



## Viewpoint

# Developing an appropriate land use methodology to promote spatially just, formal retail areas in developing countries: The case of the City of Cape Town, South Africa



Stuart Paul Denoon-Stevens

University of the Free State, South Africa

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## ABSTRACT

South African scholars have increasingly recognized that the prevailing management system for land use is one not relevant to the current spatial needs of the country's settlements. These include, in particular, the need to create sustainable, spatially just and resilient settlements and to develop land in a manner that promotes efficient urban development. The debate in the South African literature on land use management has, with a few notable exceptions, yet to venture into the specific mechanics of how to fix this system, ways the system can be used to create a spatially just urban form, or its applicability in formal retail areas.

This paper addresses these questions within the context of formal retail areas and the zoning category that these are typically found in, namely that of the General Business zone. This paper initially investigates the current exclusionary nature of formal retail areas in the context of South Africa and within Cape Town and how this is linked to the more macro patterns of spatial exclusion within Cape Town. It is argued that within the context of Cape Town there is a need to focus on both commercial, particularly formal retail, as well as residential, areas with regard to the project of creating a more spatially just city. It is subsequently demonstrated, firstly, how zoning scheme provisions could be used as a mechanism to address these patterns of exclusion in formal retail areas, specifically exploring provisions that would encourage inclusion of informal and microenterprises within shopping malls. Secondly, it is demonstrated how provisions can be included that create a safer and more inviting environment for public transport users and poorer employees and consumers, in formal retail areas.

The contribution of this paper is to initiate a long overdue conversation regarding the relationship between land use management and social justice within a developing world context, and in formal retail areas, and aims to set out ways in which land use management can be made more relevant; both for South African cities and cities in other developing countries.

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## 1. Introduction

Land use management has recently begun to recapture the interest of academics and officials alike, owing to the potential of this area of practice to either hinder or enable the creation of positive, sustainable, and socially just urban and rural spaces (see for instance [UN Habitat, 2009](#); [Enemark, 2007](#); [Görgens and Denoon-Stevens, 2013](#); [Brueckner, 2007](#)). What has been missing from this debate is a conversation regarding whether methodologies developed for land use management in North American and European

countries are appropriate in Southern contexts, and if not, then what alternative approaches could be developed.

The gap in the literature that this paper seeks to address is how we can use the regulatory framework of the city to encourage inclusion of the poor, not merely as street traders and market vendors working on the margins of retail areas, but as recognized and valued entrepreneurs within the formal retail sector. The achievement of this objective is argued to be central to achieving the creation of a spatially just South African urban form.

While not attempting to tackle this enormous question in its entirety, this paper makes an initial exploration of this question through using the case of the General Business zone of the City of Cape Town's Development Management Scheme (GB zone of the CoCT DMS), and seeks to unpack what role land use management, and in particular, zoning schemes, can play in creating a spatially

E-mail address: [DenoonStevensSP@ufs.ac.za](mailto:DenoonStevensSP@ufs.ac.za)

just urban form in formal retail areas. Through this exercise it is demonstrated that it is possible to use the GB zone of the CoCT DMS to mandate the inclusion of the poor, informal retailers, and microenterprises.

The significance of this research relates to the current spatially unjust nature of South African cities, whereby the poor are marginalized spatially by being located on the fringes of cities, located far from work opportunities and the opportunities of the city. As Simphiwe Mini argues, “*Though a wide range of legal instruments and policy documents removed official racial segregation, urban communities marginalised by the Group Areas Act remain in the peripheral areas. Racial based inequalities and urban poverty remain very durable. The current patterns of inequality, racial and wealth polarisation, in the post-apartheid city, continue and are exacerbated by the emergence and rapid increase of gated communities (Naicker, 2014).*” Noting this, the project of identifying how to reverse and combat these patterns of spatial inequality, and in so doing, creating a spatially just urban form, is of utmost importance.

The next section of this paper begins this exploration with an overview of the existing South African literature on spatial justice and land use management. Following this, the paper sets out the newly enacted legislation governing land use management in Cape Town, and discusses how this legislation makes the principle of spatial justice a cornerstone of planning practice in South Africa and in Cape Town. This paper then shows how the current wording of the General Business zone in the CoCT DMS does not adequately address the issues of spatial justice. A proposal is then put forward for what clauses could be added to this zone in order to assist with achieving the national and municipal objective of creating a spatially just urban form.

## 2. Spatial justice and land use management in South Africa; understanding the relationship and current disconnection

The issues of land use management and spatial justice in the developing world, and in South Africa, in particular, have, in recent years, started to recapture the attention of scholars, after a substantial period of neglect. For instance, [Watson \(2009\)](#) argues that LUM in its current application in the south has been inappropriate, with the standards imposed being more suitable to a western development context and that, in many cases, LUM has been used to maintain the exclusion of the poor from the benefits of the City. [Parnell and Pieterse \(2010\)](#) take this further, arguing that the continuation of systems of informality and traditional leadership, and a ‘fast-tracking’ of development processes for public housing, exclude the poor from the potential benefits of the LUM system (e.g. protection from hazards, nuisance, and reservation of land for higher order functions such as schools, libraries, and protection of land values etc.). Furthermore, they argue that the differential pattern of enforcement whereby land use rights are enforced in wealthy middle class areas, but not in poorer areas, further exaggerates the stark inequality between these areas. [Zach et al. \(2007\)](#) argue similarly that the lack of regulation excludes the poor from the area-based services of the city and the possibility of using property ownership for asset creation.

These arguments have been empirically backed by the work of the CUBES unit at the University of Witwatersrand ([Rubin, 2008](#)), and the work of [Berrisford et al. \(2008\)](#). The former examined five sites in Johannesburg, South Africa, in order to ascertain how land was being used, developed, sold, and managed within the five Case Study areas, with the eventual aim of providing recommendations to policy makers and practitioners. The main finding of this study was that “*The existing planning schemes, zoning and the cadastral system are in many ways exclusive of the needs of low-income households and communities and seem to result in the disempowerment and*

*alienation of those that they intend to include and empower (Rubin, 2008:30).*”

[Berrisford et al. \(2008\)](#) had similar findings in their case study of Ethembaletu, a low-income community that were attempting to access land in a peri-urban area in Johannesburg using its own savings and resources. They found that the affluent middle class was able to block the community’s attempts to access land legally through a combination of court action and the development control process. The state, in particular through the EIA process, further contributed to this by creating numerous onerous procedural requirements, by being slow to act on the planning application and ultimately by blocking the final attempt of the community to access land by refusing the EIA application. This is seemingly not a unique experience, with a substantial number of pro-poor development projects in South Africa being delayed by the wealthy middle class using the planning and environmental processes.

The main attempt to address these issues of spatial exclusion in South Africa and abroad has been to promote the concept of inclusionary housing. This concept has been most extensively described in the US literature, where inclusionary zoning practices started in reaction to the plethora of methods used by suburban communities to exclude lower income groups. These methods include requiring large plots, setting minimum house sizes and low densities for residential development, barring multifamily apartments, filling the planning process with excessive regulations, and exclusion of mobile homes, all of which prevent any developments catering to lower income communities to be built in the area which is subject to the above restrictions ([National Commission on Urban Problem, 1968](#)). In South Africa, all the aforementioned tools have also been used, as well as additional race-based controls that prevented people of color owning homes or property in areas zoned for exclusive usage by ‘whites’ (and the reverse).

In the USA, to date around 500 communities have adopted inclusionary housing practices ([Jacobus, 2015](#)), as is the case in many European countries ([Oxley et al., 2009](#); [Cativa, 2006](#)). The model used has differed substantially, varying from the typical US model of mandatory or incentive-based zoning requirements to the more flexible negotiation process (which is guided by national and municipal policy) ([Hickey et al., 2014](#)) that occurs in the UK through the Section 106 agreements ([Oxley et al., 2009](#)). Certain systems also require that a percentage of the dwelling units in a proposed development be set aside for lower income families, whereas other systems require the developer to pay a fee, which is used by the municipality (or the developer) to fund an offsite development for lower income households ([Hollingshead, 2015](#)).

What is important to note is that the model used, and performance thereof, has differed significantly from place to place. Some of the common elements that have been identified as key to the success of inclusive zoning programs are the following:

- Inclusionary housing programs need to focus both on the creation of new units, and preservation of existing affordable units. If this does not occur, over time existing affordable housing units may become unaffordable to the desired target market ([Hickey et al., 2014](#)).
- Mandatory programs produce more housing than voluntary inclusionary housing programs ([Brunick, 2004](#)).
- Under weak market conditions inclusionary zoning regulations should be relaxed to allow the market to recover, and in general, inclusionary zoning policies should be drafted in such a way that they are sensitive to the local land market ([Kroll et al., 2010](#); [Mukhija et al., 2015](#)).
- A policy focusing on on-site provision of affordable units, as opposed to payment of a fee for offsite

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