

Municipal planning in terms of SPLUMA – Examples and case studies

Jeannie van Wyk

University of South Africa

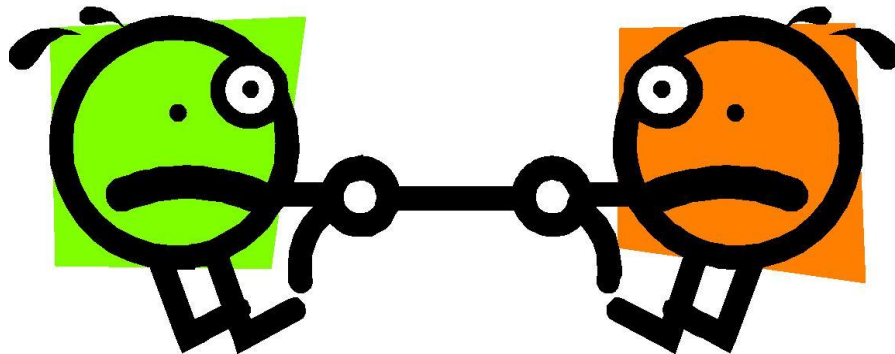
Focus - Necessary content of public participation provisions

Public participation provisions are important to provide certainty to municipalities -

Municipalities play a role vis-à-vis....

Developers/owners

Neighbours, 3rd parties...



Example of (problematic) participation

Beplande casino kompleks

Sun International hou van vandag tot Vrydag openbare verhore by die NG Moreletapark kerk oor sy planne om die Morula Sun Casino na Menlyn Maine in die ooste van Pretoria te skuif, waarby die naam sal verander na Time Square casino kompleks. Duisende, waaronder die breë kerkgemeenskap, het al beswaar aangeteken teen die beplande dobbelplek.



Focus - Necessary content of public participation provisions

Examples used:

1. City of Joburg Draft Municipal Planning By-law
2. City of Tshwane Land Use Management By-law
3. KZN Draft Spatial Planning and Land Use Management Generic By-law
4. Umlalazi Spatial Planning and Land Use Management By-law (similar to Umgungundlovu, Kwadukuza)
5. Mpumalanga Spatial Planning and Land Use Management Standard Draft By-law
6. Mbombela By-law on Spatial Planning and Land Use Management

Focus - Necessary content of public participation provisions

Public participation is relevant in -

1. Municipal Spatial Development Frameworks
2. Land Use Schemes
3. Development Applications

From the by-law examples above the necessary content of public participation provisions that is recommended for these planning components is set out in the remainder of the presentation.

BUT, not to be underestimated...

While by-laws provide the necessary legislative content, informal communication between parties at the beginning of a process must not be underestimated – it does prevent conflicts, delays, financial expense down the line.....

MSDF – no land use right

Preliminary – type of right granted:

A MSDF does not confer or take away land use rights but guides and informs decisions to be made by municipality relating to land development.

MSDF – participation in process

1. When the municipality intends drafting, reviewing or amending its SDF –

It must publish a notice -

(a) in the *Provincial Gazette* in English and one other official language commonly spoken in the area, once a week for two consecutive weeks;

(b) simultaneously in two local newspapers circulating in the area of jurisdiction of the municipality in English and one other official language commonly spoken in the area.

2. It may use any other method of communication it may deem appropriate.

MSDFs – participation in process

3. Municipality must inform Ward Committees, Councillors, Residents' Associations.

44. Municipality may for purposes of public engagement arrange specific consultations with professional bodies, other groups.

5. The notice must –

(a) invite interested persons to comment on the draft SDF;

(b) indicate where the SDF is available;

(c) specifically state that any person or body wishing to comment must: (i) do so within 60 days from the first day of publication of the notice; (ii) provide written comments; and (iii) provide contact details.

Land Use Scheme – rights and legal force

1. A land use scheme-

(a) has the force of law and all land owners and users of land, including the municipality, state-owned enterprises and organs of state within the municipality's area of jurisdiction are bound by the provisions of such a land use scheme;

(b) provides for land use and development rights.

2. The municipality has a duty to comply with and enforce the provisions of its land use scheme.

3. Any use of land which is deemed contrary to such land use scheme shall constitute a criminal offence.

Land Use Scheme - preparation

Once a draft Land Use Scheme has been drawn up -

1. The municipality must publish a notice in the *Provincial Gazette* once a week for two consecutive weeks.
2. Simultaneously publish a notice in two local newspapers circulating in the area of jurisdiction of the municipality in English and one other official language commonly spoken in the area.
3. Municipality must inform Ward Committees, Councillors, Residents' Associations.
4. Use any other method of communication it may deem appropriate.

Land Use Scheme - preparation

5. The municipality may for purposes of public engagement arrange: (a) specific consultations with professional bodies, or other groups; and/or (b) public meetings.

6. The notices must specifically state that any person wishing to provide comments and/or objections must (a) do so within a period of 60 days from the first day of publication of the notice; (b) provide detailed written comments; (c) provide their contact details; (d) detailed grounds of objection; (e) a demonstration of the interest and/or *locus standi* of the interested person or objector to the satisfaction of the municipality.

Land Use Schemes - preparation

7. After the public participation, engagements and consultation processes the department responsible must
- (a) review and consider all submissions made in writing or inputs made during any consultations or engagements; and
 - (b) prepare a report, including all information deemed relevant to the Municipal Council, on the submissions made.

Development applications

1. Types of applications: amendment of land use scheme, consent, township establishment, removal of restrictive condition, consolidation, subdivision, closure of road ...
2. Notarial tie, extension of sectional title scheme, approval of land use scheme – are these ‘development applications?’
3. Categories of applications: Category 1 and Category 2.
4. Because one is dealing with a range of different types of applications there cannot be a one size fits all provision for notification.

Development applications – notice, contents

1. Details of property, applicant, proposed development...
2. Application and accompanying documents will lie open for inspection at specified times and at specified places.
3. Number of days in which to object.
4. No late objections.
5. Submission timeously in writing by registered post, by hand, by facsimile or by e-mail.
6. Details of opportunities for persons unable to write to be assisted.
7. Failure so to submit comments or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal.

Development applications – notice, manner

1. Once a week for consecutive 2 weeks simultaneously in the *Provincial Gazette* and two newspapers that circulate within the area (English and another language in common use in the area).
2. Another notice containing the same detail displayed on the relevant land in English, and in any other official language;
 - (a) in a conspicuous place where it is best and easily visible and can be easily read from each and every adjacent public street or other adjacent public place;
 - (b) maintained in a clearly legible condition for a period of not less than 28 days from the date of publication.

Development applications – notice, manner

3. The municipality may, in order to bring the application to the attention of the general public or interested parties, require the applicant to give further notice of the application simultaneously with the notices.
4. The applicant must, within 21 days from the last day of display of the notice, submit to the municipality— (a) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and (b) at least two photos of the notice, one from nearby and one from across the street.
5. Where the municipality requires an applicant to display a public notice, it must conduct an on-site inspection to verify whether the applicant has complied with the requirement to display that public notice.

Development applications, specific notice

1. Each owner of an adjacent property, including a property separated from the property concerned by a road, prior to the date of the notice in newspaper and on the property.
2. Holders of long term leases, permission to occupy certificates for land adjacent to a development in a traditional community area.
3. Every holder of limited real rights, eg restrictive condition, servitude, mortgage holder.
4. Municipal Ward Councillor.
5. Acknowledged resident's association.
6. Clarity on “adjacent”, “adjoining” – in definitions (see next slide).

Diagram A: Land development area in the centre of the block

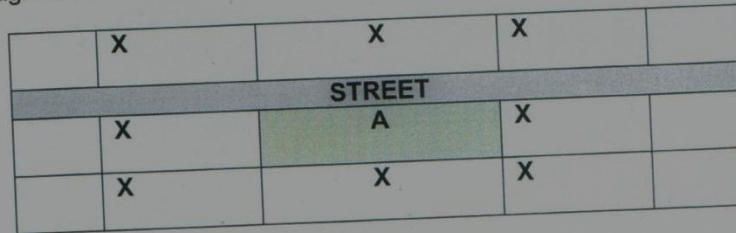
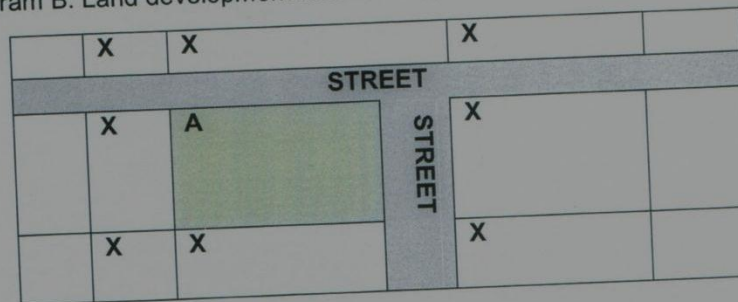


Diagram B: Land development area on a corner of two streets



Erven marked **A** represent the land development area (application property)

Erven marked **X** represent the properties whose owners must receive the notice.

Development applications, manner of notice

1. Registered mail
2. Delivery
3. Service

Development applications – who may object, comment

1. Definitions of “objector”, “interested person”
2. Intervenor – more clarity on role
3. Ward Councillors?

Development applications - objection, content

1. How to object? Delivery, email, registered mail, by hand.
2. Objector must provide —
 - (a) sufficient details of application for it to be identified;
 - (b) full name, address, other contact details and method of notification;
 - (c) interest in the application;
 - (d) reason for objection, including -
 - the effect that the application will have on them/the area;
 - any aspect of the application that is considered to be inconsistent with policy, and how.

Thank you...