

# Town planning schemes: are they appropriate within the context of a new democracy ?

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## Introduction

Within the corridors of power there has been a tendency to discard all associated with the past, and to replace it with newly drafted legislation to suit the new era we find ourselves in. This tendency is clearly understood, bearing in mind the dismal manner in which our cities are structured as we move into a post-apartheid society. That we need to reconfigure and repair the urban fabric of our cities, so that they can function efficiently and in the interest of all citizens is undisputed. However, whether this will be achieved by rewriting legislation relating to town planning is a debatable point, particularly the Town Planning Ordinances and their accompanying Town planning schemes.

## The origins of town planning schemes

Without delving too deeply into history, it is generally accepted that Town planning schemes, at least in part, had their origins in the post-industrial revolution era in Europe, America and other countries, and which were put in place to address the poor living conditions created during that period. The enabling legislation was based in the realms of public health, and subsequent town planning legislation which followed was aimed at promoting appropriate health standards, and minimising disturbances in the living environments of the industrial cities.

Town planning schemes in South Africa go back some 66 years to the Transvaal Ordinance of 1931, which was revised in the old Transvaal in 1965 and again in 1986; similar legislation exists in the other provinces and supplementary legislation

affects town planning schemes in areas not covered by the old ordinances, such as black townships and former self-governing territories. While it is important to keep an open mind regarding new legislation, it is equally important to learn from the experiences of 66 years of implementation. The town planning schemes were selectively applied in apartheid towns, in that they were only made applicable to the previously 'white' areas, while the so-called 'townships' were constituted in terms of other legislation. It is in my opinion necessary to assess now whether they can be universally used, albeit in a revised format, or whether a totally new form of land use management is required.

## We need to examine the underlying principles

Essentially, Town Planning and Townships Ordinances, and the schemes, are the enabling mechanisms which facilitate the formalisation of urban land. The process of converting farm land into urban land is done via township establishment which in turn results in properly defined erven, which are registered, surveyed and can be legally identified and owned. As every erf in an urban area cannot have the same attributes and potentials, the schemes also have provided a zoning which spells out the development rights applicable to the site in question. Furthermore, the development rights on any property are generally devised so as to limit impacts on surrounding properties, and ensure appropriate development parameters for the site, such as access requirements, parking provisions, landscaping, etc. In short, the town planning schemes are aimed at legal, proper and compatible urban development. The zoning of land is also a basis for valuing land, which in turn

sets a benchmark for taxation. This in turn influences the financing capabilities of land for the development thereof.

To use a single example, one can imagine how difficult it would be to keep a legal record of ownership with proper title, and to borrow funds from a bank or institution to build homes and other forms of development, if there was no security in tenure for such institutions. It is largely town planning and related legislation which gives rise to a system which enables this security.

In essence, the underlying principles encapsulated in the schemes are as follows:

- Formalises urban land
- Facilitates the proper registration of land
- A vehicle for land ownership
- Definable development rights which give rise to land value
- A basis for taxation
- A basis for borrowing (financing)
- Appropriate land use management by:
  - minimising impacts
  - compatible development
  - suitable development parameters

### The logic for any system of this nature

If one accepts that in any urban (or rural) context it is necessary to have a system which enables the principles mentioned to operate, then it is in my opinion logical that such a system would need to be structured around the following elements.

- There must be formal, stipulated procedures to achieve the principles.
- Any rights or development parameters must be clearly defined.
- There must be a process which facilitates amendment to accommodate changing circumstances, and
- The process must be democratic, including a right of appeal.

Whatever system is devised to deal with land use management, I do not believe it possible to exclude any of the logical principles highlighted

above. Rights applied for should not be ambiguous, and therefore require proper definition both in terms of land usage, and development parameters. It will always be necessary to allow public comment and consequently periods for objection/ comment need specification. Owing to the fact that Town Planning matters are often contentious, and therefore become politicised, it will also always be necessary to make provision for some form of appeal.

### How effective is the current system ?

This is a common question normally asked from a perception that the current system is nothing but a hindrance to development. My experience is that the efficacy of the system has little to do with the provisions of the legislation and is entirely dependent on the efficiency of the bureaucracy within which the system operates.

To illustrate this point, it is possible for me to provide examples where town planning applications, of all sorts, have been processed within very reasonable periods (without special favours I might add) where the administrative capacities were functional and focused. Our practice has in the past managed:

- A township of 2 000 erven to be proclaimed in less than 6 months
- Rezoning in under 4 months
- Consent uses in 3 months
- Subdivisions in two weeks

It is really difficult to imagine how, by creating an entirely new system, one would improve on the periods mentioned above. Clearly, if one accepts the principles and the logic of a land use management system, then it would appear unlikely that new procedures, *per se*, would dramatically improve delivery of development. As previously indicated, the current town planning systems in operation have a testing period of more than 60 years, and while we would all welcome a revolutionary new system that provides us with what we require for rapid development in the shortest possible period, one must caution against naivity.

That it is necessary to continually improve and change, wherever benefits can be achieved, is

obvious. However, it is equally prudent to examine all perspectives relating to the subject if improvements are to be made, and not to concentrate on legislation alone. There is, in my opinion, every reason to try and streamline procedures and indeed eliminate unnecessary

provisions where possible. However, there may be greater benefit in ensuring that the bureaucratic system is structured in a manner which ensures the efficient handling of the legislation.¶