

**MEETING OF CONCERNED
DEVELOPERS –
THE FUTURE OF THE DEVELOPMENT
FACILITATION ACT 67 OF 1995**

**THE CONSTITUTIONAL COURT ORDER IN THE
MATTER OF THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY V THE GAUTENG
DEVELOPMENT TRIBUNAL AND OTHERS 2010(6)
SA 182 (CC)**

● ● ● | Presentation by Ivan Pauw:





Unique features of the DFA

- **Transitional Legislation**
- **Cutting Through Red Tape**
- **Stringent Time Limits**
- **Vanilla Application**
- **Suspension of Laws**

Why land developers opt for the DFA rather than Old Order legislation:

- Time – Ordinance Application 18 to 24 months
 - Appeals 18 Months
- Developments not 100% consistent with the wording of policy documents
- Obligation to hold hearings and the creation of a debating and discussion forum
- Vanilla Application



The Dispute

1. Ruimsig and Poortview Applications
2. High Court Judgment – North & South Gauteng
3. Supreme Court of Appeal Ruling
4. Constitutional Court Ruling



The Constitutional Court – Role Players

- The SAACPP and SAPOA (Private sector interests)
- eThekweni
- National Government
- Mpumalanga, Gauteng and Kwazulu-Natal Provincial Governments



The Order

In the result the following order is made:

1. The order of constitutional invalidity made by the Supreme Court of Appeal in respect of Chapter V and VI of the Development Facilitation Act 67 of 1995 is confirmed.
7. The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to **correct the defects** or enact new legislation.
8. The suspension is subject to the following conditions:
 - (a) Development tribunals must consider the applicable integrated-development plans, including spatial-development frameworks and urban-development boundaries, when determining applications for the grant or alteration of land-use rights.
 - (b) No development tribunal established under the Act may exclude any bylaw or Act of Parliament from applying to land forming the subject-matter of an application submitted to it.
 - (c) No development tribunal established under the Act may accept and determine any application for the grant or alteration of land-use rights within the jurisdiction of the City of Johannesburg Metropolitan Municipality or eThekweni Municipality, after the date of this order.
 - (d) The relevant development tribunals may determine applications in respect of land falling within the jurisdiction of the City of Johannesburg Metropolitan Municipality or eThekweni Municipality only if these applications were submitted to it before the date of this order.



Effect of the lapsing of the DFA

- Chapter V & VI will lapse in their entirety
- No Designated Officer to attend to a Report
- No Tribunal to hear, consider and pronounce on applications
- No Designated Officer to publish post approval notices
- No provisions empowering the Surveyor General to approve General Plans



Effect of the lapsing of the DFA cont.

- No provisions empowering the Registrar of Deeds to open the Register
- No Designated Officer to issue Certificates of Registration
- No statutory provisions to regulate the suspension of title conditions, transferability of erven, transfer of Municipal roads, erven divisions, phasing of townships and the amendment of application and approvals



Life after the judgment

1. Land Use Management Bill (“LUMB”)
2. Spatial Planning & Land Use Management Bill (“SPLUMB”)
3. Gauteng Planning and Development Act, 2011 (“GPDA”)

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Department of Rural Development & Land Reform
Department of Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

INVITATION TO BID

BIDS MUST BE DOWNLOADED FROM THE FOLLOWING WEBSITE: <http://www.ruraldevelopment.gov.za>

- BID No: RDLR (0053) 2011 2012:** Appointment of a service provider to draft Regulations for the Draft Spatial Planning and Land Use Management Act within a period of four (4) Months
Closing date: 14 December 2011@11:00
- BID No: RDLR (0064) 2011 2012:** Appointment of a service provider to develop an electronic Municipal Land Use Management tool within a period of four (4) Months
Closing date: 14 December 2011@11:00
- BID No: RDLR (0066) 2011 2012:** Appointment of a service provider to develop comprehensive guidelines on Operational and Interim instruments to support the implementation of the Spatial Planning and Land Use Management Act within a period of 4 Months
Closing date: 14 December 2011@11:00
- BID No: RDLR (0066) 2011 2012:** Appointment of a service provider to develop draft national guidelines for Municipal Land Use Management within a period of 4 Months
Closing date: 14 December 2011@11:00
- BID No: RDLR (0067) 2011 2012:** Appointment of a service provider to draft provincial legislation and accompanying Regulations on Spatial Planning and Land Use Management for the Eastern Cape Province within a period of 4 Months
Closing date: 15 December 2011@11:00
- BID No: RDLR (0068) 2011 2012:** Appointment of a service provider to draft provincial legislation and accompanying Regulations on Spatial Planning and Land Use Management for the Mpumalanga Province within a period of 4 Months
Closing date: 15 December 2011@11:00
- QUOTATION No: K7/2012 (0069) 2011 2012:** Appointment of a service provider to develop draft general framework on integrated Spatial Planning and Land Use Management within a period of 4 Months
Closing date: 15 December 2011@11:00 Bid related: Mr. Sphiso Manganyi (012) 312 8300
- BID No: RDLR (0070) 2011 2012:** Appointment of a service provider to draft provincial legislation and accompanying Regulations on Spatial Planning and Land Use Management for the Free State Province within a period of 4 Months
Closing date: 15 December 2011@11:00
- BID No: RDLR (0071) 2011 2012:** Appointment of a service provider to draft provincial legislation and accompanying Regulations on Spatial Planning and Land Use Management for the Northern Cape Province within a period of 4 Months
Closing date: 15 December 2011@11:00
- BID No: RDLR (0072) 2011 2012:** Appointment of a service provider to draft provincial legislation and accompanying Regulations on Spatial Planning and Land Use Management for the Limpopo Province within a period of 4 Months
Closing date: 16 December 2011@11:00

KINDLY NOTE THAT THERE WILL BE NO BRIEFING SESSIONS FOR THE ABOVE BIDS

Technical enquiry: Mr. Gandyi Gqumoni
Tel: (012) 312 8371/ 082 577 5655

Technical related enquiry: Mr. Rajesh Maken
Tel: (012) 312 8185/ 082 375 4402

Bid related: Ms. Gotscho Noora
Tel: (012) 312 8879/

Bid related: Mr. Sphiso Manganyi
Tel: (012) 312 8300

Interested Service providers should submit a completed registration form which is obtainable from your nearest Department of the Rural Development and Land Reform office or DRDLR website: <http://www.ruraldevelopment.gov.za> or obtainable from Physical address: Physical address: 184 Jacob Mare Street, Cnr Jacob Mare and Paul Kruger Streets, Pretoria

Responding to these bids does not automatically qualify a supplier as a preferred service provider. The Department of Rural Development and Land Reform reserves the right not to award the bid in parts or as a whole.

www.ruraldev.co.za



NEW LEGISLATION



1. SPATIAL PLANNING & LAND USE MANAGEMENT BILL (“SPLUMB”)

STAATSKOERANT, 6 MEI 2011

No. 34270

GENERAL NOTICE

NOTICE 280 OF 2011

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

INVITATION TO COMMENT ON THE DRAFT SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2011

The Department of Rural Development and Land Reform hereby invites any interested person or body to provide comments on the Draft Spatial Planning and Land Use Management Bill, 2011 (hereinafter called “the Bill”) as published hereunder.

The Bill will replace the Development Facilitation Act, No 67 of 1995, Removal of Restrictions Act, No 84 of 1967, the Physical Planning Act, No 88 of 1967 and other laws. The Bill will impact on all national, provincial and pre-1994 pieces of legislation on land use management and land development.

The objects of the Bill are to—

- (a) provide for a uniform, effective, efficient and integrated regulatory framework for spatial planning, land use and land use management in a manner that promotes the principles of co-operative government and public interest;
- (b) provide for and determine development principles, compulsory norms and standards for land use management;
- (c) maintain essential standards for land use management, spatial development and land use;
- (d) promote—
 - (i) co-operative governance;
 - (ii) socio-economic benefits; and
 - (iii) sustainable and efficient use of land;
- (e) establish planning tribunals; and
- (f) redress the imbalances of the past and ensure that there is equity in land use and land use management.

Written comments and consultative inputs on the Bill must be submitted by no later than 06 June 2011 to:

Sunday Ogunronbi
Rajesh Makan
Lindiwe Mabona

SOgunronbi@ruraldevelopment.gov.za
RMakan@ruraldevelopment.gov.za
SPLUMB@ruraldevelopment.gov.za

Fax: 0866 92 8882
Fax: 012 321 6854
Fax: 012 321 6808



TRANSITIONAL PROVISIONS OF THE SPLUMB

Transitional provisions

58. (1) The repeal of laws referred to in section 57 or by a provincial legislature in relation to provincial or municipal planning, does not affect the validity of anything done in terms of that legislation.

(2) A tribunal established in terms of section 15 of the Development Facilitation Act No. 67 of 1995, continues to function in terms of that Act, notwithstanding the repeal of that Act until all applications, appeals or other matters pending before the tribunal at the date of repeal of that Act have been decided or otherwise disposed of, provided that the Minister may prescribe a date by which such applications, appeals or other matters must be disposed of and may prescribe arrangements in respect of such matters not disposed of by that date.

(3) No new land development applications, as contemplated in terms of the Development Facilitation Act No. 67 of 1995, may be submitted after the date of repeal of that Act.



2. GAUTENG PLANNING & DEVELOPMENT ACT (“GPDA”)

- *“To provide for the planning and development of land in the Province; to provide for the coordination of land use and land development policies of national and provincial departments and of municipalities; to provide for a system of land use management and the regulation of land use and development; to facilitate and expedite the process of land development; to provide for the determination by municipalities of development and land use applications and the establishment of settlements and for appeal procedures; to provide for the planning and development functions of the Gauteng Province and the establishment and functions of the Municipal Appeal Tribunal; to provide for the provision of engineering services; to provide for the control and enforcement of land use and development measures; and to provide for related matters”*



TRANSITIONAL PROVISIONS OF THE GPDA

Section 85

- (1) Any application submitted or any other pending matter in terms of any law repealed by this Act not disposed of prior to the commencement of this Act shall be dealt with and finalised as if this Act had not come into operation.**

- (5) After the date upon which this Act comes into operation, no new land development application shall be submitted to the Gauteng Development Tribunal in terms of the provisions of the Development Facilitation Act, Act 67 of 1995.**




TRANSITIONAL PROVISIONS OF THE GPDA cont.

- (6) Notwithstanding any law to the contrary, all applications, appeals or any other matters pending before the Gauteng Development Tribunal or the Gauteng Development Appeal Tribunal, as the case may be, on the date upon which this Act comes into operation shall be dealt with and finalised in terms of the provisions of the Development Facilitation Act, Act 67 of 1995.**
- (7) For the purposes contemplated in subsection (6), the MEC shall extend the term of office of any members, the Designated Officer, the Registrars and secretarial staff of the Gauteng Development Tribunal and the Gauteng Development Appeal Tribunal serving on the date on which this Act comes into operation on such terms and conditions as may be necessary under the circumstances.**




AMENDING THE DFA

- **'designated officer'** means an appropriate officer in a provincial administration or in the employ of a local government body, designated by the MEC to serve as the designated officer for the purposes of Chapter V or VI, or both those Chapters
- **'designated officer'** means an appropriate officer in **(deleted)** the employ of a local government body, designated by the **applicable local government body** to serve as the designated officer for the purposes of Chapter V or VI, or both those Chapters




Amending the DFA cont. Section 15(1)

- (1) A tribunal is hereby established for each province in each case to be known as the development tribunal of the province concerned.
- (1) Each Municipality shall establish a Committee in terms of the Local Government: Municipal Structures Act, Act 117 of 1998, to be known as the development tribunal of the Municipality concerned.



Amending the DFA cont. Section 15(2)

- (2) A tribunal consists of a chairperson, a deputy chairperson and the other member or members appointed from time to time by the Premier with the approval of the provincial legislature.
- (2) A tribunal consists of a chairperson, a deputy chairperson and the other member or members appointed from time to time by the **Municipality** with the approval of the **Municipal Council**



Amending the DFA cont.

Section 15(3)

- (3) The chairperson, deputy chairperson and the other member or members of a tribunal shall be appointed by reason of their qualifications in and knowledge or experience of land development or the law and shall be persons who are in the Premier's opinion competent to perform the functions assigned to them in terms of this Chapter.
- (3) The chairperson, deputy chairperson and the other member or members of a tribunal shall be appointed by reason of their qualifications in and knowledge or experience of land development or the law and shall be persons who are **(deleted)** competent to perform the functions assigned to them in terms of this Chapter.



Amending the DFA cont. (New Provisions)

Section 15(13)

The Premier shall establish a Provincial Development Tribunal under the following circumstances:

- (a) Where a Municipality requests the Premier to establish such Tribunal due to its inability to comply with subsection 15(1); or
- (b) Where a Municipality fails to establish a committee contemplated in subsection (1) within the prescribed time period.

Section 15(14)

Where a Provincial Development Tribunal is established in a province in respect of one or more the municipalities, the provisions of subsections 15(2) to 15(12) shall apply *mutatis mutandis*



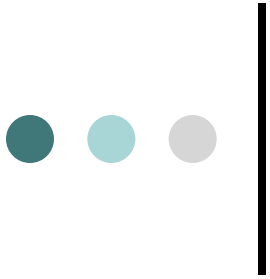
EXTENSION OF 18 JUNE 2012 DEADLINE

- **Application to the Constitutional Court**
- **Who may apply?**
- **Format of Application**



What will be required in respect of the Application

- **Attorney of Record**
- **Senior and Junior Counsel**
- **Supporting Affidavits**
- **Studies**
 - **Gauteng**
 - **Mpumalanga**
 - **Limpopo**
 - **North West**
- **Economic Contribution and Impact Study**



Questions