



A better zoning system for South Africa?

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ABSTRACT

After many years of disjointed legislation, the new Spatial Planning and Land Use Management Act has finally been implemented in South Africa. This legislation requires a holistic spatial planning system that includes development principles, policy, spatial planning on all levels of government, land use management and control. The development principles relate to spatial justice, redress, inclusion, resilience, efficiency, sustainability and good administration. At the same time the act mandates land use zoning as the form of development control, yet zoning has been criticised as being exclusionary, unjust and unsustainable. It is thus in conflict with the principles of the act. This raises the question: if not zoning, what other form of land use management and control will be suitable for South Africa and other countries with a similar colonial history? This paper considers the role of land use management and the criteria for an appropriate system in circumstances of weak municipal government capacity. As part of the argument it considers the arguments around zoning and then evaluates the applicability of alternative forms of development control in the South African context. The paper concludes with a suggestion for a land use management system based on a transect adapted to the South African landscape using various forms of land use management such as performance zoning, form based codes and local spatial plans, where applicable in the local context, within the transect.

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1. Introduction

Apartheid left South Africa's land use management and development control system as fragmented and disjointed as the spatial landscape it created. With the advent of democracy in 1994, a plethora of new legislation was enacted by the new democratic parliament to reverse the Apartheid laws and create new freedoms. However, with the exception of the Development Facilitation Act of 1995, few changes occurred with respect to land use planning and legislation prior to 2013. While the Development Facilitation Act introduced innovations such as development principles and strategic municipal planning in the form of land development objectives (South Africa, 1995), it did not change the overall planning landscape. Each province has its own legislation that in some cases may be applicable only to former white areas or areas subject to former Bantustan legislation, although some provinces have enacted new provincial acts that pertain to the entire province. Furthermore, urban and rural areas have experienced different levels of control, with formal white urban areas subject to the most stringent

land use controls, mostly in the form of Town Planning Schemes, but little or no control is exercised in former black settlements or rural areas (Watson, 1993; Parnell and Pieterse, 2010). While this may reduce the cost of land for development, there may also be environmental consequences and long term infrastructure costs.

This situation is set to change, with the advent of the Spatial Planning and Land Use Management Act, (SPLUMA) in 2013. This act seeks to provide an overarching framework for spatial planning, policy and land use management for the entire country. Its provisions include spatial planning principles and the concept of an inclusive spatial planning system (Van Wyk and Oranje, 2014). The concept 'inclusive' pertains not only to all the land in the country (from rural to urban), but also the range of spatial development aspects included in the act, namely: policy, provincial legislation, spatial frameworks, land development applications and development regulations in the form of zoning schemes applicable to all land within a municipality.

Furthermore, SPLUMA – unlike its Apartheid predecessors – contains normative principles which apply to spatial plans and applications that are intended to address the inequalities that characterise the South African landscape. Briefly, the principles are:

- Spatial justice that emphasises redress, inclusion, flexibility and appropriate land use management;

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- Spatial sustainability that includes environmental (including the protection of agricultural land) as well as institutional and financial sustainability;
- Efficiency that relates to the optimal use of existing infrastructure and resources, as well as effective decision-making;
- Spatial resilience that concerns the protection of livelihoods from economic and environmental shocks; and
- Good administration dealing with an efficient, effective and inclusive approach to planning and development management; as well as administrative justice (South Africa, 2013: Section 7).

However, while SPLUMA requires integration, inclusion and justice, it also requires municipalities to adopt land use schemes, and in the absence of such a scheme, to use standard land use zones given in the act (in schedule B of the act). Yet, as this paper will illustrate, zoning conflicts with the SPLUMA principles of spatial justice, spatial sustainability and spatial resilience. This raises the question: if not land use zoning, what other land use management system will be more appropriate for South Africa and other African nations that have a history of colonialist segregation?

This paper considers the arguments around zoning and evaluates the applicability of alternative forms of development control in circumstances of weak capacity of municipal government and few professional planners, as is the present situation in South Africa (Department of Cooperative Governance and Traditional Affairs, 2009; Municipal Demarcation Board, 2012). Some suggestions for a land use management system that will be more appropriate in the South African context are then made.

Before evaluating zoning and alternative development control systems, this paper will briefly consider the role of land use management and the criteria for an appropriate land use management system for South Africa before outlining SPLUMA's requirements regarding zoning schemes. After the evaluation of various land use management systems, proposals are made for a more applicable land use management system, followed by a conclusion.

2. Criteria for an appropriate land use management system

Land use management, also known as 'development control', 'land administration' 'land regulation', or development 'codes' (Thomas, 1997; Enemark et al., 2005; Talen, 2012), refers to the control of development on land. This may include spatial and environmental policy and legislation, land information such as the cadastre and the land administration process (Enemark et al., 2005; Enemark, 2007). According to Healey (2006: 72) it pertains to "collective management of local environments" and is often, but not always, linked to spatial plans and the implementation thereof (Healey, 2006; Todes et al., 2010; Coyle, 2011; Van Wyk, 2012: 56; Görgens and Denoon-Stevens, 2013). This link is important for without some form of development control to ensure that development takes place as envisaged, there is no point in engaging in strategic planning (Oranje, 1995: 32; Berrisford and Kihato, 2008).

Land use management is undertaken for a number of reasons, most importantly for the protection of people and the environment from the externalities of development (Thomas, 1997; Alexander, 2001; Talen, 2012). Thus health, safety and sustainable development have long been among the primary goals of land use management (Ben-Joseph, 2005; Enemark et al., 2005; Pelling and Wisner, 2009; Coburn, 2009; Healey, 2010; Talen, 2012; Van Wyk, 2012). A more subtle externality pertains to decreased land values arising from 'unsavoury' developments. Thus the maintenance of property values (which ultimately support the municipal tax base) and the creation of a secure environment for investment are further justifications used for land use management (Fischel, 2004; Ben-Joseph, 2005; Savini et al., 2014; Hirt, 2014). While these are

seen as positive, the control over land use can affect the supply and hence the price of land that affects the supply of affordable housing (Ikeda and Washington, 2015). One important component of land use management is the control over the density or intensity of land uses to enable the planning and supply of basic services infrastructure (Thomas, 1997).

In addition, land use management is linked to the concepts of administrative justice and transparency where appropriate processes are essential to inform communities of proposed developments. This enables residents and stakeholders to voice their opinions and proposals on the matter (Healey, 2006). These processes also generate institutional systems such as public hearings and tribunals to peacefully resolve conflicts that arise from (re)development processes (Oranje, 1995: 33).

The relationship between land use management and social justice has long been recognised (Charlton, 2008; Van Wyk and Oranje, 2014). This includes the extent to which laws that determine "access to, the rights to develop and transact and the powers to tax urban land – are neither ideologically nor economically neutral. They shape the social, financial and political values of urban land and they influence directly the extent to which households, rich and poor, are able to realize the financial value held in their largest single investment, their homes" (Kihato and Berrisford, 2006: 3). Consequently, land use management is not value free (Hirt, 2014). Where linked to normative plans, it should support and seek to implement those plan's goals.

In South Africa the land use management system must seek to promote the SPLUMA principles of spatial justice, spatial sustainability, spatial resilience, efficiency and good administration. Other legislative mandates are an inclusive, just and democratic nation as contained in the Constitution and the Bill of Rights (Van Wyk and Oranje, 2014). This is consistent with other authors who identify democratic governance, participation and consensus, transparency of both rules and decision-making as important criteria (Oranje, 1995; Thomas, 1997; Talen, 2009; Nel, 2011; Görgens and Denoon-Stevens, 2013). A system based on consensus should also reflect the values, visions and aspirations of the community (Oranje, 1995; Thomas, 1997; Talen, 2009). It must, moreover, be flexible enough to accommodate various forms of tenure and development, including unregistered sites such as land held under customary tenure (Williamson, 2001) and informal settlements (Görgens and Denoon-Stevens, 2013).

Additionally effective administration, leading to speedy decision-making along with credible conflict resolution is required (Eggers, 1990; Oranje, 1995; Thomas, 1997). To achieve this the system must have the necessary capacity – staff, skills and finances – to implement the system sustainably (Watson, 1993; Görgens and Denoon-Stevens, 2013). This implies that the regulatory system should focus on the strategic and not the petty (Oranje, 1995), containing only the most essential rules (Talen, 2009). Watson (1993) focuses on enabling the livelihoods of the poor and being self-sustaining through community acceptance thus requiring the minimum regulation necessary. Eggers (1990) suggests that land use management should be concerned with promoting economic development through flexibility, increased certainty for investment, sensitivity to market signals and limited arbitrariness of decision-making.

The promotion of sustainable development, environmental integrity, and prime agricultural land are goals of many land use management systems (Oranje, 1995; Thomas, 1997; Enemark, 2007). This includes compact, walkable, attractive and liveable settlements with low greenhouse emissions (Coyle, 2011).

In summary, the most common purposes of a land use management system are: social sustainability including justice, equity and inclusion; economic development through creating and maintaining investor confidence, supporting property markets and

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