES** if a condition is not complied with, within –
    - 1. a period of **five years** from the date of such approval, if no period for compliance is specified in such approval; or
    - 2. the period for compliance specified in such approval, which , together with any extension which may be granted, may not exceed five years.
  - **RESTRICTIVE CONDITIONS IN THE TITLE DEED OF LAND**, e.g. regarding a building line or use of the land, may be removed, amended or suspended with the consent of the MPT
  - The MPT considering such an application , is not liable to compensate any person for any loss arising from or related to a decision made in good faith.
  - An applicant must, within the prescribed period given by the MPT apply to the Registrar of Deeds concerned for the removal, amendment or suspension of any title condition.

**REGISTRATION OF ANY PROPERTY RESULTING FROM A LAND DEVELOPMENT APPLICATION MAY NOT BE PERFORMED UNLESS THE MUNICIPALITY CERTIFIES THAT ALL THE REQUIREMENTS AND CONDITIONS FOR THE APPROVAL HAVE BEEN COMPLIED WITH (SEC 53 CERTIFICATE)**

# MUNICIPAL PLANNING BY-LAW, 2016

- ▶ A township must be established on any farm portion or agricultural holding where the land concerned is to be used, developed or subdivided mainly for residential, business, commercial, industrial, institutional, education or other similar purposes as defined in the applicable land use scheme, excluding agricultural, open space or nature conservation purposes.
- ▶ **An application for the establishment of a township shall comply with the following procedures and time frames:**
- ▶ **A notice of the application;** of which the format of such notice shall be determined by the Council, shall be given once by **simultaneously publishing** a notice in the **Provincial Gazette** and a **newspaper** that circulates within the area of jurisdiction of the application site in English;
- ▶ **Such notice shall reflect full details of the application e.g.** the street address, the name of the proposed township and general purposes of the application together **with details of the applicant**, postal address, telephone number, e-mail address.
- ▶ The notice shall reflect that the application and its accompanied documents will lie open for inspection at specified times and at specified places at the Council's office. **Any objection**, comment must be submitted timeously to the Council in writing by registered post, by hand, by facsimile or by e-mail **within a period of 28 days** for the date of publication of the notice.

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- ▶ A **visible site notice** in the format as determined by the Council, that contains the same detail as aforementioned notice – this notices shall be displayed on the land from the same date as the date of the publication and it must be easily visible and should be easy to read from each and every adjacent public street or other adjacent public place. **This notice shall be maintained in a clearly legible condition for a period of not less than 21 days from date of publication of the notice.**
  - ▶ A **Letter shall also be dispatched within 7 days** of date of the publication of the notice envisaged to the owners/occupiers of all contiguous erven, including those on the opposite side of a street or lane by registered post, by hand or by any other means available informing such owners/occupiers of all the details. **Proof of compliance must be submitted to the Council in the form of an affidavit within in 14 days of expiry of the date.**
  - ▶ On receipt of the application by the Council, the Council shall submit a copy of such application to the undermentioned entities which shall in return submit its objection, comment and/or representation to the Council in writing within **60 days of receipt of the application**, failing which, it shall be deemed that such interested party has no objection, comment or representation to make:
    - ▶ Any Roads authority whether local (as a municipal owned Entity), Provincial or National which may have an interest in the application;
    - ▶ Any neighbouring municipality who may have an interest in the application; and
    - ▶ Any other stakeholder, Municipal Department, Provincial Department, National Department, Municipal Entity or any other interested party who may, in the discretion of the Council, have an interest in the application.

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- ▶ The Council shall forward a copy of each **objection, comment and representation** received from the interested parties as before mentioned in respect of the application to the applicant. The **applicant may respond in writing** thereto to the Council within **28 days** of date of receipt of abovementioned objections, comments and representations, where after the Council shall refer the application to the Municipal Planning Tribunal (MPT) for determination. No decision shall be taken on the application unless due regard has been given to each objection, comment and/or representation lodged timeously.
  - ▶ In case of an objection, comment and/or representation a hearing will be scheduled with the interested parties and give them **14 days** clear notice of such day, time and place of the hearing.
  - ▶ **In the instance of an unopposed complete application**, a decision on the application shall be taken by the authorised official or his/her authorised sub-delegate within **90 days of date of expiry of the administrative phase**.
  - ▶ The administrative phase may not be longer than **12 months** and only start if the application is regarded as complete ( this is the phase during which all public participation notices must be published and responded to, parties must be informed, public participation process finalised, intergovernmental participation process finalised and the application referred to the MPT or authorised official for consideration and decision-making).
  - ▶ After the administrative phase the consideration phase commences and may not be longer than **3 months** (this is the phase during which MPT or authorised official consider the application)

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- ▶ A decision shall be made within **30 days** from the date of the last meeting of the MPT.
  - ▶ On approval of the application the Council shall notify the owner and all relevant parties including the Surveyor-General and the Registrar of Deeds of the decision in writing by registered post, by hand or by any other means available without delay. The approval is done in the format of a letter and Conditions of Establishment (COE).
  - ▶ After the notification to the owner but before the township is declared an approved township the Council may, in consultation with the owner of land, amend or delete any conditions imposed in the COE or add further conditions.
  - ▶ The owner shall within a period of **12 months** from the date of such notice of approval lodge with the Surveyor – General for approval of such plans, diagrams or other documents as may be required by the Surveyor-General and if the applicant fails to do so the approval will automatically lapse. The applicant may request an extension of time and it shall be made before the **expiry of the 12 month period** and the extension may **not exceed another 24 months** and no further extension shall be granted.
  - ▶ The Surveyor-General may lawfully impose any requirement the owner must adhere to, if the owner fails within a reasonable time, the Surveyor-General shall notify the Council accordingly and where the Council is satisfied, after consulting the owner of land, that the owner of land has failed to comply with any such requirement without good cause shown, the approval will automatically lapse.
  - ▶ The owner of land shall lodge with the Council, within **3 months**, from the date upon which the Surveyor-General has approved the plans, diagrams and any other documentation, a certified copy or tracing of the general plan of the township.

# The role of the Registrar of Deeds

- ▶ The owner of land will apply to the Registrar of Deeds for the opening of a township register and registration of a general plan in terms of Section 46 of the Deeds Registries Act 47 of 1937 within **12 months** from the date of approval of such general plan or within such extended period as the Council may allow. An application for an extension of time shall be made prior to the **12 month** period and if granted may not exceed another **24 months** and no further extension shall be granted.
- ▶ The Registrar of Deeds shall not accept such application without the Council having issued a certificate that the applicant has complied with such pre-proclamation conditions as the Council may require to be fulfilled before giving notice in the Provincial Gazette that the township is declared an approved township.
- ▶ The Registrar of Deeds shall notify the Council that the proposed Township register has been opened and the general plan is registered.
- ▶ The Registrar shall not register any further transactions in respect of any land situated in the township thereafter until such time as the township is declared a registered township.
- ▶ After the Council received notice from the Registrar of Deeds, the Council shall by giving notice in the Provincial Gazette, proclaim the township an approved Township and it shall in a schedule to such notice set out the conditions on which the township is declared an approved township. (COE – conditions of establishment).

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- With effect from the date of above notice, the ownership in any public road in the township establishment , shall vest in the Council.
  - Where a township owner is required to transfer land to the Council or any other organ of state by virtue of the COE above, the land shall be so transferred at the expense of the township owner within a period of 6 months from date of the issuing of the **certificate in terms of Section 29 (1) of the Johannesburg Municipal Planning By-Law, 2016.**
  - The Registrar of Deeds shall not register a deed of transfer by which ownership of an erf unless the council certifies in terms of abovementioned certificate that:
    - (a) the township has been declared an approved township;
    - (b) that any condition as set out in the COE has been complied with;
    - (c) that the Council will, within a period of 3 months from the date of such certification, be able to provide the erf with such engineering services as it may deem necessary an that it is prepared to consider that approval of a building plan in terms of the National Building Regulations and Building Standards Act in respect of the erf in question; and
    - (d) that all outstanding external engineering services- and inclusionary housing contributions an all amount is lieu of open spaces(were applicable) in respect of the township has been paid in full.
  - No building plans shall be approved an no occupancy certificate shall be issued in terms of the National Building Regulations and Building Standards act unless the Section 29(1) certificate has been issued.



# General info and tips

- ▶ Always spend time and money on a good due diligence before starting a township application. It is no use spending all that time and money when a preliminary study could have revealed adverse soil conditions, under-mining problems, economical non-feasibility of upgrades to existing bulk services or the installation of link services, or a material environmental concern that will prohibit your new development.
- ▶ Townships work mostly on economy of scale. For most developments the cost associated with the process only makes sense if the scale of the project is large enough. This is not always the case though – for example when a new school is being build or when high density sectional title units are envisaged only 2 erven (the minimum allowed) may be enough.
- ▶ If you develop in the City of Johannesburg Municipal jurisdiction make sure you are aware of the inclusionary housing requirement. In short 30% of your development must house affordable housing candidates if your development will consist of more than 20 units or erven. This topic is worth a presentation of its own and your are welcome to contact us should you need more guidance with this.