

DESIRABILITY: NOW THE PRIMARY BASIS FOR CONSIDERING CHANGE OF LAND USE

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In die Ordonnansie op Grondgebruikbeplanning (15/1985) is 'wenslikheid' die enigste grondslag vir die evaluering van aansoeke om grondgebruik te verander, teenoor die tradisionele 'noodsaaklikheid en wenslikheid' grondslag wat onder die vorige bedeling die gebruik was. Dié begrippe word nie in die Ordonnansie (oud of nuut) of meegaande regulasies gedefinieer nie, maar daar kan afgelei word dat die doel van die verandering was om 'n meer markgerigte stelsel te skep. Waar 'n plaaslike bestuur die ontwikkelaar is, sal noodsaaklikheid natuurlik nog steeds 'n belangrike kriterium wees.

'Wenslikheid' is egter 'n subjektiewe begrip, en om konsekwent en regverdig te kan oordeel behoort plaaslike bestuurs 'n sisteem te ontwikkel waarmee die impak van 'n beoogde verandering in grondgebruik objektief getoets kan word. So 'n sisteem wat as tentatiewe voorbeeld kan dien, word in die artikel beskryf.

PURPOSE

The purpose of this paper is to give an overview and examine the implications of the accentuation placed on the 'desirability' criterion in assessing applications in terms of the Land Use Planning Ordinance (15/1985) (LUPO) operative in the Cape Province since 1 July 1986. This is done against the background of the so-called 'need and desirability' principle utilised in the past under the old Townships Ordinance (33/1934) that has now been repealed.

PROBLEM OF DEFINITION

In the absence of definitions of these terms in both the new and the old Ordinances, reference to the Concise Oxford Dictionary had to be resorted to with the following result:

Need: is defined as 'circumstances requiring some course of action'.

Desirability: is defined as 'worth having or wishing for'. However, fellow town planners may agree that in the land use planning context, 'need' may rightly be regarded as reference to the supply of, or demand for, a land use in the open market. 'Desirability' relates

to compatibility of a proposed land use with the intent of a plan (or policy) depicting an acceptable spatial development pattern for the future.

I could find no mention of 'need and desirability' in the old Townships Ordinance and it is only in the context of pre-LUPO township applications that Van Tonder (1981) states that a system was evolved by the Cape Provincial Administration to enable developers to test the views of that Administration through the submission of a preliminary or so called 'N & D' application which preceded the formal application. My conclusion is that the planning intent of the widely used term 'need and desirability' has all along lacked clear definition.

APPLICATION TYPES

The new Ordinance provides for at least five distinct mechanisms whereby the right to use land may be changed or influenced. These mechanisms are activated by making application for either:

Rezoning (sect.16 to 18): i.e., if acted upon, a permanent change of the purpose for which land may be used and the applicable land use restrictions.

Departure (sect.15): i.e. a permanently altered land use restriction on the extent of improvement of land or a use right granted on a temporary basis.

Subdivision (sect.22 to 27): i.e. the allocation, survey or preparation of undivided portions of land with a view to the separate registration of land units.

Substitution Scheme (sect.14(4)): i.e. a replacement of portion of a zoning scheme with other zoning which confers rights for 5 years despite the absence of need.

Amendment of Regulations (sect.9(2)): i.e. a change or replacement of development parameters in the zoning scheme regulations for purposes of control over zoning.

STATUTORY ASSESSMENT CRITERIA

Once any such application has been made, section 36 of the LUPO comes into play. That section prescribes the basis of refusal of applications and gives the planning practitioner some insight into the particulars applicable at the granting of applications, as follows:-

Refusal shall be: (a) 'Solely on the basis of a *lack of desirability* of the contemplated utilization of land concerned including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or ...' (b) 'on the basis of its effect on existing rights concerned (except any alleged right to protection against the trade competition)'.

Approval shall, in respect of development parameters, have regard to: (a) 'only the safety and welfare of the members of the community concerned,' (b) 'the preservation of the natural and developed environment concerned, or' (c) 'the effect of the application on existing rights concerned (with the exception of any alleged right to protection against trade competition).'

DETERMINING THE INTENT

To determine the reasoning that led to the accentuation of the 'desirability' criterion in section 36 of the LUPO, it has been necessary to consult the cornerstone of the LUPO namely Van Tonder's thesis and the

motivation and clause by clause explanatory memorandum (CPA 1984) that served before the Administrator in Executive Committee when the early draft of the LUPO was gazetted for comment in December 1983. I have paraphrased significant parts as follows:

- The introduction of physical planning interferes per se with the market mechanism and having one mechanism for both planning control and long term planning (viz. the old town planning scheme concept) whereby development rights were allocated, increased this interference.
- A major objective of the LUPO is the reinforcement of the free market. Under the old Ordinance, although it was not the objective, the market mechanism was interfered with primarily by virtue of a misallocation, in economic terms, of development rights in so far as timing, location and quantity are concerned.
- The authorities had all along attempted to prescribe whether there was a need for a particular development instead of leaving this to the market mechanism and concentrating on desirability.
- Detail requirements were often laid down which were unrelated to feasible norms and in conflict with free market forces.
- The accent on desirability must be accepted as one of the main measures to eliminate unnecessary intervention.

THE PRACTICAL EFFECT OF SECTION 36

The practical effect of the provisions of section 36 has to be seen from the point of view of the entrepreneur. As far as supplying development is concerned the entrepreneur may in my view be either private enterprise (e.g. a company) or a public authority (e.g. a municipality).

The effect of section 36 is thus that in the event of private enterprise having established the need or demand in the market place and wishing to supply the commodity in a location where profits will be the greatest, the public authority would have to assess plan-

ning **desirability** of the proposal and, as primary supplier of most bulk engineering services, also the **desirability** of supplying these services.

However, in respect of the supply of certain 'commodities', the local authority is itself in the position of a supplier in the market place and would in such circumstances in practice have to determine the **need** and **desirability** of a land use change.

Be it a private or public proposal, such proposal would have to be put through some or other practical evaluation process which I choose to call a 'land use change impact assessment' (LUCIA).

LACK OF A LUCIA SYSTEM

In the absence of it having been spelt out to local authorities and the general public in plain and simple terms what is expected of them when having to apply the **desirability** criterion, I believe it would be fitting to conclude this discussion by suggesting one possible LUCIA framework. In doing so here under I have made extensive use of some ideas documented by an experienced and senior colleague (Mercer 1985) to whom acknowledgement is due. The framework lists a series of criteria around which questions have been moulded to which the town planner should be capable of obtaining or supplying the answers and which should aid him in arriving at alternatives and conclusions in advising decision makers.

SUGGESTED CRITERIA FOR A LUCIA

- 1 **Impact on policy plans and the zoning scheme**
 - 1.1 What effect will the application have on the intent and interpretation of policy plans and the zoning scheme?
 - 1.2 Will it encourage further land use changes that are not contemplated by policy plans and the zoning scheme?
 - 1.3 Will it negate the principles of the policy plans or zoning scheme or bring them into disrepute?
- 2 **Impact on whole community**
 - 2.1 How will the proposal affect the

inhabitants of the town/city as a whole?

- 2.2 Will it enhance or be detrimental to the image of the town/city?
 - 2.3 Will there be any inhabitants, other than the local inhabitants, who could be adversely affected?
- 3 **Impact on local community**
 - 3.1 How will the local people in the vicinity be affected?
 - 3.2 Will their quality of life be affected?
 - 3.3 Will their environment be affected?
 - 4 **Impact on local values and physical structure**
 - 4.1 Will the proposal lower or raise property values?
 - 4.2 Is it likely to affect the quality of development in the vicinity?
 - 4.3 Will it encourage improved development standards in the vicinity?
 - 4.4 Will it encourage additional development of a higher or lower standard?
 - 5 **Impact on site development**
 - 5.1 Will the development be advantageous to the site itself?
 - 5.2 Can the site accommodate the development to advantage?
 - 5.3 Will the development be aesthetic, in keeping with any other development already on the site?
 - 5.4 Are there any natural features on the site which will be spoilt or enhanced?
 - 6 **Noise pollution**
 - 6.1 Will unacceptable noise be generated either directly or indirectly?
 - 6.2 Is noise confined to the daylight hours or will it go on into the night?
 - 6.3 Will the noise be of such a level that it could be injurious to health?
 - 6.4 Will there be any vibrations set up that could be unacceptable?
 - 7 **Atmospheric pollution**
 - 7.1 Will any toxic wastes be dis-

charged that can affect humans, animals or vegetables?

- 7.2 If so, can these be controlled and if so, what are the economic and practical issues involved?
- 7.3 Can such control be practically achieved?
- 7.4 Will any odours be generated?
- 7.5 Will they be unacceptable or merely unpleasant?
- 7.6 Will any odours be injurious to health?

8 Impact on town/city's finances

- 8.1 Will the proposal impose any abnormal burden on the town/city's finances?
- 8.2 Can this be accommodated in the current financial programme or is it long term to be financed later?
- 8.3 Would it upset the financial priorities imposed upon the financial programme?
- 8.4 To what degree will the rate fund benefit?

9 Impact on traffic transport system

- 9.1 What will the increased traffic generation be?
- 9.2 Can it be handled in terms of the present transport system?
- 9.3 Will changes in the traffic system have an impact on the town/city's network and priorities?
- 9.4 Can the development be accommodated without major change to the road geometrics in the vicinity of the development?
- 9.5 What impact will this have on the public transport system – can it be accommodated?

10 Impact on public car parking

- 10.1 Can the additional car parking generated be accommodated on site to acceptable standards?
- 10.2 Will any on-street parking result – can it be accommodated?
- 10.3 What effect will the parking have on the general environment and the site itself?
- 10.4 If the development is likely to encourage further similar development can the above points be met?

11 Impact on utilities and services

- 11.1 Can the existing services accommodate the additional demand? These include water, sewage, electricity, gas, refuse, fire, health and stormwater.
- 11.2 If not, what will the impact be – can it be accommodated in: (a) the present budget; or (b) future budgets; or (c) not at all?
- 11.3 Would the provision of services be premature, contrary to the normal planned progression of servicing the town/city? (Any assessment of additional costs would be considered under item 8).

12 Impact of town/city development

- 12.1 Will the proposal be of specific benefit to the city – i.e. in order to secure it, should norms be waived?
- 12.2 Is the development desirable but could be located elsewhere?
- 12.3 Is the development merely part of the run-of-the-mill progress of the town/city?
- 12.4 Would the development perhaps be undesirable?

13 Applicant's options

- 13.1 What is the effect on the applicant himself?
- 13.2 Will he be financially embarrassed if the proposal is refused?
- 13.3 Could he locate the use elsewhere but with disadvantage?
- 13.4 Could he locate the use elsewhere without detriment to himself?
- 13.5 Has he bought the land speculatively and is now trying to press a proposition?
- 13.6 Is the development genuine?

CONCLUSION

'Need and desirability' was not defined in the old Ordinance and 'Desirability' has not been defined in the Land Use Planning Ordinance. I believe the town planning profession should go about remedying this shortcoming by outlining credible assessment criteria that may be consistently applied throughout the Cape Province by town planning practitioners.

The land use change impact assessment outlined above is one attempt at a system to evaluate 'desirability'. It needs to be tested, refined and improved considerably. I trust that it may generate constructive thought. The possibility of applying some form of weighting system to this or a similar framework in an effort to gauge whether the benefits of a land use change are greater than the disadvantages or vice versa should not be discounted without deeper investigation.

REFERENCES

- Cape Provincial Administration (CPA) 1984: Circular LG/PB No. 1, 11 Jan, Director of Local Government, Cape Town.
- Mercer, J G B 1985: Informal notes made in his capacity as Assistant City Engineer (Planning), Port Elizabeth Municipality.
- Van Tonder, C J 1981: *An evaluation of physical planning administration in terms of provincial legislation in the Cape Province and preliminary proposals for the improvement thereof*. Unpublished thesis, UCT.