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SPLUMB/21/2012

SUBMISSION TO:

MP STONE SIZANI
THE PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM

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COMMENT ON:

SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 14 of 2012

Prepared by:

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These comments are submitted in my personal capacity.

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My comments are as follows:

1. There has been a major improvement on the previous version. This is appreciated.

2. I struggle to find reference in the Bill to the role and function of the South African Council for Planners (SACPLAN) as the body responsible for regulating the Planning Profession.

3. There is no definition either of SACPLAN and Professional Planner (Pr Plan) in the Bill and what their functions are. This is a major flaw.

4. It is not stated in the Bill that Planning Professionals (Professional Planners) are the competent persons that should be permitted to prepare and submit land development applications to any Municipal Development Tribunals. Other professions have regulated this to protect the public and country such as engineering, environmental NEMA, architectural profession etc etc. This should be included in this Bill.

Chapter 6:

Part B

Section 35 (2), (3) – It is unclear what type of applications a Delegated Municipal Official will be considering and how this will be determined. What applications go to the delegated official and which one's go to the Municipal Tribunal. This needs to be clear and specific.

A clear example is if a land development application is submitted and it complies/aligns with an existing Municipal SDF/LSDF and no valid objections (with proper reasons and factual supporting evidence) are received within the prescribed 21 day notification/advertising period, then it is supported that a delegated official may approve the development. Minor applications such as Special Consent, Departure, Closure of Roadway and Open Space could also be considered by the delegated official.

Applications that are not governed by an SDF/LSDF policy or have valid objections should then follow the Municipal tribunal route.

Section 36:

This section is fine, however it is not specific as to how the Tribunal is to be formed and this is open to deception. At least one member of a Tribunal sitting should be a Registered Professional Planner with SACPLAN (South African Council for Planners). It is recommended that the tribunal consist of a minimum of 5 members per sitting. The Tribunal should be structured as follows:

X1 Chairperson (Either an experienced Registered Professional Planner (Pr Plan) or Registered Conveyancing Attorney and can be from Municipality or from the public/private sector domain)
X2 Municipal members (employed or contracted by Municipality - professionals)
X2 Public members (not employed by Municipality – professionals)

There should be alternative members of up to 10 which can be used at any sitting.

These members above may not be Municipal officials who are involved in processing, assess/commenting/reviewing any land development applications as they will then they will be the Judge, assessor and process the application resulting in major conflict of interest. It is recommended that external appointments are made by the Municipality.

The following professions need to be present on a tribunal sitting:

1. Registered Professional Planner (Town and Regional Planning profession);
2. Registered Natural Scientist (Environmentalist);
3. Legal (Practicing conveyance);
4. Engineer (Registered Professional Engineer – Civil, Electrical and/or Traffic experience);
5. Another (either with economic, agricultural or construction / architectural related qualifications, professional registration and experience).

The above is proposed based on experiences and best practice. I agree that politicians should not be members of a tribunal such as this.

40(2). At least one member must be a Registered Professional Planner (Pr Plan) with more than 10 years of experience.

40(9). A prescribed period is required in this Bill. Through experiences and best practice this is recommended as follows:

If the application is:

a) **Delegated Municipal Official** – a decision is to be made within 3 months (90 days) of receipt of the development application
b) **Municipal Tribunal** – a decision is to be made within 5 months of receipt (150 days) of receipt of the development application

41(2) – what about departure, special consent and rezoning of land applications. Most importantly applications should be allowed for Tribunals to consider amending Spatial Development Frameworks and Local Spatial Development Frameworks, as part of the overall, Land Use Management System. The reason for this is that most municipalities do not have the capacity,

funds and skills to amend/update their Spatial Frameworks, and these functions are outsourced to professional private town planning practices. This would be a cost saving. This especially applies to the Eastern Cape.

44(1), (2) – Proposed timeframes need to be included in the BILL-

Proposal - If the application is :

a) **Delegated Municipal Official** – a decision is to be made within 3 months (90 days) of receipt of the development application
b) **Municipal Tribunal** – a decision is to be made within 5 months of receipt (150 days) of receipt of the development application

There should be a standard timeframe nationally or provincially. If not this will cause major problems and confusion.

Part D

51. I believe that the appeal process should be heard by the Provincial Local Government of that particular Province and not the Executive Authority of the Municipality, as this is a clear conflict of interest. A Provincial Planning Appeal Tribunal should hear and decide on all appeals. This is already established in the Eastern Cape for example and can work well. This will mean that there is no conflicts and there will be impartiality. An appeal will need to show clear and factual reasons.

If this is not possible, then a Municipal appeal tribunal needs to be established. This will need to consist of members who are impartial and have no conflict of interest.

The appeal authority must consider the appeal and can either (1) conform (2) vary or (3) revoke the decision of the Municipal Planning Tribunal. The Bill then states that despite these powers, whatever option the appeal authority decides, this *cannot detract from the rights which have accrued in terms of the original decision.*

It is submitted that this constitutes a violation of the person who appeals the decision's right to administrative justice. This right is of no value if the decision which was originally made cannot substantively be overturned. The rights which accrued with respect to the original decision must follow the outcome of the appeal decision or this process will become a sham.

59. I am concerned that the repeal of laws is not conclusive and needs to include provincial ordinances and acts as well. For example the Eastern Cape consists of a myriad of different planning and land development related acts and ordinances dating back to the early 20th century.

Schedule 1:

It should be stated that development applications may be submitted by Registered Professional Planners (SACPLAN) representing a land owner as this is their competence and field of expertise.

Schedule 3:

What about other legislation which needs to be repealed such as:

Less Formal Townships Establishment Act 113 of 1991

Ciskei Land Use Regulation Act 15 of 1987

Ordinance 33 of 1934 (former Transkei)

Land Use Planning Ordinance 15 of 1985 (Applicable to former Cape Provinces)

GENERAL COMMENTS:

1. The Bill fails to address complexity of our rural landscape, in particular the Eastern Cape. The reality of persons subjected to different ownership and land rights (insecure tenure, landless and communal unregistered state land). This mostly applies to the former Transkei and Ciskei homelands where high poverty and unemployment levels, low social and economic infrastructure is evident. This legislation needs to deal with land use management and planning of these rural communities.

2. The failure of the legislature to give effect to section 25(6) of the Constitution of ensuring security of tenure for people on communal land is but one reason for the continued marginalisation of rural communities. The restoration of land and tenure rights is critical in empowering these rural communities. Communal tenure is linked to the legacy of the homelands which not only created clusters of Africans with no citizenship rights, but denied people any rights to resources thereby facilitating extreme poverty and inequality. The deep structural entrenchment of such inequality will inevitably remain a challenge for decades to come. How does SPLUMB address this?

3. SPLUMB is then silent on the status of customary tenure and the rights of customary communities to consent as provide for in the Interim Protection of Informal Land Rights Act. As such, it may only perpetuate the inequality it purports to undo.

4. The Bill must also take into account various other legislation and government departments that impact negatively on land development and which are having a major impact and bearing on development and economic/social growth not taking place in the Eastern Cape and the Republic. If this is NOT considered and brought into this BILL, it will not have the desired impact.

In terms of my experiences over the last decade there are major problems with other pieces of national legislation which impact negatively on land development, resulting in non-approvals and investors/applicants wanting to develop waiting up to 2 or 3 years before they can start their development / construction. There are even Municipal/Government Land Development Applications that have been stalled for up to 8 years in Buffalo City and many parts of the Eastern Cape, and this has resulted in a hopeless situation for communities as well as practitioners. I am aware of 40 major government/municipal human settlement (rural and urban) development applications that have stalled due to a combination of legislation related problems and government/municipal inefficiency in the Eastern Cape. This does not align with best practice and international precedents. How is this BILL going to address this and resolve these major problems and challenges that Planning Practitioners are faced with. In the end municipalities are not able to complete nor achieve their programmes, services stall and investors/developers discontinue their plans/projects or move elsewhere.

It is my experiences as a Practicing Planner over the last decade in the Eastern Cape that the various problems consist of the following and if these problem areas are resolved that the benefits will be tremendous resulting in increased economic growth, investor confidence and quicker developments especially for government programmes and interventions:

No	Problem / Fatal Flaw	Department
1.	(Subdivision of Agricultural Land Act 70 of 1970) The provisions and processes relating to the Subdivision of Agricultural Land Act (70 of 70) need to be taken into account in so far as they have a negative bearing on land development. This is concerning and a major fatal flaw in the land development process. It is a known fact that this National Government Department (as well as its Provincial Department) are dilatory	Department of Agriculture

No	Problem / Fatal Flaw	Department
	(slow, uninformed, inconsistent and negligent) in processing land development applications / commenting on land development applications. It is my experience that this Government Departments either ignores land development applications submitted to them for comments or takes a considerable amount of time to comment or if a decision is made, which is mostly a Negative response, NO valid or suitable reason is provided as to why the application for subdivision/land development was declined. Numerous examples can be provided of this. It is submitted that even vacant land (registered with a farm no) that is located within proclaimed municipal urban edges (land for human settlement development) does not escape the ineptitude of the Department of Agriculture and incorrect negative decisions are made behind closed doors in Pretoria. Numerous land development applications that are compliant with approved Municipal Spatial Planning Policy are declined and blocked by the Department of Agriculture, having a major impact on growth and development. It takes about 2 to 3 years to process a minor subdivision application and longer for a more complex application. This does not align with best practice and other land development legislation and is causing undue delay. It is evident that the Town Planning approval is granted first, followed by EIA approval and then Department of Agriculture approval if one is fortunate to even get this processed by Department of Agriculture. It general, it takes up to 3 years before construction can commence. It is submitted that the National Department of Agriculture has a major problem, in processing applications and this will have a negative impact on this new BILL when it becomes an Act. The Department of Agriculture has poor policy which is outdated and their decision making is often incorrect and without thought. On many occasions at Tribunals it was stated by the Planning Authority that the Department of Agriculture did not apply their minds correctly and their decisions cannot be supported with factual as well as scientific evidence. They have no capacity in the Provinces either. The **SOLUTION:** This BILL somehow needs to manage and be able to ensure compliance or co-operation with Dept. Agriculture to "tow	

No	Problem / Fatal Flaw	Department
	the line" or face Administrative Justice. A clause is needed that aligns other departments (provincial or national) with the BILL's proposed land development process in terms of timeframes.	
2.	NEMA legislation – this legislation is arduous and drawn out. Decisions take between 12 and 24 months to be made. This is too long and does not align with best practice timeframes as well as planning timeframes. It is evident that the Environmental Authorities are ignoring prescribed timeframes and there are no consequences if it takes 3 times as long as the allotted time to process an EIA application. The impact on this is that this does not allow for streamlined land development and economic growth.	Environment (NEMA);
3.	It must be noted that land development related applications sometimes also require SANRAL and Department of Transport consent, through parallel legislation. I am of the opinion that these entities are able to provide comment/consent within the same period as land development applications require for the Town Planning component, as what is proposed in the BILL. This is subject to these entities having capable and competent staff.	Transport Planning (SANRAL, national and provincial roads);
4.	(Land Development on unregistered state as well as communal land): I am of the opinion that this is one of the most important aspects of land development that is being neglected by National Department of Rural Development and Land Reform. National Government and the parliament oversight body need to seriously review the existing status quo that has plagued RSA over the last 18 years relating to our rural settlements. In the Eastern Cape the majority of our people (rural communities) are suffering incredibly due to the tenure being unsecure and them unable to obtain ownership / title. This directly disempowers these communities. I am unsure as to how this BILL is going to accommodate this and how land development processes are going to take place on unregistered state land. The current system does not work (State Land Disposal). We have many proposed rural human settlement developments that have been stalled and blocked due to no proper legislation and systems being in place and the confusion surrounding communal land.	National Department of Rural Development and Land Reform

SUBMITTED BY:

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