ENDOWMENTS AND CONDITIONS IN TERMS OF THE LAND USE PLANNING ORDINANCE

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Die Ordonnansie op Grondgebruikbeplanning het verbeteringsheffings wat volgens artikel 35ter van die ou Dorpeordonnansie ingestel is, afgeskaf. Artikel 42 van die nuwe Ordonnansie maak voorsiening daarvoor dat hersonerings en onderverdelings oor dieselfde kam geskeer word wat betref heffings en die stel van voorwaardes.

In hierdie artikel word kortliks gekyk na die oorsprong van verbeteringsheffings, en daarna word die leiding wat die Provinsiale Administrasie deur middel van kennisgewings in die verband gegee het bespreek, asook aanbevelings van die Venter Kommissie. Die bespreking konsentreer spesifiek op die verdeling van die koste van ingenieursdienste by grootskaalse ontwikkelings, en kom tot die gevolgtrekking dat kapitale kostes nie sondermeer deur die plaaslike bestuur gedra kan word nie, omdat dit die belastinglas te groot sal maak. Kapitale koste vir interne dienste moet liefs deur die ontwikkelaar gedra word wat dit dan op die voornemende koper laat afwentel. Aan die ander kant is die koste van eksterne dienste in die geval van nuwe dorpe so hoog dat dit nie deur die ontwikkelaar en ook nie deur die erfkopers gedra kan word nie.

INTRODUCTION

The old Townships Ordinance of the Cape Province (33/1934) provided for two different circumstances under which a developer could be required to contribute (in cash and/or kind) to compensate the local government for services rendered, or to be rendered.

In the case of subdivisions, under section 14 of the old Ordinance developers could be required to pay cash or donate erven for governmental, educational and local governmental purposes on conditions determined by the Administrator. (In practice a local authority would decide on the conditions and submit them to the Administrator for ratification.) Developers were also required to pay part or all of the capital cost for internal engineering services, and sometimes also part of the cost of external services. The proportion of the cost to be paid by the developer depended very much on the type of development and the policy of the local government. Where there is a great demand for erven (in a high income area) a local government may be inclined to require a developer to pay for all the services. In slow growing areas, where a local government wants to stimulate growth, some of the capital costs may be paid for by the local government, which reimburses itself in time by means of property tax and service charges.

In the case of rezonings the endowments, or 'enhancement' levies (also called betterment levy) was introduced in 1969 through the addition of section 35ter to the old Ordinance. The Financial Relations Act entrenched this principle with section 14(i)(i) of schedule 2, which stipulates that any increase in the value of land resulting from proposals of a town planning scheme, or the alteration or substitution of a town planning scheme, must be paid over to the local government by the owner, even if the town planning scheme is still in preparation. The Townships Ordinance stipulated that half the increase in value must be paid over, while the Financial Relations Act specifies no percentage, but implies that the whole increase in value must be paid over.

The idea of an enhancement levy originated in Britain in 1932 with the introduction of the Town and Country Planning Act of that year (Heap 1982:8). The philosophy behind enhancement levies is that the improvement in the economic climate that warranted this particular rezoning is the result of combined civic action. The resultant increase in value of a property thus advantaged, it is argued, belongs to society at large. The purpose of the enhancement levy was therefore to recoup part of this increase in value for the benefit of the community as a whole.

The advantages and disadvantages of enhancement levies have been the subject of much debate ever since its introduction. The most important points of criticism against enhancement levies are that it is very difficult to determine the real increase in value of land resulting from a rezoning, and that it inhibits development. There was a tendency for municipalities who wanted to encourage development to keep the levy low, while others used it as a source of income. Furthermore, the principle of enhancement fees does not fit into the present climate of a free market economy. In the drafting of the new Ordinance it was therefore decided to abandon enhancement levies altogether. (However, the provisions in the Financial Relations Act which require value enhancement through rezoning to be paid over, still stands. Whether it applies to the new Ordinance is a point of debate.)

The decision, however, created an imbalance in that development through subdivision is taxed by the exaction of endowments, whereas development through rezoning goes

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free. With certain rezonings heavy financial burdens could be placed on a local government. For instance, a rezoning to 'general residential' could require new roads, a better water supply and even new schools.

To overcome this dichotomy section 42 of the new Land Use Planning Ordinance, which allows for endowments to be levied, was worded to apply to any change of land use for which permission is required, that is, subdivisions, rezonings and deviations. The basis on which the actual amount of money is to be calculated is not clearly defined, and as it reads, a local government can charge virtually any amount. The only controlling measure is that the developer can appeal to the Appeal Committee should he feel aggrieved or be of the opinion that such conditions of approval are to onerous.

In the rest of this article a specific aspect of endowment will be discussed, that is, endowment in the case of greenfield development for the lower income groups. However, the arguments and comments can be just as applicable to older developments, maybe in a lightly varied form.

With the rapid population growth in the metropolitan areas new towns are being developed at a rapid rate. Many of these developments are completely separated from present development and thus require main engineering services such as water supply, sewer mains, sewerage treatment plants, main connecting roads, electricity, etc. to be provided at great cost, that is over and above the cost of the normal internal services. Where this type of development is executed through a series of smaller private developers, as for instance in the Blue Downs area near Kuilsriver, the division of the capital cost of services becomes a real problem.

ENDOWMENTS: ARTICLE 42

In terms of section 42 of the Land Use Planning Ordinance the Administrator or council of a local authority may impose such conditions as he deems necessary or thinks fit when granting authorisation, exemption or an application or adjudicates upon an appeal. Such conditions may include the cession of land or the payment of money relating to the application. The conditions should have regard to: 'the community needs and public expenditure which ... may arise from the authorisation ... and the public expenditure incurred in the past which facilitates the authorisation ...' (sect. 42(2)(a)).

With the introduction of the Appeal Committee in section 43, provision has been made for appeals against conditions imposed in terms of section 42. Section 43(8) allows for a further appeal by the owner to a 'competent court'. The decision of the chairman of the Appeal Committee (or subsequent court decision) 'is final and binding on the owner and local authority concerned' (sect. 43(8)).

ENDOWMENTS FOR GREEN FIELD DEVELOPMENT

In new developments the major public expenditure concerns the provision of engineering services. According to regulation 26 of the regulations issued in terms of section 47(1) of the Ordinance, the standards of services and the division of costs of such services shall be in accordance with guidelines laid down by the Director of Local Government. Subsequently in paragraph 6 of circular letter LG/PB/17/1986 the Director determined that the standards for services should be in accordance with the document *Guidelines for the provision of engineering services for residential townships* (Guidelines, 1983). In the same paragraph of the circular the Director determined that local authorities and developers must negotiate the division of the costs of services in accordance with the recommendations of the Venter Commission (1984).

THE VENTER COMMISSION ON ENDOWMENTS

The Venter Commission made several recommendations on endowments. They were strongly influenced by the Fouché Commission Report (1977), the Housing Matters Advisory Committee and the Housing Policy Council (the latter two established under the Coordination of Housing Matters Act, 1978).[1] In order to clarify the issues here under discussion, a brief analysis of the relevant sections of the report of the Venter Commission is necessary.

In its second report the Commission inter alia recommends that sites which can be used as parks and open spaces be ceded free of charge to the local authority. The report recommends that areas (i.e. parks and open spaces) 'that should be set aside for extensive use, especially for regional purposes, by the community at large' should be purchased by the local authority (1984 par. 3.4.2(a)).

No endowment contributions should be payable in respect of dumping sites and cemeteries and endowments of a general nature should be discontinued. School sites should be purchased by education authorities. The Commission pointed out that, as a result of the Fouché Commission Report, it had already become accepted practice that land for central government uses should be obtained at market value.[2]

The Commission was of the opinion that absolute uniformity is neither practicable nor desirable in the determination of cost liability and that it should be a matter for negotiation between the township establisher and the local authority. The Commission however set out general principles which should apply and should be taken into account by an appeals body in settling disputes.

As a general principle equal treatment should apply in all cases and to ensure this, the principle of marginal cost determination should be applied. This means that the development of erven in a new township must be dealt with as an extension of the production process and costs should be allocated in accordance with the cost pattern that applies in the old town in accordance with the most recent prevailing prices (Venter Commission 1984 par. 3.3.1).

The Commission did not define 'internal' and 'external' services. That was left to the developer and local authority to settle by negotiation. The report however states that internal roads and stormwater drainage are considered to be non-paying services for which the developer is responsible. Water, electricity and sewerage are remunerative services, the contribution per site being determined by the extent of the indebtedness to the local authority for the provision of

such services. For these services the Commission recommended the principle of 'equal treatment' whereby neither the new township should be subsidized by the old established town, nor that the established town benefit from the new township development, as far as the costing of these services is concerned. For this purpose the Commission supports the Transvaal formula, the so called 'TMA' formula (Venter Commission 1984:22). According to this formula the township developer is responsible for a capital amount per site which is equivalent to the cost of the service per site in the township less the net outstanding loan debt of the local authority for the service proportion per site in the established town.

The Commission pointed out that the township developer recoups his capital invested in the financing of the development by the sale (or leasing) of sites. The local authority has to recoup its capital expenditure through basic levies, service fees and connection fees (1984 par. 3.2.1).

FINANCIAL IMPLICATIONS OF RECOMMENDATIONS

The Venter Commission recommendations did not take cognizance of the time taken to recoup the financial expenditure and the cost of such capital outlay. High interest rates can be a very crippling cost factor affecting the tax base of a local authority.

The developer, through the progressive sale of sites, disposes of his interests and responsibilities in a reasonably short time. Conversely, the responsibility and financial implications of the local authority increases in the process. It is therefore imperative that the local authority should carefully consider the full financial implications of any proposal by a developer during the process of negotiation.

In a model that was used to determine a financial development policy for a large new town, a series of test calculations was conducted to establish the effect of a number of possible policies. It was concluded that the best policy to recoup the necessary loan capital for the external engineering services was to recover it from the developer and thus add the cost to the price of the erven. This means that the prospective purchaser is aware of the full financial implications from the outset. A factor contributing to this conclusion is the fact that younger people who cannot afford excessive undisclosed financial burdens in the form of high rates and taxes tend to settle in a new town.

An alternative will be to recoup the capital expenditure on external services through taxes and service fees. Calculations however, indicated that taxes, rates, levies and/or fees, could never generate the required funds to meet the interest and redemption rates, even at the most optimistic rate of development and settlement of people in such a new town.

The two options mentioned above are really only practical if the costs of external services are affordable by the future occupants of the town concerned. In the case of green field new towns apart from established towns, the cost of external services is very high. The calculations also showed that the system of capitalizing interest had such a spiralling effect on capital and interest repayment that taxing would perforce become extremely high and the community would have no hope of ever in the future being able to upgrade its services. For instance, in the case of Blue Downs the cost of external services only, if repaid over 15 years at 18% interest, came to between R1000 and R2000 per lot per year, which is far higher than the taxes levied on lots in high income areas. From this it is clear that, as far as external services is concerned for middel to low income housing in greenfield development, extensive subsidization is imperative.

This theoretical analysis also indicated that in the case of older towns which are extended by new development, the older part will have to subsidize the new development, which is contrary to the arguments of the Venter Commission's report.

IN CONCLUSION

The Provincial Administration and the Venter Commission are both in favour of negotiation between the developer and the local authority culminating in an amicable agreement on the conditions and contribution to development costs. This is only possible if the prospective owner can afford the costs which he must eventually bear. For greenfield development apart from existing towns subsidy of external services is unavoidable.

What also emerged from recent experience in greenfield development is that prospective purchasers are greatly attracted to developments with services already available. Developers will therefore have to consider providing more in the form of services such as shops, play parks, community centres and even school buildings, than in the past, especially in larger developments. For the developer this leads to faster sales and thus a better cash flow, with the added advantage of a more satisfied community from the beginning of the project, which in turn leads to the invaluable asset of advertisement by the inhabitants.

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NOTES

[1] The Coordination of Housing Matters Act (66/1978) was replaced by the National Policy for General Housing Matters Act (102/1984). Apparently the Housing Matters Advisory Committee and Housing Policy Council were replaced by the South African Housing Advisory Council.

[2] *Regulations made in terms of section 47(1)* (PK 333/1986, Official Gazette 4429, 6 June 1986), prescribes three more conditions for the transfer of land by an owner (developer): In the case of housing schemes financed by the State, land for use by the State must be made available at 'cost price' (reg. 23). If land is needed by the local authority for services related to the subdivision, such land shall be surrendered free of charge (reg. 24). Where other land is required (other than prescribed in regulation 24 and section 28 of the Ordinance) the relevant authority should purchase the land at 'market value applicable to the total land unit'. However the authority shall not be obliged to buy the land until 50% of the lots have been sold. Any dispute will go to the Appeal Committee (reg.25).