

## **ABOUT LAND USE APPLICATIONS FOR SUBURBAN DEVELOPMENTS IN GAUTENG**

### **Background**

In South Africa all land outside proclaimed urban land is agricultural land and many activities on such land are severely restricted. Cities and towns are being extended by way of township development applications. Presently in Gauteng – in areas surrounding most cities and towns - there are 2 pieces of legislation used to apply for township development:

- Town-Planning and Townships Ordinance - Ordinance 15 of 1986.
- Development Facilitation - Act no. 67 of 1995.

When applying via the Ordinance 15 of 1986 route an application is directed to a local authority that processes the application until it can be approved or disapproved. If disapproved the applicant can appeal to the Townships Board that operates on a provincial level (Not a higher level than local government.) who advises the applicable minister in this regard. Objectors to an application can do the same.

The Development Facilitation - Act no. 67 of 1995 (DFA) was implemented as part of a strategy to unify South Africa's highly fragmented land use planning and control system. In the end it did not replace all legislation regarding land use control as promised. Eventually it was seen by many as only for the use of the huge state driven programs to lower the housing backlog. Nowadays this process is being used more often for applications where definite issues regarding decision making will be applicable that could delay an application. (Note that DFA applications can even be delayed more by objectors.)

This DFA process has immense power to overcome historical limitations like servitudes and title deed restrictions and bureaucratic red tape but is not really shorter than Ord. 15 of 1986. It is politically severed from local politics as the decision making tribunals are not part of the local political and government system, but is connected to the province's administration setup. After a tribunal approved an application objectors can also appeal.

Where applicable a DFA application still has to go through the section 125 town planning scheme (Ordinance 15 of 1986.) amendment process to get the approved land use rights into the municipality's town planning scheme. The developer also has to receive services from a municipality. Service agreements between municipal service providers and developers are always necessary. Presently the DFA process is mostly used in cases where it is expected that the proposed development will be heavily contested by environmental agencies, objectors like in the case of rival shopping centres, filling stations, areas far from available municipal services, etc.

For straight forward applications not in conflict with local spatial frameworks, the Town-Planning and Townships Ordinance - Ordinance 15 of 1986 is still considered to be best vehicle as its applications fall under most metros' delegated powers of approval.

The Gauteng Planning and Development Act No 3 of 2003 was meant to replace Ordinance 15 of 1986 but has not been put into operation although already approved. The reason for not activating this legislation is most likely the existence of the Land Use Management Bill of January 2006 that will become a national Act to create uniform

standards and norms for South Africa. This legislation will function on all 3 government levels as applicable to the proposed development's level of impact – local, provincial; or national. It aims to bring provincial premiers and the national minister into the land use application system as land use regulators where development will have impact on provincial and national levels. This probability also switch on some serious red lights as State and Provincial agencies usually have difficulty in interpreting municipal level concepts comprehensively like urban sprawl and compact cities within a localised context.

This legislation can also lead to situations where broad policy and ideas can be applied to local situations. Broad policies always have severe difficulty to distinguish the local merit from the general limitations. The circumstances on an erf are by definition different from that described by the general approach in the same context as sometimes the average of a string of values is different than any of the string values themselves. If done correctly this legislation can further the densification and intensification processes within the central zones of residential areas if central governments do not put too much emphasis on big city CBD's to redirect development back to them.

As the Ordinance 15 of 1986 refers to township development as the process to prepare virgin land for roads, services and land use rights to be developed and built upon, many people today think "townships" refers to typical low cost housing as seen in the typical apartheid "townships" outside cities and towns. Some agencies refer to so called "first world" urban environments as suburbs in this regard. A **township** or several townships applied for in terms of Ordinance 15 of 1986 will eventually become a typical South African **suburb**.

Almost all applications for low cost housing are made through the DFA procedures.

### **The Client and the Township Application Process**

When a township application is needed to acquire land use rights for a planned development the following must be taken into consideration.

In principle the land to be used to establish a township has to be converted from farmland to a township as defined by Ordinance 15 of 1986.

- The proposed township has to be analysed in terms of the ecosystem on it and that surrounding it - also in terms of its possible impact on the total surrounding environment.
- The existing stakeholders of the area must have a chance to take notice of and to provide inputs into the process when a landowner wishes to establish a township.
- The newly created properties must be registered in the Deeds Office. The land must be provided with cadastral data to identify it as a township. (Surveyor General Plan.)
- The land must receive services as required – both on the land itself and to be connected with the existing service system of the built environment. (Roads, water, sewerage disposal, storm water outlets, electricity supply, and waste disposal.)
- The land will receive specific land use rights and needs to be incorporated into the existing town planning scheme.
- A string of conditions will be imposed on it by the authorities to be implemented by the township developers. Cash contributions will have to be made to the municipality regarding the extension and adjustments to the main service

systems to accommodate the planned development. Many pre-proclamation conditions will have to be met before proclamation can occur.

It must be remembered that although the township application process is complex and expensive, all township areas did in fact go through it and a good profit can still be made out of it. Zoned and developed land is like any other commodity – its selling price responds to supply and demand. The township development process on a specific piece of land must be conducted as a business venture on its own. During the last decade profits increased dramatically as land prices soared for developed erven – especially for residential land. Most of newly created residential erven were bought by investors and as the investment value of new erven declines so will the total demand for it. The market demand for erven should rather be seen as land needed by the market to build upon (And not to be kept for speculation in the hope of huge price increases after proclamation.) and is a more realistic value to work with. Also the value of location will again become crucial. Land situated ideally has more worth.

The land market in South Africa went through a once in a lifetime adjustment after a 20 year recession where property prices adjusted to an international standard in relation to available demand. The economy still needs floor space in buildings to conduct its business processes. The real residential need has not yet been addressed – that of the lower middle income group who needs higher density flats to own or to rent. The population cannot be housed in a 5 year booming period. As the economy will bloom again with even higher levels of growth so will demand for developed land increase for all market categories.

It must be remembered that applications can take time so it is better to begin a project in an economic downturn to be able to have the product ready when the demand increases again. Most developers are business men who see a short term demand and decide to develop land and then want the land use application to take 3 months otherwise the business venture would fail. Most business people are extremely short term orientated.

That is not the way to conduct a township development venture. ***Although time is of the essence*** the risk factor for time allowed should not be shorter than 18 months to 2 years ***for the whole process.*** (Approval of an Application – what the town planner aims at - is only a part of the whole process.) Many ventures take longer. Many unforeseen problems can emerge in a township development project. There are a plethora of external agencies and factors involved in land use applications. In future many of the new legislation to come will even increase this uncertain environment. For the smaller developer it would be best to conduct it from a stable platform – i.e. the ownership of land is stable and serviced by an existing ongoing financial situation.

Although the residential land market will decline from low density erven on large farm areas located on the urban periphery the demand for the recycling of existing erven in suburbs and left over parcels of farm land within the urban fabric will steadily rise over the short term. Residence nearer to work and available bus and train services will become the main criteria for consumers buying and renting trends over the medium term.

## Township Application and Professions involved

A land use application is a comprehensive action that includes critical information from many professional disciplines. Within the total project for township development the application for land use rights is only 1 process conducted by a town planning firm and other professionals must also be appointed to provide information for several processes of approval, to design the services, calculate its cost and to eventually actually built the township's services.

The following team of professionals can be mentioned:

EIA consultants	A consultant firm that for a township application has to initialize the environmental impact assessment process. An application to the provincial authority has to be lodged. This application puts the proposed development before EIA decision makers for approval. Different stages are applicable in line with the implications found on the terrain and in the vicinity. Most applications go only through the initial stages. This process is critical for the land use application. Usually, if so decided, the land use application can be lodged before the finalisation of the EIA.
Town Planning consultant	Any property owner can lodge an application for that land himself. Because the application is so technical and rely heavily on knowledge and experience it is generally accepted that a town planning consultant is necessary. Many developers have planners in-house when their land development implies the lodging of many different applications over time. Planners usually produce the layout plan of the township, provide a motivating memorandum and put together all other aspects required by the applicable authority for an application. The application process is hugely complex and many unexpected results occur until a decision is made by the authority. The land developer sometimes also appoints the town planner consultant as the co-ordinator of the different professionals to receive their information for the application and provide it for the municipality in time. After approval of the application the town planner has no responsibility towards any of the other processes.
Land surveyor consultant	The land surveyor provides the application with a correct topo-cadastral plan and all servitudes. This plan is used to design the layout and all other spatial aspects. Eventually the land surveyor converts the layout plan into a "General Plan" that must be approved by the Surveyor General's Office. The approved township is measured out according to this plan and also the map of the town planning amendment scheme.
Electrical Engineer consultant	The application will need inputs regarding available electrical services, connection points and liaison in this regard with the municipality. Eventually he / she must provide information for a service agreement to be drafted and approved. Nowadays this consultant must also work with the EIA consultant to establish certain aspects of that application. In the end he can design and build the services.

Civil Engineer consultant	The application will need inputs regarding available civil services, connection points and liaison in this regard with the municipality. The application must also be certified for flood lines. Eventually he / she must provide information for a service agreement to be drafted and approved. Nowadays this consultant must also work with the EIA consultant to establish certain aspects of that application like a storm water management plan for the proposed development. In the end he can design and build the services.
Traffic Engineer consultant	In most cases the municipality will demand a traffic impact study that is conducted by a traffic engineering consultant. This consultant then do an investigation, produces a document that is handed to the municipality. The municipal traffic engineers use the document for decision making, drafting of conditions and adjustment of traffic management programs.
Geologist consultant	For every township application a geological investigation has to be done. This can vary from elementary to being hugely complex as in the case of dolomite underlain land. The geologist do some tests on the site and provide the land developer with a document that the geologist then hands in at the Council for Geosciences who evaluates the investigation and provides an approval – sometimes with conditions of land use, building types and densities, management of storm water, building of services, etc. to accommodate the soil conditions.
Noise consultant	In certain cases the municipality will demand a noise impact study that will provide conditions that must be implemented to ascertain acceptable noise levels within the township.
Architect / draughtsperson consultant	When a development like a townhouse scheme or specialist development is planned the EIA process needs a facility plan that provides that process with a basic layout of the proposed end development. This usually gives a good idea what the land use in terms of the zoning would entail. Although this work is not the design of buildings, etc the layout of a complex is usually done by an architect, urban designer or draughtsperson.
Deed investigator consultant	It is usually a good thing to appoint a deed investigator – an attorney to conduct an investigation of the property's title deed and its register at the deeds office. This systemizes all title conditions to be removed and or adhered to. It identifies the owners that will be seen as the applicants and imply correct procedures for the power of attorney to the town planner and decision to apply for a township.

<p>Attorney</p>	<p>At the end of the process an attorney becomes involved to produce documents that function to secure the erf for the buyers. The attorney also receives in trust any deposits from buyers in this regard. The attorney produce and open the deeds register of the township after completion of the last processes. The attorney also receives the balance of the total erf price from buyers. This enables the different buyers to take ownership of the land they previously promised to buy from the developer when their names are eventually registered at the deeds office. The developer can then receive the original deposits of the buyers when the properties were marketed to secure the erf and the full balance of the purchase price.</p>
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- As can be seen in this document an application is a complex undertaking. Many follow-up actions on an application mean that a lot of hourly work is sometimes done after the lodging of the application. This basic work necessary to let the application flow is usually included in the town planner's quoted price. This work can consume nearly all of the profits of an application. People who quote too low for an application will have severe problems not making a loss and will tend to seriously neglect the "maintenance" of such an application. For that reason sufficient cash flow within an application's account is of the essence. A consultant is not insulting a client by quoting higher rather than lower but he is making sure that he will be able to provide good service at the risk of losing the project if the developer simply chooses the cheapest quote.

Sometimes many developers cannot understand why they receive poor service while at the same time they do not pay their applicants even the accepted low remuneration on time.

Sometimes it is strange to see how developers or their representatives will bargain for a few thousand Rands off the quoted price in a project that will run into hundreds of millions of Rands and is dependent on a timely approval of the land use application. Rather pay the consultant a healthy fee and expect above average service. One should not bargain with professionals.

Because of the hugely complex application environment there can be so many problems that developers constantly and quasi-logically relay problems to their applicants. Applicants only work with the problems – they are not the problem itself. After working with the applicant over a period of 15 months and channelling all problems through him many developers become brainwashed and fully associates his problems with the applicant. This is an occupational hazard. Many developers are so keen they try to do all the work behind the applicant's back. This discredits the applicant in front of the municipal officials and also frustrates them endlessly. Officials can actually pay less attention in cases where they or their colleagues are being harassed. In such cases there can occur a higher than average loss of documents and delays because municipal personnel handles thousands of applications on an annual basis in difficult circumstances. All processes have an inherent probability for mistakes – one must not increase that by affecting the environment in which the process takes place.

**So trust your appointed town planning consultant and pay him the agreed upon money on time and consult with him on a regular basis.**

**PROCESS WHEN APPLICATION IS MADE IN TERMS OF SECTION 96(4) OF THE TOWN-PLANNING AND TOWNSHIPS ORDINANCE, 1986 (ORDINANCE 15 OF 1986): A PROPOSED TOWNSHIP.**

<p>A Client contacts a practising town planning consultants about a proposed development on a particular farm or agricultural holding. After a preliminary discussion about the viability of development on the land he can then asks for a quotation.</p>	<p>Consultant contact municipal planning professional if possible to discuss possibilities and procedures. At this stage the professional can provide an indication how he sees such a possible development and application. Consultant decides upon a strategy how to approach application i.e. what if municipal professional disapproves of idea outright and why, etc. The planning consultant will provide quotation to the client and can also provide it in the form of a development proposal.</p>
<p>Town planning consultant is appointed by client. Client signs mandate and special power of attorney.</p>	<p>Client receives a quotation and statement dividing application process into stages. An initial amount is paid when mandate and power of attorney is signed by the client. This quotation is for town planning services only. Client agrees to pay a specific amount per stage. This also addresses application fees and advertisement costs. Consultants usually tend to indicate a shorter application period to impress client. Later on the plethora of usual problems that will be experienced masks this misconduct. <b>An application takes as quickly as it can be done.</b> Only corruption or an approved fast tracking procedure can quicken the application process. There are factors that can delay it. Following up on the process correctly is the key to an effective application. When certain stages are reached or agencies want new information or amendments to the layout plan, etc. it could be delayed because their requests take a time to reach the applicant. Also the municipality takes a while to send the letter with the request, etc. Nowadays many municipalities will send you an e-mail notification. Because municipalities have hundreds of applications it is severely frowned upon if the applicant is harassing officials by constantly phoning them or other senior personnel. This practise usually has grave consequences for an application. The applicant is experienced in knowing when and how to approach officials in this regard.</p>
<p>Preparations are done for lodging of the township application.</p>	<p>Town planner schedules an appointment with municipal town planning professional. Procedures and prescriptions are discussed. The Application needs inputs from up to 7 other professionals to get to the approval stage: Land surveyor, EIA specialist, Geologist, Electrical, Civil and Traffic engineers, architect/designer. Town Planner can get team together – otherwise the developer usually has his own team.</p>

<p>Lodging of application with Municipality.</p>	<p>I.e. 40 copies of layout plan, motivating memorandum and all necessary documents are handed in to be distributed by municipality to all concerned. A local authority usually has a list of aspects and documents that must be included.</p> <p>Usually with this type of application the geology and environmental impact assessments do not have to be concluded for the application to proceed.</p>
<p>Municipal Town Planning Department calls for Comments from External Departments and municipal service providers. Expected period allowed 60 days. Some external departments can delay proceedings for many months.</p>	<p>All concerned provide comments on application. This stage do not include municipal town planning's comments.</p>
<p>Application has to be advertised as prescribed and possible objections or comments from public in regard to the proposed zoning and development can be expected. This can be done by applicant in conjunction with municipality when the application is lodged. Usually a municipality advertise a township application. Period for objections: 28 days Total expected period: ± 2 months.</p>	<p>Advertisement is placed on terrain usually by municipality and advertised in local news papers. (In some cases they do not have to place advertisement.) Municipality can allow applicant to place own advertisement as prescribed. After advertisement period municipality takes time to gather everything.</p> <p>It is important to note that applicant cannot harass municipal officers to speed up proceedings without eventual detrimental effect on the application.</p> <p>Also: every time a senior official is approached the file will be called for and taken out of system. It can take up to 10 days to get file back where it was with the functionary who has to attend to it. Only after undue delay can applicant react to situation. Applicant/consultant can communicate informally with officials if connected well enough.</p>
<p>Copies of objections (if any) are sent to applicant. The applicant has to comment on it. Problems from objections and comments from external departments and all concerned are addressed during this period. Application is amended to accommodate comments if necessary. Expected period: ± 1-6 months depending on type of problems.</p>	<p>When objections are received the objector is usually emotionally involved with situation and seldom listens to applicant. This leads to a hearing of objections by a Town Planning Committee of Councillors. If serious enough the applicants' case is usually presented by a specialist attorney.</p> <p>A common mistake developers make is to proceed with their development regardless contrary to existing land use rights or building plans. They are usually stopped and fined because inspectors visit site in reaction to application.</p>
<p>If objections were received a date for a hearing by the Town Planning Committee is scheduled. Expected period up to hearing: ± 3-4 months.</p>	<p>A suitable meeting of Town Planning Committee has to be established and this is usually fully booked ahead for many months. If the planning department wants to disapprove application in some municipalities this is seen as an objection and a hearing is called while in others the application go to the planning committee without a hearing and is approved or disapproved.</p>



<p>Report and conditions of establishment are prepared by personnel for applicable committee to decide on the application. Expected period: ± 1-3 months.</p>	<p>In terms of legislation the application is approved by the municipality after which the conditions of establishment are formulated. Some municipalities decided that the application must be approved within a set of conditions of establishment to ease the formulation of conditions of approval. This procedure can prolong the approval.</p>
<p>If necessary a Hearing takes place to listen to objectors or stakeholder's inputs.</p>	<p>Decision is made. Expected period to receive decision: ± 2-3 months.</p> <p>If the application is approved by the Committee after the hearing the objector can appeal to the Townships Board of Gauteng Province. The applicant can also appeal if the municipality disapprove application. Eventually there is also a hearing by a committee of the Township's Board who then decides on the appeal and the applicable provincial minister makes the approval or disapproval or if no objection is received and the planning department has no objection the Application gets approved by municipality on many conditions.</p>
<p>Excision from Agricultural Holdings Act</p>	<p>If the land is an Agricultural Holding an application for excision from the Agricultural Holdings Act can now be made to Gauteng Province. Also any title conditions that have to be removed can be applied for.</p>
<p>Conditions of establishment must be accepted by all parties. Comments from internal role players: ± 2 months.</p>	<p>The conditions of establishment are finally accepted by all concerned.</p>
<p>Surveyor General plan is drafted &amp; approved by Surveyor General: Expected period: ± 2-3 months.</p>	<p>An application is lodged with the Surveyor General to approve a Surveyor General plan for the application. This Surveyor General plan is based on the approved layout plan of the application. The erf numbers of the township are registered,</p>
<p>Section 125 zoning scheme is drawn up and approved. Expected period: ± 2-3 months.</p>	<p>An amendment scheme of the existing town planning scheme has to be compiled – a map – to accommodate the new erven and their zoning. This has to be done before proclamation of the township.</p>
<p>Service agreements are drawn up between the municipality and the township developer. Cash contributions are paid to municipality. Guarantees towards the cost of internal services are delivered to the municipality.</p>	<p>The developer has to go into service agreements with the service providers of the municipality. Developer pay cash contributions for increase of the bulk capacity of the existing municipal service system. The developer provides guarantees for his own internal services in case he goes out of business at a critical time.</p>

<p>Developer comply with pre-conditions of establishment</p>	<p>Developer has to comply with all pre-proclamation conditions of establishment. These conditions are demanded by the different agencies that evaluated the application.</p>
<p>Township register is opened by an appointed attorney and a section 101 certificate is issued. Expected period: ± 2-4 months.</p>	<p>An attorney is appointed to open a townships register with the deeds office. After confirmation that all the pre-proclamation conditions have been complied with, the section 101 certificate is issued by the municipality.</p>
<p>Municipality declare the application an approved township</p>	<p>The municipality advertise its approval of the township in the Provincial Gazette. A schedule is attached that contains the conditions on which the township is declared an approved township. After approval of the township the building plans and site development plans can be submitted to the municipality for approval.</p>
<p>By completion of the township's services the municipality certify by means of the issuing of a section 82 certificate the correctness of it and in most cases takes it over.</p>	<p>This process enables the attorney to register each erf into its new owner's name and pay out money to developer. The erf owner can now occupy his property and building can commence.</p>